

**Changing Ideas about Corporate Social
Responsibility
CSR and Development in Context:
The Case of Mauritius**

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to my parents and grand-parents

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Abstract

The idea of corporate social responsibility (CSR) has risen to prominence with remarkable rapidity in recent years. Although the literature on contemporary CSR has concentrated almost exclusively on advanced capitalist countries, CSR is increasingly being promoted in a developing country context as an important mechanism for furthering economic and social development goals. Yet, there is currently very limited research about whether contemporary CSR can in fact assist in development.

This thesis seeks to contribute to the body of knowledge in this area. The first, theoretical, part of the thesis explores changing ideas about the nature of CSR, and argues that contemporary ideas of CSR are ameliorative in nature, marking a fundamental shift from the original, transformative, idea of the 'socially responsible corporation', which emerged in the 1920s and 30s. The thesis also argues that with their emphasis on self-regulation and voluntarism, contemporary ideas about CSR are very much part and parcel of contemporary neo-liberal ideas about economic and social organisation. The second, empirical, part of the thesis seeks to investigate whether the model of CSR being deployed in the developing world is indeed a conservative one and, if so, whether this conservatism is likely to render it ineffectual. It explores how CSR is understood by its practitioners - company executives and other key players - in Mauritius, focusing on the impact of the concept on executive opinion by examining their rhetorical commitment to CSR as well as what that entailed in practice. The research suggests that executives in Mauritius tend to equate CSR with corporate philanthropy, which casts doubt on its ability to make a significant contribution to development.

In light of the arguments developed in the thesis, one of its main conclusions is that a return to the earlier, more radical, conception of CSR is needed if CSR is really to make an important contribution to development.

List of Acronyms and Abbreviations

AA1000	AccountAbility 1000
ACP	African, Caribbean and Pacific
ADC	African Development Community
AfDB	African Development Bank
AGM	annual general meeting
AGOA	African Growth and Opportunity Act
ANPED	Northern Alliance for Sustainability
ASH	Action on Smoking and Health
ATCA	Alien Tort Claims Act
AU	African Union
BAE	British Aerospace
BAT	British American Tobacco
BC	Beachcomber
BCSD	Business Council for Sustainable Development
BERR	Department for Business Enterprise and Regulatory Reform (UK)
BIS	Department for Business, Innovations and Skills (UK)
BOI	Board of Investment (Mauritius)
BP	British Petroleum
BT	British Telecom
BUSCO	Business Association for the World Social Summit
CA 2006	Companies Act 2006
CBI	Confederation of British Industry
CCR	Center for Constitutional Rights
CEO	Chief Executive Officer
CEPAA	Council on Economic Priorities Accreditation Agency
CERES	Coalition for Environmentally Responsible Economies
CFO	Chief Financial Officer
CISCO	Cisco Systems, Inc. (a multinational company)
CLR	Company Law Review
CLRSG	Company Law Steering Group
CM	Communications Manager
CMT	Compagnie Mauricienne de Textile
COMESA	Common Market for Eastern and Southern Africa
COO	Chief Operations Officer
CORE	Corporate Responsibility
CRA	Corporate and Regulatory Affairs
CS	Company Secretary
CSD	Commission on Sustainable Development
CSO	Central Statistics Office (Mauritius)
CSR	Corporate Social Responsibility
DFID	Department for International Development (UK)
DG	Director General
DTI	Department of Trade and Industry (UK)
EABIS	European Academy of Business in Society
EC	European Community
ED	Executive Director
EMS	Environmental Management System

EMAS	Eco-Management and Audit Scheme
EPZ	Export Processing Zones
EPZLWF	Export Processing Zone Labour Welfare Fund
ESV	Enlightened Shareholder Value
ETI	Ethical Trade Initiative
EU	European Union
FDI	Foreign Direct Investment
FoE	Friends of the Earth
FoEI	Friends of the Earth International
FED	Fondation Espoir et Développement
FLA	Fair Labor Association
FNR	'Fondation Nouveau Regard'
FSC	Forest Stewardship Council (UK)
FSDM	Financial Services Division Manager
FSF	Financial Stability Forum
FT	Financial Times
FTSE	Financial Times Stock Exchange
GATT	General Agreement on Tariffs and Trade
GC	Global Compact
GCC	General Construction Company Limited (Mauritius)
GDP	Gross Domestic Product
GE	General Electric
GM	General Manager
GRI	Global Reporting Initiative
HDR	Human Development Report
HR	Human Resources
HSBC	Hong Kong and Shanghai Banking Corporation
IBFAN	International Baby-Food Action Network
IBRD	International Bank for Reconstruction and Development
ICC	International Chamber of Commerce
ICCLR	International Company and Commercial Law Review
ICFTU	International Confederation of Free Trade Unions
ICNL	International Center for Not-For-Profit Law
ICQL	International Comparative Law Quarterly
ICTI	International Council of Toy Industries
IDB	International Development Bank
IFC	International Finance Corporation
IFIs	International financial institutions
IFU	International Union of Food
ILO	International Labour Organisation
IMF	International Monetary Fund
IOD	Institute of Directors
IRS	'Integrated Resort Scheme'
IRTK	International Right to Know
ISAR	International Standards of Accounting and Reporting
ISO	International Organisation for Standardisation
ITT	International Telephone and Telegraph Corporation
IUF	International Union of Food, Agriculture, Hotels, Restaurants, Catering, Tobacco and Allied Workers' Association
JEC	Joint Economic Council

LDC	less developed country
LSE	London Stock Exchange
MACOSS	Mauritius Council of Social Service
MCCI	Mauritius Chamber of Commerce and Industry
MCCI	Mauritius Chamber of Commerce and Industry-
MD	Managing Director
MDGs	Millennium Development Goals
MEF	Mauritius Employers' Federation
MFA	Multi-Fibre Agreement
MLR	Modern Law Review
MNE	Multinational Enterprise
MOF	Minister of Finance
MRU	Mauritius
MSC	Marine Stewardship Council
MSCI	Morgan Stanley Capital International
MSI	multistakeholder initiatives
NAALC	North American Agreement on Labour Cooperation
NAFTA	North American Free Trade Association
NCCG	National Committee on Corporate Governance
NEPAD	New Partnership for Africa's Development
NGLS	UN Non-Governmental Liaison Service
NGO	Non-Governmental Organisation
NICC	New Island Clothing Company Ltd
NIEO	New International Economic Order
OECD	Organisation For Economic Co-operation and Development
OFR	Operating and Financial Review
OHCR	UN Office of the High Commissioner for Human Rights
OPEC	Organisation of Petroleum Exporting Countries
OUP	Oxford University Press
PFSM	Personal Financial Services Manager
PIL	'public interest litigation'
PILS	Prévention, Information et Lutte contre le SIDA, Mauritian NGO
PM	Personnel Manager
PPP	Public-Private Partnership
PR	Public Relations
PRSP	Poverty Reduction Strategy Paper
PWC	PricewaterhouseCoopers
RCG	Report on Corporate Governance for Mauritius
ROSC	Report on the Observance of Standards and Codes
SA8000	Social Accountability 8000
SAI	Social Accountability International
SADC	Southern African Development Community
SAP	Structural Adjustment Programme
SBM	State Bank of Mauritius
SGS	Société Générale de Surveillance
SILWF	Sugar Industry Labour Welfare Fund
SRC	'socially responsible corporation'
SRI	Socially Responsible Investment
TBL	Triple Bottom Line
TNC	Transnational Corporation

TransPuG	Transparency and Company Disclosure Act (Germany)
TSE	Tokyo Stock Exchange
UK	United Kingdom
UN-BPs	United Nations-Business Partnerships
UNECE	United Nations Economic Commission for Europe
UNAIDS	United Nations Joint Programme on HIV/AIDS
UNCED	United Nations Conference on Environment and Development (also known as the Earth Summit)
UCLA	University of California, Los Angeles
UN	United Nations
UNCHR	Commission on Human Rights
UNCTAD	United Nations Conference on Trade and Development
UNCTC	United Nations Centre on Transnational Corporations
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNFCCC	Framework Convention on Climate Change
UNHCHR	United Nations High Commissioner for Human Rights
UNIDO	United Nations Industrial Development Organisation
UNRISD	United Nations Research Institute for Social Development
US	United States
ViSa	Vie-Santé- literally, 'Life-Health' (Mauritius)
WBCSD	World Business Council on Sustainable Development
WEF	World Economic Forum
WFSGI	World Federation of Sporting Goods Industry
WICE	World Industry Council for the Environment
WRAP	Worldwide Responsible Apparel/Accredited Production
WSSD	World Summit on Sustainable Development
WSSD	World Summit on Sustainable Development held in Johannesburg, South Africa from 26 August to 4 September 2002
WSSD	World Summit for Social Development in Copenhagen
WTO	World Trade Organisation
WWF	World Wildlife Fund
ZEP	Zone D'Education Prioritaire (Mauritius)

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Introduction

A Brief History of CSR

In the last two decades or so, the idea of corporate social responsibility or CSR, as it is now commonly known, has risen to prominence with extraordinary rapidity. Elevated into a term of art¹, CSR has become, in the words of *The Economist*, ‘an industry in itself, with full-time staff, newsletters, professional associations and massed armies of consultants.’² It is ‘difficult’, Doreen McBarnet observes, ‘to open a newspaper these days without coming across some reference to [CSR]’.³ Indeed, it has not only become an increasingly fashionable field of study amongst academics, been embraced by corporations and entered common consciousness, but it has also increasingly been advanced by non-governmental organisations (NGOs) and policymakers as a potential mechanism for achieving social policy objectives and furthering economic development. More and more hopes have been pinned on it, particularly in the developing world, where it is increasingly seen as having a potentially vital contribution to make to economic, social and human development.⁴ ‘By following socially responsible practices’, the UK’s Department for International Development (DFID) claims, ‘the growth generated by the private sector will be more inclusive, equitable and poverty reducing’.⁵ In such an optimistic climate, one cannot help but wonder whether CSR can bear the weight of the increasing expectations being heaped on its shoulders.

¹ Michael Smyth, ‘The Socially Responsible Company- oxymoron or template for a new age?’ Commonwealth Law Conference 12 September 2005.

² --‘Two- faced capitalism’ *The Economist* (London 24 January 2004) 53.

³ Doreen McBarnet, ‘Corporate social responsibility beyond law, through law, for law: the new corporate accountability’ in D McBarnet, A Voiculescu and T Campbell (eds), *The New Corporate Accountability: Corporate Social Responsibility and the Law* (Cambridge University Press, Cambridge 2008) 9.

⁴ Visser explains that the challenge for CSR in developing countries is framed by a vision distilled in 2000 into the Millennium Development Goals : ‘ a world with less poverty, hunger and disease, greater survival prospects for mothers and their infants, better educated children, equal opportunities for women, and a healthier environment.’ See United Nations (UN), *Millennium Development Goals Report 2006* (UN, Brussels 2006) 3. See further W Visser, ‘CSR in Developing Countries’ in A Crane and others (eds), *The Oxford Handbook of Corporate Social Responsibility* (OUP, Oxford 2008) 473.

⁵ DFID, *Socially Responsible Business Team Strategy: April 2001- March 2004* (DFID, London 2004) 2 cited in Rhys Jenkins, ‘Globalization, Corporate Social Responsibility and poverty’ (2005) 81 *International Affairs* 525, 525.

This was the question with which I began my research, intending to focus in particular on the developing world. I soon realised that this was not going to be an easy task. Not only was the idea that corporations should behave in a socially responsible manner far from new, the sheer volume of the recent literature on CSR was enormous: Over the last fifteen or so years, CSR has been the subject of more than a hundred books, thousands of scholarly and popular articles and reports, and countless conferences - although little of it dealt with its role in the developing world. It was clear that in researching the area one was inevitably going to have to be selective. As David Vogel recently observed, the amount of material on the subject is 'far beyond the capacity of anyone to absorb'.⁶

Accordingly, this thesis has sought to focus on the most influential work representative of both the pro- and anti-CSR positions. In this context, I have found the work of the United Nations Research Institute for Social Development (UNRISD) especially helpful, and in fact, the CSR literature selected and used in this thesis was very much informed by the materials available to me via the UNRISD. Hence, one of the very first books I read on the subject of CSR and development was by Ann Zammit, of the then South Centre, entitled *Development at Risk: Rethinking UN-Business Partnerships*.⁷ Interestingly, Zammit's book concentrated on explaining the notion of CSR from an Anglo-American perspective. In effect, most of the materials I read appeared to suggest that CSR was/ is very much an Anglo-American construct.⁸ As a result, I felt that I had to go back to its Anglo-American corporate theory roots to gain a better understanding of the concept, as explained below.

I also soon realised that despite the growing prominence of the idea and its lengthy provenance, the meaning attached to the idea of CSR has varied quite significantly over time and in different contexts. Even now there is no commonly accepted definition of precisely what CSR means or entails.⁹ '[It] means something,' Votaw

⁶ See David Vogel, *The Market for Virtue-The Potential and Limits of Corporate Social Responsibility* (Brookings Institution Press, Washington DC 2005) x.

⁷ Ann Zammit, *Development at Risk: Rethinking UN-Business Partnerships* (South Centre and UNRISD, Geneva 2003).

⁸ There were case studies from developing countries published by UNRISD but these did not really engage with CSR as a systemic issue, which is what this thesis, ultimately, wanted to examine.

⁹ See R T De George, *Business Ethics* (6th edn, Pearson Prentice Hall, New Jersey 2006). See also Michael Blowfield and Jędrzej George Frynas, 'Setting new agendas: critical perspectives on Corporate Social Responsibility in the developing world', (2005) 81 *International Affairs* 499.

wrote more than thirty-five years ago, 'but not always the same thing to everybody'.¹⁰ As a result, my attention shifted to the idea of CSR itself. Are contemporary ideas about CSR the same as the earlier ideas about the social responsibilities of corporations which were popular in the mid-twentieth century? If not, how did they differ? How is the idea of CSR understood in the developing world today? These questions, it seemed to me, needed to be addressed before any assessment of CSR's potential as a mechanism of economic and social development could be made.

The first, theoretical part of this thesis therefore seeks to examine changing ideas about the nature of CSR, focusing in particular on the specific characteristics and features of contemporary CSR. In this section, an attempt is made to bring some of the voluminous literature on CSR into contact with the equally voluminous literature on corporate governance. The second part of the thesis then moves on to explore, through empirical examination, how CSR is understood by its practitioners - business executives and other key players - in a specific developing-country context, that of my home country, Mauritius, as a prelude to making a preliminary assessment of its potential as an instrument of economic and social development.

This introductory chapter seeks to explore some of the unanswered questions about the nature of CSR through an examination of its historical origins and the changing meanings that have been attached to it. In this context, it is important to note that although ideas about the social responsibilities of corporations are far from new, there is a tendency to treat ideas about CSR as monolithic and essentially unchanging. The main argument of this chapter is that this is not the case. In fact, it argues that, contemporary ideas about CSR are much more conservative than the ideas about CSR which emerged in the 1920s and 30s. The latter centred on the idea of the 'socially responsible corporation' (SRC) and entailed a fundamental challenge to the principle of shareholder primacy and a radical re-conceptualisation of the corporation as a social or public institution whose directors should owe duties to employees, consumers, creditors and society as a whole, as well as to shareholders. By contrast, contemporary ideas of CSR tend to be firmly underlain by a shareholder-oriented model of the corporation as a private enterprise whose directors owe enforceable

¹⁰ D Votaw, 'Genius Became Rare: A Comment on the Doctrine of Social Responsibility Pt. 1' (1972) 15(2) California Management Review 25, 25.

duties only to shareholders. While the earlier idea of the SRC had a genuinely **transformative** edge, therefore, contemporary CSR is essentially **ameliorative**, seeking to temper without unsettling or displacing the idea of the corporation as a private, exclusively shareholder- and profit-oriented enterprise.

The main aim of this chapter is thus to map the territory in terms of the nature of CSR. It seeks to examine, in general terms, the ways in which the meaning attached to the concept of CSR has changed over time and to elaborate on the meanings that are currently attached to it. As such, it will attempt to specify with greater clarity the shape and form of CSR through a historical lens by tracing the move from the transformative to the ameliorative conception of CSR. Indeed, it is contended in the thesis that a comparison of these different conceptions of CSR - and of the different historical and political contexts in which they developed and wider bodies of ideas of which they were part - will provide us with some important insights into the key characteristics and underlying conservatism of contemporary CSR. In this respect, one of the main arguments of the thesis is that the contemporary version of CSR is significantly less radical than the earlier ideas about CSR which began to emerge in the 1920s and 30s and rose to prominence in the decades after the Second World War; and, a return to this earlier, more radical, conception of CSR is needed if CSR is really to make an important contribution to development.

I. The Prehistory of CSR

Some commentators have attributed a lengthy provenance to the concept of CSR, tracing its origins as far back as Classical Greece.¹¹ Thus, Eberstadt explains how in

¹¹ See N Eberstadt, 'What History Tells us about Corporate Responsibility' (Autumn 1973) 7 *Business and Society Review/Innovation* 73. Eberstadt places the concept in various periods of history, which he categorises as classical, medieval (1000-1500 AD), mercantile (1500-1800 AD) and industrial (1800-1920 AD). An alternative vision of the evolution of CSR is given by R Krishnan, 'Business Philosophy and Executive Responsibility' (1973) 16 *Academy of Management Journal* 658, 659 where he classifies the periods in history as Petty Capitalism (1100-1300 AD), Mercantile Capitalism (1300-1800 AD), Industrial Capitalism (1800-1900 AD) and Financial Capitalism (1890-1933 AD). A more recent elaboration of these ideas can be found in Saleem Sheikh's analysis of CSR: see S Sheikh, *Corporate Social Responsibilities: Law and Practice* (Cavendish, London 1996).

Ancient Greece the businessman was regarded as 'only slightly higher than the slave.'¹² The community - what Aristotle and Plato called the 'polis'- was of the utmost importance, and, therefore, '[b]usiness was expected to be of social service to [it].'¹³ In other words, business existed solely to contribute to the welfare of the community.¹⁴ The idea of business being of service to the community continued during the medieval period, where the profit motive of businesses was held to be 'anti-Christian'.¹⁵ Hence, the Church produced long treatises on the morality of business practices such as wage labour, usury, and a fair price.¹⁶ In the thirteenth century, it was felt that if one could not get rid of business, at least, one should be able to control it. Once again, the element of service was paramount: in the words of Thomas Aquinas, '[as long as business was used] for a definite purpose, namely, the good estate of the household (community)',¹⁷ it could be justified. In those days, economic activity was regulated through guilds. The businessman was 'expected to care for his guild members and for the well-being of his community.'¹⁸ The Hanseatic League, for example, set closely governed public standards of businesses.¹⁹

The Idea of Business as *Service*

Calvinist doctrine took over from Catholic dogma during 1500 to 1800 AD. Success in business came to be looked upon as evidence of self-denial and hard work to the glory of God. Calvinism assured merchants and industrialists that the 'forces of nature' were on their side and taught them to feel that they were the 'chosen people',²⁰ and they, in turn, felt that they should strive for worldly success to achieve salvation. The

¹² Eberstadt (n 11) 77.

¹³ Eberstadt (n 11) 77.

¹⁴ According to Ciulla, Cicero was writing about unscrupulous business practices as early as 44 BC. See J B Ciulla, 'Why is Business Talking About Ethics?: Reflections on Foreign Conversations' (1991) 34 California Management Review 67.

¹⁵ In fact, the motto *Homo mercator vit aut numquam Deo placere potest* (The merchant seldom, or never, pleases God) expresses aptly how the Church felt vis-à-vis business activities and the businessman.

¹⁶ Ciulla (n 14) 68.

¹⁷ Eberstadt (n 11) 78.

¹⁸ Eberstadt (n 11) 78.

¹⁹ S Llyod-Smith, 'Three Faces of Corporate Social Responsibility: Three Sociological Approaches' in S Sheikh and W Rees (eds), *Corporate Governance and Corporate Control* (Cavendish Publishing Limited, London 1995) 335.

²⁰ R H Tawney, *Religion and the Rise of Capitalism* (Harcourt Brace, New York 1926) 233 cited in Sheikh (n 11) 10.

emphasis on predestination and the virtues of industry and thrift justified business leadership and legitimised business prosperity. As Hay and Gray note,

Calvinism stressed that the road to salvation was through hard work and the accumulation of wealth. It then logically followed that a business man could demonstrate his diligence (and thus his godliness) and accumulate a maximum amount of wealth by adhering to the discipline of profit maximisation.²¹

Moreover, businesses which provided outstanding public service were given special privileges by bestowing upon them the status of 'corporations.'²² This meant that they were granted limited liability and independent legal personality. This is especially true of certain entities which were given the status of corporations to pursue national interests abroad: in the early seventeenth century, for instance, Virginia, Massachusetts and some other colonies were settled by chartered companies.²³ But while Calvinism encouraged trade, it also punished what was regarded as 'irresponsible business practices': businessmen were expected to contribute to charity and those who did not 'were frequently fined the amount judged to be an adequate gift.'²⁴

Social Responsibilities of Businessmen: Embryonic CSR versus Philanthropy

The nineteenth century was the era of the Industrial Revolution, and it brought with it new attitudes towards business and industrialists. Social Darwinists explained the success of those social arrangements which survived in terms of 'natural selection' - that is, as products of the survival of the fittest, whether intellectually or industrially.²⁵

²¹ Robert Hay and Ed Gray, 'Social Responsibilities of Business Managers' (1974) 17 *Academy of Management Journal* 135, 136.

²² *Sheikh* (n 11) 10.

²³ The Virginia Company lasted from about 1607 to 1625 and the Massachusetts Bay Company fell apart within a decade- See O Handlin, 'The Development of the Corporation' in M Novak and J W Cooper (eds), *The Corporation: A Theological Inquiry* (American Enterprise Institute for Public Policy Research, Washington DC 1981) 3.

²⁴ *Eberstadt* (n 11) 79.

²⁵ *Sheikh* (n 11) 10. See also P H Werhane, 'Business Ethics and the origins of contemporary capitalism: economics and ethics in the work of Adam Smith and Herbert Spencer' in R E Frederick (ed), *A Companion to Business Ethics* (Blackwell Publishers Limited, London 1999) and R Hofstadter, *Social Darwinism in American Thought* (Beacon Press, Boston 1955) 6: '[Social Darwinism] meant a

They believed that in a free and competitive economic and market system, only the fittest and most efficient firms would survive and that such a system would, therefore, create maximum wealth and well-being for society.²⁶ Adam Smith's famous *An Inquiry into the Nature and Causes of the Wealth of Nations*²⁷ was one of the foundations of these beliefs. Smith asserted that it was the 'invisible hand' of self-interest that drove the individual to profit-seek and, in turn, the gains he/she made benefited society. This was famously expressed in the passage below:

Every individual necessarily labours to render the annual revenue of the society as great as he can. He generally, indeed, neither intends to promote the public interest, nor knows how much he is promoting it. ... [h]e intends only his own gain, and he is in this, as in many other cases, led by an invisible hand to promote an end which was no part of his intention. Nor is it always the worse for society that it was no part of his intention. By pursuing his own interest he frequently promotes that of the society more effectually than when he really intends to promote it. I have never known much good done by those who affected to trade for the publick (sic) good.²⁸

It would be easy to conclude, as many have²⁹, that in Smith's view, social responsibility had no place in economic activity, though, in fact, Smith had little to say on this matter. Nevertheless, building upon these ideas, Social Darwinists, aided and abetted by laissez-faire economists, rejected the proposition that business firms were in any way responsible for the welfare of society as a whole, and argued that the government should simply facilitate and encourage profit-oriented businesses and allow the market to do the rest:

Our rulers will best promote the improvement of the nation by strictly confining themselves to their own legitimate duties, by leaving capital to find its own most lucrative course, commodities their fair price, industry and intelligence their natural reward, idleness and folly their natural punishment.³⁰

ruthless struggle between business competitors, between labour and management, and even among nations. Only the fittest survive'.

²⁶ R V McGrath, 'An Historical Examination of the Debate Between The Stockholder Model and The Social Institution Model of the Corporation' (Lesley University, Spring 2003) 5.

²⁷ A Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (Campbell, Skinner and Todd (eds) Liberty Classics, Indianapolis 1976).

²⁸ *Smith* (n 27) Book IV, chapter ii, 456.

²⁹ For instance, Milton Friedman: See chapter 1 of the thesis.

³⁰ T B Macaulay, 'Sourbey's Colloquies on Society (January 1830)' in T B Macaulay, *The Complete Works of Lord Macaulay Vol. VII* (Longmans and Green Co, London 1898) 502 cited in Mark A Lutz, *Economics for the Common Good: Two Centuries of Social Economic Thought in the Humanistic Tradition* (Routledge, London 1999) 3.

Not only was the main aim of business to profit-maximise, this was its social responsibility. The invisible hand of the market would ensure that these profit-maximising firms operated in the wider social interest. It must be noted here that these ideas have been reprised recently, finding expression in the contemporary shareholder-oriented model of the corporation and in neo-liberal ideas about economic organisation, both of which will be discussed in more detail in the first part of the thesis.

However, alongside these ideas about the ruthless pursuit of profit, ideas about the moral and religious responsibilities of businessmen towards society also started to come to the fore. It is important to note here that an important distinction needs to be drawn between ideas about the social responsibilities of businessmen and ideas about the social responsibilities of *business*. Broadly speaking, in the nineteenth century businessmen fell into two categories: (a) those who believed that their moral responsibilities impacted on the way in which they conducted their businesses; who believed, in other words, that their business activities should be conducted in a 'socially responsible' way; and (b) those who believed that while ideas about social and moral responsibility were not directly relevant to the way in which they operated their businesses, they were relevant to what they did with the fruits of their business activities. For the latter group, their moral obligations entailed acting philanthropically and sharing, to some extent at least, the fruits of their labour with the needy and/or the wider community.

Among the most notable of the first category of businessmen was the successful British entrepreneur Robert Owen. Owen argued that manufacturers not only had a moral obligation to treat, but would profit from treating, their employees better³¹, and he put his ideas into practice at his cotton mill in New Lanark in Scotland. The innovations he introduced embraced the upbringing of children, the approach taken to crime, the design and location of buildings and leisure facilities, relationships between the sexes, and the way in which work was organised.³² Owen's ideas were

³¹ Jim Barry and others, *Organization and Management: A Critical Text* (Business Press, Thomson Learning, London 2000) 215.

³² Michael Newman, *Socialism: A Very Short Introduction* (OUP, Oxford 2005) 11. Owen's ideas have also more prominently been equated with paternalism as it entailed showing the poor the error of their ways or providing golden rules for self-improvement. See T Cannon, *Corporate Responsibility: A*

undoubtedly radical, especially for the time: he wanted to change the very nature of the business system so that its main goal would no longer simply be to profit-maximise. As one commentator points out, one can see in Owen's work as a businessman an early attempt to integrate a set of social and ethical ideas into the framework of business operations.³³ In this respect, Owen's ideas might be seen as representing an embryonic form of CSR. He believed that ethical principles and social ideals lay at the heart of any organisation and tried to integrate them into his business:

Peace, good will, charity, and benevolence, have been preached for centuries passed; nay, for thousand of years, yet they no where exist; on the contrary, qualities, the reverse of these, have at all times constituted the character, and influenced the conduct of individuals and of nations, and must continue to do so, *while the system of individual rewards and punishments is permitted to constitute the basis of human society* (emphasis in original).³⁴

He thus sought to convince other employers, the church, and the government of the benefits to be gained from adopting his principles. He was met, however, with deep hostility, not least because his emphasis on the social responsibility of business and businessmen was quite out of keeping with the laissez-faire ideologies of the era.³⁵

The more common view at this time was that instead of fulfilling their moral and social obligations by trying radically to reorganise the way in which they ran their firms, successful businessmen should act philanthropically and give part of their profits away. Businessmen (and the occasional businesswoman), it was argued, should, for moral reasons, return something to the community which had made them wealthy, rather than try to conduct their businesses in a fundamentally different way, in contravention of market principles.³⁶ This view was, perhaps, most famously expressed by Andrew Carnegie in the US. In *The Gospel of Wealth*, published in

Textbook on Business Ethics, Governance, and Environment: Roles and Responsibilities (Pitman Publishing, London 1994) 14.

³³ Peter Gorb, 'Robert Owen as a Businessman' (1951) 25(3) *Bulletin of the Business of Historical Society* 127, 147.

³⁴ Robert Owen, *Report to the County of Lanark* (Glasgow 1821) 55-56 cited in Gorb (n 31) 147.

³⁵ Newman (n 32) 12.

³⁶ Malcolm Keay, 'Towards Global Corporate Social Responsibility' (2002) *Sustainable Development Programme Briefing Paper No. 3* (The Royal Institute of International Affairs, London) 2.

1889, Carnegie outlined how large personal fortunes should be used to better society³⁷:

This, then, is held to be the duty of a man of wealth. First, to set an example of modest, unostentatious living, shunning display or extravagance; to provide moderately for the legitimate wants of those dependent upon him; and after doing so, to consider **all surplus revenues which come to him simply as trust funds**, which he is called upon to administer, and strictly bound as a matter of duty to administer in the manner, which, in his judgment, is best calculated to **produce the most beneficial results for the community**- the man of wealth thus becoming the sole agent and trustee for his poorer brethren, bringing to their service his superior wisdom, experience, and ability to administer- doing for them better than they would or could do themselves (emphasis added).³⁸

Unlike Owen's ideas about transforming the nature of business, the idea that businessmen were in some sense the stewards of wealth for the rest of society caught on with industrialists, not least perhaps because it did not threaten the idea that 'the business of business is business'. The suggestion was that it did not matter how profits were made as long as some of them were given away charitably. Philanthropy of this sort was therefore seen as a moral obligation of *businessmen* - as opposed to business. US industrialists like Henry Sage thus spoke of his gifts to Cornell as 'good works', while Benjamin Wofford saw himself as an 'agent and trustee' of Christ, Peter Cooper considered wealth to be a 'trust', James B Colgate saw 'God's hand' in the Colgate family charity, and Johns Hopkins fulfilled his Quaker's goal of 'good works'.³⁹ In fact, so prominent was philanthropy that at the beginning of the twentieth century, Ghent commented on the increase in 'conspicuous giving', arguing that it was 'always shrewdly disposed with an eye to the allayment of pain and the quieting of discontent'. It was, he suggested, an era of 'Benevolent Feudalism.'⁴⁰

Interestingly, although individual philanthropy was viewed in a favourable light, '[c]orporate philanthropy did not', as Wren notes, 'receive favourable treatment under

³⁷ Myrna Wulfson, 'The Ethics of Corporate Social Responsibility and Philanthropic Ventures' (2001) 29 *Journal of Business Ethics* 135, 135.

³⁸ The book was originally published as an article in 1889: Andrew Carnegie, 'Wealth' (June 1889) 391 *North American Review* 657.

³⁹ Daniel A Wren, 'American Business Philanthropy and Higher Education in the Nineteenth Century' (1983) 57 *The Business History Review* 321, 343.

⁴⁰ W J Ghent, *Our Benevolent Feudalism* (New York, 1902) cited in Morrell Heald, 'Management's Responsibility to Society: The Growth of an Idea' (1957) 31 *The Business History Review* 375, 376. Heald, in fact, notes that most of the 'philanthropic activities upon which Ghent commented were, of course, those of wealthy individuals rather than of business corporations as such'- See *Heald* 376-377.

nineteenth century law.’⁴¹ In England, for example, when the West Cork Railway Company attempted to compensate its employees for the loss of their jobs occasioned by the dissolution of the corporation, the court ruled against it. Lord Justice Bowen stated the now famous guiding principle that:

Charity has no business sitting at the board of directors *qua* charity ... [the board of directors] can only spend money which is not their’s, but the company’s, if they are spending it for purposes which are reasonably incidental to the carrying on of the business of the company.⁴²

In short, the legal position was that corporations were *private* enterprises chartered to do specific things, that managers were trustees of the property of shareholders, and that directors could give away assets only if it was of measurable benefit to the corporation and its shareholders.⁴³ This ‘measurable benefit’ was seen to work in the case of *Steinway and Sons*⁴⁴, where the court permitted the piano manufacturer to buy an adjoining tract of land to be used for a church, library, and school for its employees: the court saw ‘improved employee relations’ as a major benefit accruing to the company.⁴⁵ Overall, however, the position was clear: business was a purely private, profit-oriented enterprise, which essentially entailed nothing more than the exercise of private rights by individuals. This notion of business enterprise, with its exclusive focus on the interests of shareholders, persists to this day, finding expression in the principle of shareholder primacy and the shareholder-oriented model of the corporation, both of which are explored in the first chapter of the thesis.

⁴¹ *Wren* (n 39) 340.

⁴² *Hutton v West Cork Railway Company* (1883) 23 Ch D Reports 654.

⁴³ *Wren* (n 39) 342.

⁴⁴ *Steinway v Steinway and Sons* [1896] 40 N.Y.S. 718.

⁴⁵ Archie B Carroll, ‘A History of Corporate Social Responsibility: Concepts and Practices’ in Crane and others, *The Oxford Handbook of Corporate Social Responsibility* (OUP, Oxford 2008) 22.

II. The Rise of the Corporate Economy and the Social Responsibilities of *Business*

Challenges to these beliefs came only in the closing decades of the nineteenth and early twentieth centuries, with the rise of the corporate economy.⁴⁶ This was the process whereby the economies of the most industrialised countries came increasingly to be dominated by a relatively small number of large corporations, having previously been dominated by a large number of small companies. As they grew in size, corporations began to be seen, in certain important senses, as institutions with a *separate legal personality* of their own. More and more people began to argue that the increasing size and market power of these corporations endowed their activities, individually as well as collectively, with wider, 'social' significance. As their economic power grew, it became much harder to insist upon their purely private nature. As such, it was felt that they now had social obligations to fulfil: social responsibility was no longer just the purview of businessmen but of *business* itself.

Thus, George W Perkins, an outspoken director of US Steel and International Harvester, argued in 1908 that '[t]he larger the corporation becomes, the greater become its responsibilities to the entire community.'⁴⁷ One result of this was that the idea of philanthropy was extended from businessmen (and the odd woman) to corporations as separate entities: *corporate* philanthropy now joined individual philanthropy. Indeed, during the course of the First World War, especially in the US, '[b]usiness contributions of leadership and funds were substantial and a practice of corporate giving for community welfare programs was firmly established.'⁴⁸ Once again, then, ideas about CSR were equated with corporate giving and did not entail a reformulation of business principles as such. Despite this, corporate philanthropy was still not given legal recognition: this was not to come until the mid-twentieth century.⁴⁹

⁴⁶ See Leslie Hannah, *The Rise of the Corporate Economy* (Methuen, London 1976).

⁴⁷ G W Perkins, *The Modern Corporation* (New York 1908) cited in *Heald* (n 40) 378-379.

⁴⁸ *Heald* (n 40) 379.

⁴⁹ See below.

The Rise of Transformative CSR

Nevertheless, by the 1920s the idea that business was a matter of 'public interest' as well as of 'private right' was becoming ever more widespread, especially among certain businessmen, though Heald suggests that these ideas were probably still rather atypical.⁵⁰ Thus, in 1923, John D Rockefeller asked:

Shall we cling to the conception of industry as an institution primarily of private interests, which enables certain individuals to accumulate wealth, too often irrespective of the well-being, the health, and the happiness of those engaged in its production? Or shall we adopt the modern viewpoint and regard industry as being a form of social service, quite as much as a revenue-producing process?⁵¹

In similar vein, Henry Ford asserted that, '[s]ervice as a basis for profit-making is coming to be recognised as the true motive for creative industry'⁵² and Gerald Swope explained how '[t]oday a much higher proportion of corporate leaders realise their responsibilities as trustees of other people's money, their obligation of service to the public, and their duty to their employees.'⁵³

It was during this period that the idea of corporate social responsibility - as something which impacted on the actual way in which businesses were conducted - began to emerge. At this time, in countries such as the US and Britain in particular, there was a declining belief in the capacity and beneficence of free market competition and a growing belief in the need for 'planning' of various sorts, whether by private industry or the state.⁵⁴ This belief was greatly strengthened by the Depression. There was also a growing dispersion of the shareholders of large companies and significant changes in the nature of these companies. Whereas in the eighteenth and for much of the nineteenth centuries, shareholders had often been actively involved in the monitoring of the management of these companies, if not in management itself, by the early twentieth century this was becoming more and more rare. The day-to-day running of

⁵⁰ Heald (n 40) 382.

⁵¹ Heald (n 40) 380.

⁵² Henry Ford in cooperation with Samuel Crowther, *My Life and Work* (Doubleday, Page & Co., New York 1922) 20 cited in M Heald, 'Business Thought in the Twenties: Social Responsibility' (1961) 13(2,1) *American Quarterly* 126, 128. However, for Ford, service meant primarily the increase in production and productivity.

⁵³ Gerard Swope, 'What big business owes the public- A notable interview given to French Strother' (1927) 53 *World's Work* 556-561 cited in Heald (n 50) 133.

⁵⁴ See Hannah (n 46).

these corporations was increasingly vested in professional managers who were subject to less and less genuine monitoring by shareholders who were now little more than passive owners of titles to revenue, completely 'outside' the company and external to the processes of management and production. Significantly, some commentators began to liken these shareholders to bond-holders, to people who were 'owed' rather than people who 'owned'. Indeed, in some circles, they began openly to be characterised as mere functionless 'rentiers.'⁵⁵ 'The average stockholder in the large corporation', wrote Franklin Wood, 'regards himself more as a security holder than as in any sense a responsible managing partner in the corporate enterprise'. As a result, he argued, the legal distinction between bondholders and stockholders was 'fast becoming a distinction unwarranted by the actual situation.'⁵⁶ The perceived decline in shareholder control that accompanied this was further associated with what many saw as a growing problem of managerial accountability. In the words of Mason,

... this corporate machine, which so successfully grinds out the goods we want, seems to be running without any discernible controls. The young lad mastering the technique of his bicycle may legitimately shout with pride, 'Look, Ma, no hands,' but is this the appropriate motto for a corporate society?⁵⁷

Berle-Dodd debate and Berle and Means

Central to the emergence of this view was Adolf Berle and Gardiner Means' famous *The Modern Corporation and Private Property*⁵⁸, published in 1932. The empirical work in the book purported to show that (a) shareholdings in many large US companies had become so widely dispersed, and that (b) shareholders were so little involved (or interested) in the day-to-day running of the corporations in which they held shares, they had ceased to be in control of the companies concerned. Berle and Means were, in effect, arguing that ownership and control had become separated with the result that many companies were controlled by their managers not their shareholders.

⁵⁵ See T Veblen, *Absentee Ownership and Business Enterprise in Recent Times: The Case of America* (B W Huebsch, New York 1923) and E S Mason, 'Introduction' in E S Mason (ed) *The Corporation in Modern Society* (Athenaeum, New York 1973, originally published by Harvard University Press) 2.

⁵⁶ Franklin S Wood, 'The Status of Management Stockholders' (1928) 38 *Yale Law Journal* 57, 59.

⁵⁷ Mason (n 55) 4.

⁵⁸ A A Berle Jr and G C Means, *The Modern Corporation and Private Property* (The Macmillan Company, New York 1932).

These developments formed the basis of a famous exchange between Berle and E Merrick Dodd⁵⁹, both academic corporate lawyers in the US, about the problem of managerial accountability and, more significantly perhaps, about the nature of the corporation itself. The decline of shareholder control, Berle argued, had created a serious problem of managerial accountability. Managers were (*de facto*) increasingly accountable to nobody at all and were, therefore, able to act in self-interested ways: they could seek to divert profits into their own pockets. This, according to Berle, made it essential that the legal mechanisms aimed at ensuring that managers act in the interests of shareholders - meaning, in essence, the fiduciary duties that they owed those shareholders - were strengthened. It was imperative, in his view, that corporate managers were made accountable to someone and shareholders were the only available candidates. Berle's arguments were pragmatic rather than principled.

Dodd contested this view, arguing from principle. Like Berle, he recognised that there was a growing problem of managerial accountability. But in his view this problem was a reflection of the separation and detachment of shareholders from the corporations in which they held shares, and of the increasingly *social* nature of these corporations. The law, Dodd argued, needed to recognise that public opinion now considered these big corporations to be public institutions that should *not* be run solely in the interests of shareholders. For Dodd, running corporations exclusively in the shareholder interest was simply no longer justifiable. Public opinion now held that corporations had broader social responsibilities and were not responsible only to their shareholders. Crucially, according to Dodd, while such an extended view of corporate managerial social responsibility was 'difficult to justify if [one] insist[ed] on thinking of the business corporation as merely an aggregate of stockholders'⁶⁰, it could easily be reconciled with a view of the corporation as a real entity, 'as an institution which differs in the nature of things from the individuals who compose it'.⁶¹ Once one recognised the corporation as a truly separate 'person', he suggested, there was no reason why it should

⁵⁹ See A A Berle Jr, 'Corporate Powers as Powers in Trust' (1931) 44 Harvard Law Review 1049; E M Dodd, 'For Whom are Corporate Managers Trustees?' (1932) 45 Harvard Law Review 1145; A A Berle Jr, 'For Whom Corporate Managers *Are* Trustees' (1932) 45 Harvard Law Review 1365; E M Dodd, 'Is Effective Enforcement of the Fiduciary Duties of Corporate Managers Practicable?' (1934) 2 University of Chicago Law Review 194.

⁶⁰ *Dodd* (1932) (n 59) 1159.

⁶¹ *Dodd* (1932) (n 59) 1161.

not operate, through its managerial agents, as a 'good citizen' 'with a sense of social responsibility'.⁶² Dodd thus began to develop a conception of the corporation as a partially, if not predominantly, public institution with broad social responsibilities. As such, Dodd's idea of the 'socially responsible corporation' was the precursor of the modern stakeholding model of the corporation.⁶³

By the time of the publication of *The Modern Corporation and Private Property* in late 1932 Berle's own position had begun to shift. The rise of the modern corporation, he argued with Gardiner Means, 'involved an essential alteration in the character of property', giving rise to important questions about both the orientation of public corporations and the allocation of rights within them. Because shareholders were now the owners of 'passive' rather than of 'active' property, the 'traditional logic of property' was no longer applicable to them. Having relinquished so many of the rights traditionally associated with ownership, they could no longer properly, or accurately, be called the corporation's owners. They had 'surrendered the right that the corporation should be operated in their sole interest', 'releas[ing] the community from the obligation to protect them to the full extent implied in the doctrine of strict property rights'. The community was entitled 'to demand that the modern corporation serve ... all society'. Various groups should be 'assign[ed] ... a portion of the income stream on the basis of public policy rather than private cupidity'.⁶⁴ The final chapters of Berle and Means' book and the Berle-Dodd debate are discussed and analysed in more detail in chapter two of the thesis.

Transformative CSR

These developments also reflected the growing belief that corporate managers now had considerable discretion in determining corporate goals. As we have seen, shareholder control was thought to have been greatly weakened by the dispersal of shareholdings and by the reduction of most shareholders to pure rentiers. Moreover,

⁶² *Dodd (1932)* (n 59) 1160.

⁶³ See chapter 2 of the thesis.

⁶⁴ *Berle and Means* (n 58) 355, 356 and see the revised edition of the book, A A Berle and G C Means, *The Modern Corporation and Private Property* (Revised edn Harcourt, Brace and World Inc, New York 1968). See also Paddy Ireland, 'Defending the Rentier: Corporate Theory and the Reprivatization of the Public Company' in John Parkinson, Andrew Gamble and Gavin Kelly (eds), *The Political Economy of the Company* (Hart Publishing, Oxford 2000).

the market disciplines to which managers were traditionally thought to have been subject were also believed to have been weakened by the erosion of competition and free markets and by the rise of oligopolies and monopolies. Managers, the argument ran, now had a great freedom in determining the direction and goals of corporations. These views became the basis of the so-called managerial theories of the corporation which emerged in the 1940s and 50s.

Two different versions of managerialism developed: one sectional and one non-sectional.⁶⁵ ‘Sectional’ managerialism, which was most closely associated with James Burnham⁶⁶, asserted that managers were pursuing their own interests - that is, they were self-interested - and would emerge as a new, technocratic ruling class. ‘Non-sectional’ managerialism, on the other hand, which was to become more influential, was based on the idea that corporate managers, freed from shareholder control and market disciplines, were increasingly trying to balance a range of interests – those of shareholders, employees, consumers and the community at large. From this perspective, corporations were becoming ‘socially responsible’. Non-sectional managerialism thus became the basis of the idea of CSR in its first modern incarnation.

The Socially Responsible Corporation and the Capitalist Revolution

By the 1950s and 60s the idea of the SRC had become commonplace in Anglo-American corporate discourse. In fact, there was, some have argued, a ‘Quality of Life Management’⁶⁷ revolution during these two decades: corporate managers were seen to accept social responsibilities by participating in the resolution of some of the most current social issues in society including environmental pollution, unemployment, and effective utilisation of human resources. The belief emerged that corporations, with managers no longer bound to profit maximise, had become more ‘socially responsible’. Ideas about ‘soulful corporations’⁶⁸ and claims that

⁶⁵ T Nichols, *Ownership, Control and Ideology, An Inquiry into Certain Aspects of Modern Business Ideology* (Allen and Unwin Ltd, London 1969) 43.

⁶⁶ J Burnham, *The Managerial Revolution or What is happening in the world now?* (Putnam, London, 1942, published with a new preface, Penguin, London 1962).

⁶⁷ *Hay and Gray* (n 21) 140.

⁶⁸ The phrase was coined by Carl Kaysen, ‘The Social Significance of the Modern Corporation’ (1957) 47(2) *The American Economic Review* 311, 314.

'corporations hav[e] a conscience'⁶⁹ became increasingly familiar. The implication was that shareholder rights needed to be diminished, corporations re-conceptualised and directors' duties redefined.

More significantly, it was argued by some that these developments had changed the nature of capitalism itself. In the US, writing in 1957, Heald⁷⁰ explained how the term 'welfare capitalism' had come to characterise contemporary American economic life:

A prominent aspect of the new capitalism, according to businessmen and nonbusinessmen alike, is the emergence of a "corporate conscience", a recognition on the part of management of an obligation to the society it serves not only for maximum economic performance but for humane and constructive social policies as well.⁷¹

Other commentators in the UK, such as Anthony Crosland, thought that because of these changes, the country could no longer be described as a capitalist society:

new managers do not have the same relationship to private property as the old owners (though also for other reasons), there are significant differences in the nature of the profit-goal and degree of responsibility with which economic power is exercised. These differences constitute one feature of present-day, as opposed to capitalist, society.⁷²

By the early 1960s, Berle himself was endorsing Dodd's earlier ideas about the responsibilities of corporate managers, whom he now described as 'administrators of a community system', and about the nature of the corporation. Berle now considered the American corporation to be not so much a business device as a social institution, and wrote of the rise of 'People's Capitalism.'⁷³

From this optimistic perspective, there was, people like Crosland argued, no longer any need to take the means of production into public ownership (to nationalise industry): all one had to do was to educate properly the corporate managers who had *de facto* control of industry; or, more radically, to introduce representatives of other

⁶⁹ A A Berle Jr, *The 20th Century Capitalist Revolution* (Harcourt Brace and Company, New York 1954)113.

⁷⁰ Heald (n 40) 375.

⁷¹ Heald (n 40) 375.

⁷² C A R Crosland, *The Conservative Enemy* (Jonathan Cape, London 1962) 92.

⁷³ See Berle (n 69) 24 and in general.

groups - employees, consumers, the community- on to the boards of directors of large corporations.⁷⁴ It was felt that the corporation was an essentially neutral entity, its direction and nature being almost entirely a product of the choices made by its managers. Hence, the composition of the board of directors was crucial.

This was reflected in the fact that from the mid 1950s to the 1970s there was considerable pressure in places like Britain for the introduction of 'industrial democracy' or 'worker participation', involving the appointment of workers' representatives on to the boards of directors of large corporations, along the lines of co-determination in Germany⁷⁵ and Europe.⁷⁶ While there are differing levels of German co-determination⁷⁷, in general, co-determination entails two-tier board structures: a supervisory board including representatives of labour, and a management board, appointed by the supervisory board, that actively runs the day-to-day activities of the enterprise. The draft Fifth EC Directive on Company Law, first issued in 1972⁷⁸, contained proposals modelled on existing German legislation⁷⁹, and sought to harmonise company structure in Europe and in particular, to introduce the principle of co-determination.

Therefore, as embodied in the notion of the SRC, CSR entailed a radical re-conceptualisation of the nature of the corporation and an explicit rejection of the principle of shareholder primacy: it was underlain by the belief that it was perfectly legitimate to subordinate the interests of shareholders to those of other groups or of society as a whole. As part of a wider body of ideas about changes which were

⁷⁴ See Paddy Ireland, 'Corporate Governance, Stakeholding, and the Company: Towards a Less Degenerate Capitalism?' (1996) 23 (3) *Journal of Law and Society* 287.

⁷⁵ It culminated in the 'Bullock Report' in 1977- See Bullock Report, 'Report of Inquiry into Industrial Democracy' (Cmnd 60767, 1977) under the Labour government of the time, and a further White Paper - UK Government, 'Industrial Democracy (White Paper)' (Cmnd 7231, 1978) - favoured co-determination with a two-tier board structure but the issue was removed from the political agenda with the return to power of a Conservative government in 1979. See below.

⁷⁶ For instance, in France, the two-tier board is optional. See M Gold and M Hall, *Legal Regulation and the Practice of Employee Participation in the European Community* (Shankill, Dublin 1990) for a Europe-wide review.

⁷⁷ For example, see J Schregle, 'Workers' Participation in the Federal Republic of Germany in an International Perspective' (1987) 126 *International Labour Review* 317.

⁷⁸ Proposal for a fifth Directive on the Coordination of safeguards which for the protection of the interests of members and outsiders, are required by Member States of companies within the meaning of Article 59, second paragraph, with respect to company structure and to the power and responsibilities of company boards, OJ C131 (13.12. 1972) 49.

⁷⁹ See K J Hopt, 'New Ways in Corporate Governance: European Experiments with Labour Representation on Corporate Boards' (1984) 82 *Michigan Law Review* 1338.

thought to be taking place in the nature of capitalism, CSR in this form had *transformative* aspirations, looking to bring about radical social changes and a different form of capitalism - or, indeed, in some versions, something other than capitalism. The idea of the SRC is elaborated in chapter two of the thesis.

However, from the late 1970s transformative CSR hit the rocks, as finance reasserted its power and neo-liberal ideas began to rise to prominence in the personalised forms of 'Thatcherism' and 'Reaganomics'. In this era, the radical idea of the SRC was abandoned and the principle of shareholder primacy was re-asserted with a vengeance. When the idea of CSR began to re-appear in the 1980s in the context of a new 'shareholder value' conception of the corporation, it took a very different form.

III. The Decline of Transformative CSR

Neo-liberalism posits that the principal role of the state is to create and preserve an institutional framework in which the economic rationality of the market can operate so as to maximise social wealth and welfare. In the economic sphere, it is argued, the state should create and protect private property rights (privatisation), encourage free trade and free markets (deregulation and liberalisation) and ensure that freely negotiated contracts are enforced (rule of law)⁸⁰, but should not do much more. Indeed, too many state interventions in 'the market' will merely distort its beneficent, wealth maximising rationality. From this perspective, the economy should, as far as possible, be 'depoliticised' hence the claims that the state should adopt an essentially non-interventionist and deregulatory approach to economic affairs. States, it is said, are 'in retreat'.⁸¹

⁸⁰ David Harvey, *A Brief History of Neoliberalism* (OUP, Oxford 2005) 2.

⁸¹ This view of the world has been forcefully propounded in recent decades by international financial agencies like the International Monetary Fund and the World Bank when providing financial assistance to developing countries and advising them on the best route to economic growth and development. As a result, it has exerted considerable influence over policy formulation and state-business relations in the developing world. This is discussed in more detail in Part 3 of the thesis.

The rise of neo-liberalism has been accompanied not only by a push to extend the sphere of the market and to 'deregulate', however, but by a fierce reassertion of the principle of shareholder primacy and the shareholder-oriented model of the corporation. This model of the corporation is discussed in much more detail in the first chapter of the thesis. The origins of this development are to be found in the growing power of, and influence exerted by, finance and financial interests in recent decades. Indeed, for some commentators, the growing power of finance lies at the heart of neo-liberalism as a political project: it is the ideological expression of financial power.⁸²

As we have seen, in the 1950-60s heyday of the idea of the SRC, corporate shareholders in places such as the US and the UK were for the most part dispersed and passive. Since then, however, they have gradually reunited in institutions and become collectively much more active. The rise of a wide range of institutional investors and the increase in shareholder activism which has accompanied this development has precipitated a radical shift in the balance of power within corporations and contributed to a dramatic change in corporate culture.⁸³ The maximisation of 'shareholder value' – a mixture of dividends and capital (share price) growth – has emerged as the dominant goal of corporations and their executives: share prices rather than production have become the guiding lights of economic activity.⁸⁴ It is a goal which has been partly imposed on, and partly voluntarily embraced by, corporations. The element of imposition has come from the stock market and the 'market for corporate control'⁸⁵, in whose constant shadow corporate executives now work. At the same time, however, there have been important changes in the ways in which corporate executives are remunerated – the rise of such things as share options and performance (often share-price) related bonuses – which have realigned their interests and brought them much closer to those of shareholders. As

⁸² See G Duménil and D Lévy, *Capital Resurgent: Roots of the Neoliberal Revolution* (D Jeffers trans, Harvard University Press, London 2004).

⁸³ See D Henwood, *Wall Street- How it Works and for Whom* (Verso, London 1997).

⁸⁴ Harvey (n 80) 32.

⁸⁵ See Henry G Manne, 'Some Theoretical Aspects of Share Voting – An Essay in Honor of Adolf A. Berle' (1964) 64 *Columbia Law Review* 1427. The theory of the market for corporate control is that 'inefficient managers, if not responsible to, and subject to displacement by, owners directly, can be removed by stockholders' acceptance of take-over bids induced by poor performance and a consequent reduction in stock value' – see E S Herman, *Corporate Control, Corporate Power* (CUP, Cambridge 1981) 10 and chapter 1 of the thesis.

Khurana comments, the belief grew that ‘the way to motivate managers to act in the best interests of shareholders [was] to design a compensation structure that provides them with an incentive to increase the share price.’⁸⁶ By the 1980s, academics and policymakers, particularly in the US, had begun vigorously to reassert the economic superiority of the unequivocally shareholder-oriented model of the corporation⁸⁷, justifying the prioritisation of the shareholder interest not so much on the (problematic) grounds of shareholder ‘ownership’ rights as on the consequentialist grounds that shareholder-oriented corporations are more efficient and deliver higher rates of growth than their rivals.⁸⁸ Indeed, by the end of the century it was being claimed that the debate about corporate governance was over: the exclusively shareholder-oriented, Anglo-American model of the corporation had triumphed over its more stakeholder-friendly German, French and Japanese rivals. ‘The recent dominance of a shareholder-centered ideology of corporate law among the business, government, and legal elites in key commercial jurisdictions’, Henry Hansmann and Reinier Kraakman argued, has resulted in a world in which ‘there is no serious competitor’ to this view of the corporation. We had, they concluded, reached the ‘end of corporate history’.⁸⁹ Even if some are reluctant fully to endorse this extravagant claim, there is little doubt that the more stakeholder-friendly models of corporate governance of Continental Europe and Japan have been undermined⁹⁰ and that a ruthlessly shareholder-oriented model of the corporation has spread around the world, promoted by the Organisation for Economic Cooperation and Development (OECD) and the World Bank. The OECD’s recently revised *Principles on Corporate Governance*⁹¹, for example, are unashamedly shareholder-oriented.⁹² The shareholder-

⁸⁶ Rakesh Khurana, *From Higher Aims to Hired Hands: The Social Transformation of American Business Schools and the Unfulfilled Promise of Management as a Profession* (Princeton University Press, Princeton 2007) 6.

⁸⁷ This found expression in the rapid rise of contractual theories of the corporation. These theories are discussed in more detail in chapter 1 of the thesis.

⁸⁸ See *Ireland* (n 64).

⁸⁹ Henry Hansmann and Reinier Kraakman, ‘The End of History for Corporate Law’ (2001) 89 *Georgetown Law Journal* 439, 439, 468. The unspoken reference is to the controversial claim in social theory more generally of ‘an end of history’ after the Cold War. See Francis Fukuyama, *The End of History and the Last Man* (Penguin Books, London 1993).

⁹⁰ The alternative model is known as the ‘Rhinish model’ - a term coined by the French writer, Michel Albert in his book, *Capitalisme contre Capitalisme* (Seuil, Paris 1991) - which is much less stock market based and involves a stakeholder conception of the company as something with wider goals than simply maximising shareholder value. See further chapter 2 of the thesis.

⁹¹ They were initially adopted in 1999 and revised in 2004. For the full texts of both see, OECD, *Principles of Corporate Governance* (OECD, Paris 1999) <http://www.ecgi.org/codes/documents/principles_en.pdf> accessed 5 September 2008, and OECD, *Principles of Corporate Governance* (OECD, Paris 2004) <<http://www.oecd.org/dataoecd/32/18/31557724.pdf>> accessed 8 July 2009.

oriented model of the corporation will be discussed in more detail in chapter one of the thesis.

The Rise of Ameliorative CSR

It was against this unpromising backdrop that CSR in its contemporary form emerged. Paradoxically, its origins are to be found in the reassertion of the principle of shareholder primacy and the emergence of a corporate culture dedicated to the maximisation of 'shareholder value' and the raising of share prices. In a world in which many multinationals are richer and more powerful than some states and regions⁹³, questions have inevitably arisen as to how far the multinational enterprise (MNE) 'has a responsibility to maintain the framework of the society in which it operates and how far it should reflect society's priorities in addition to its own commercial priorities'.⁹⁴ Business may have gained 'more power', but the consequence of this, Ciulla argues, is to burden it with 'more social obligations'.⁹⁵ Increasingly well organised and with a growing international membership, NGOs began to put pressure on corporations, particularly those operating in developing countries, to 'clean up their acts' as early as the late 1970s, mounting campaigns to 'name and shame' companies involved in what they considered socially irresponsible behaviour. In 1977, for example, the Infant Formula Action Coalition (INFACT) launched in the US a boycott of Nestlé's products to protest against the unethical way in which the company was marketing artificial baby milk in Third World countries.⁹⁶ The adept ability of NGOs to enlist media support in these campaigns was particularly visible in relation to companies trading with and in apartheid South Africa, leading to the adoption of the Sullivan Principles by American firms with operations in the country. The Principles provided a set of voluntary labour and anti-discrimination

⁹² See S Soederberg, *The Politics of the New International Financial Architecture: Reimposing Neoliberal Domination in the Global South* (Zed Books, London 2004). The OECD Principles are dealt with in more detail in chapter 5.

⁹³ See S J Chang and D Ha, 'Corporate Governance in the twenty-first century: new managerial concepts for supranational corporations' (2001) 19(2) *American Business Review* 32, 33.

⁹⁴ *Chang and Ha* (n 93) 33.

⁹⁵ *Ciulla* (n 14) 69.

⁹⁶ For a history of the campaign, see <<http://www.ibfan.org/english/issue/history01.html>> accessed 20 June 2008.

standards, with a focus on the position of the non-white workforce.⁹⁷ NGOs also put pressure on firms to adopt Codes of Ethics - by 1986 seventy-five percent of all *Fortune 500* companies in the US had done so⁹⁸ - and organised a number of other campaigns, particularly in the environmental sphere, in the 1990s.⁹⁹

In the 1990s, NGOs also played a key role in drawing public attention to the activities of the Royal Dutch/Shell Group in the Niger Delta of Nigeria, highlighting the demand of Nigeria's Ogoni people that Shell compensate them for extracting oil from their land. The conflict led to the execution of nine Ogoni leaders and activists in 1995, and demands for a boycott of Shell products immediately afterwards.¹⁰⁰ Around the same time, pressure from US and British groups forced new scrutiny of the way child labour was used in the Asian sporting goods industry, in the production of everything from footwear to soccer balls.¹⁰¹ Nike Inc., in particular, bore the brunt of sustained attacks.¹⁰² These developments eventually led the then UN Secretary-General, Kofi Annan to propose a 'Global Compact' in an address to the World Economic Forum in 1999.¹⁰³ Its aim was to bring together corporations, governments, UN agencies, workers, non-governmental organisations and other civil society actors to foster action and 'partnerships' in the pursuit of 'good corporate citizenship'.¹⁰⁴

⁹⁷ See C McCrudden, 'Human Rights Codes for Transnational Corporations: What can the Sullivan and McBride Principles Tell Us?' (1999) 19 *Oxford Journal of Legal Studies* 167.

⁹⁸ *Ciulla* (n 14) 73.

⁹⁹ See generally the website of the Northern Alliance for Sustainability (ANPED), <www.anped.org> accessed on 13 July 2009. Corporate environmentalism, as it has been labelled, is seen to have been kick-started by the Rio Earth Summit in 1992 and by a number of 'green business networks' that followed in its wake. See chapter 3 of the thesis.

¹⁰⁰ A lawsuit was initiated in 1996 by the Center for Constitutional Rights in New York, US, accusing Royal Dutch Shell of human rights violations. On the eve of the trial, on 8 July 2009, the MNE agreed to pay £9.6 million (\$15.5 million) in settlement of the action. It was one of the largest payouts agreed by a MNE charged with human rights violations. See, amongst others, Ed Pilkington, 'Shell pays out \$15.5m over Saro-Wiwa killing' *The Guardian* (London 9 June 2009)

<<http://www.guardian.co.uk/world/2009/jun/08/nigeria-usa>> accessed 14 July 2009. The MNE also came under attack in the mid-1990s when it planned to sink the Brent Spar oil platform in the Atlantic Ocean. It subsequently had to abandon its plans in the face of protests from environmentalists, especially Greenpeace: see M Kaptein and J Wempe, *The Balanced Company: A Theory of Corporate Integrity* (OUP, Oxford 2002) 6-13.

¹⁰¹ Alan Cowell, 'International Business; A Call to Put Social Issues on Corporate Agendas' *The New York Times* (New York 6 April 2000) <<http://www.nytimes.com/2000/04/06/business/international-business-a-call-to-put-social-issues-on-corporate-agendas.html>> accessed 13 July 2009.

¹⁰² See chapter 3 of the thesis.

¹⁰³ The purpose of the Global Compact is to encourage companies to embrace ten principles of corporate social responsibility relating to the observance of human rights, the establishment and upholding of labour standards, the protection of the environment and the upholding of anti-corruption practices.

¹⁰⁴ Taken from the Global Compact website <www.unglobalcompact.org> accessed 6 September 2003.

The large number of high-profile corporate financial scandals that marked the beginning of the new Millennium (Enron, WorldCom, Global Crossing, Tyco, Adelphia, Parmalat and others) further reinforced the claim that corporations needed to be made more 'socially responsible'.¹⁰⁵ Over time, these various strands coalesced around the idea of contemporary CSR.

If the pressure for corporations to behave in a more socially responsible manner initially came from NGOs, however, the newly emerging notion of CSR was soon embraced by the corporate world. Many corporations concluded that for reasons of social and political legitimacy - and also, perhaps, brand image - they needed to be seen as 'socially responsible'. As a result we now find the Royal Dutch/Shell Group providing a Statement of General Business Principles on its website¹⁰⁶, built, it tells us, on the core values of honesty, integrity and respect for people. The Principles recognise that Shell is responsible not only to shareholders, customers and employees, but also to all those with whom they do business and to society as whole. In similar vein, Nestlé has adopted 'business principles' whereby their corporate objective is to 'manufacture and market the Company's products in such a way as to create value that can be sustained over the long term for shareholders, employees, consumers, and business partners'.¹⁰⁷ Consequently, contemporary CSR has come to be associated with notions such as 'corporate citizenship' ('understanding and managing a company's wider influences on society for the benefit of the company and society as a whole'¹⁰⁸); 'the triple bottom line' (corporations should focus not only on the economic value they add but also on the environmental and social value they add and/or destroy¹⁰⁹); 'sustainable development' (development that meets the needs of the present without compromising the ability of future generations to meet their own

¹⁰⁵ J C Coffee Jr, 'What Caused Enron? A Capsule of Social and Economic History of the 1990s' in P K Cornelius and B Kogut (eds), *Corporate Governance and Capital Flows in a Global Economy* (OUP, Oxford 2003) 29.

¹⁰⁶ The Business Principles can be found at <www.shell.com/sgbp> accessed 20 June 2008.

¹⁰⁷ See Nestlé Corporate Business Principles

<<http://www.nestle.com/Resource.axd?Id=70014B84-A4FC-4F82-BFA0-23939DC52E9D>> accessed 13 July 2009.

¹⁰⁸ C Marsden and J Andriof, 'Towards an Understanding of Corporate Citizenship and How to Influence it' (1998) 2(2) *Citizenship Studies* 329, 329-352.

¹⁰⁹ From the SustainAbility website <<http://www.sustainability.com/philosophy/triple-bottom/tbl-intro.asp>> accessed 12 May 2004. The term was made famous by John Elkington in his book *Cannibals with Forks: The Triple Bottom Line of 21st Century Business* (New Society Publishers, Stony Creek, Connecticut 1998).

needs¹¹⁰); and recently, 'corporate sustainability'. The revised OECD *Guidelines for Multinational Enterprises* now state that 'enterprises should take fully into account established policies in the countries in which they operate, consider the views of other stakeholders' and 'contribute to economic, social and environmental progress with a view to achieving sustainable development'.¹¹¹

IV. Contemporary CSR

The Potential of Ameliorative CSR

It is undoubtedly in significant part because CSR in its contemporary form has been embraced by corporations that it has gained so rapidly in strength in the last decade or so. Although the concept of CSR which has emerged in the last few decades is more far-reaching than the old nineteenth century notions of paternalism, and goes further than the more recent ideas of corporate giving and philanthropy, it is still far less transformative in intent than its historical predecessor. As we have seen, CSR in its original form entailed not only a radical re-conceptualisation of the corporation as a social institution rather than as a private enterprise but also a significant relegation of the shareholder interest. By contrast, contemporary CSR operates very much within the prevailing neo-liberal consensus, leaving unchallenged the shareholder-oriented model of the corporation. As such, it is in many ways most accurately regarded as a mere *adjunct* to the emergence of the shareholder value model of the corporation. Contemporary CSR is not, and does not purport to be, transformative in nature. It is, and purports to be, only ameliorative. It makes little effort to displace the view that the goal of business is the pursuit of the shareholder interest and the maximisation of shareholder value. Its objective is the much more modest one of trying to ensure that

¹¹⁰ World Commission on Environment and Development (also known as the Brundtland Commission) *Our Common Future* (also known as the Brundtland Report) 1987 cited in M van Marrewijk, 'Concepts and Definitions of CSR and Corporate Sustainability: Between Agency and Communion' (2003) 44 *Journal of Business Ethics* 95, 95.

¹¹¹ They were first initially adopted in 1976 and were last revised in 2000. OECD, *Guidelines for Multinational Enterprises* (OECD, Paris 2000) 14 <<http://www.oecd.org/dataoecd/56/36/1922428.pdf>> accessed 14 July 2009.

the maximisation of shareholder value is not pursued by corporations without their having *some* regard to the impact of their activities on society at large. It seeks to induce more socially responsible behaviour from corporations. Moreover, whereas the idea of CSR originally entailed an open recognition that the conflicts of interest between corporate shareholders and other groups were not always reconcilable and argued that they should not always be resolved in favour of the shareholder, contemporary CSR downplays the irreconcilability of these interests, emphasising the scope for 'partnership'. Thus, its advocates commonly seek not only to induce the adoption of an expanded concept of the 'bottom line' – the 'triple bottom line' – but to make a 'business case' for CSR, arguing that engagement in the latter is good for the financial bottom line of corporations and that the maximisation of shareholder value is good for society as a whole. The 'business case' for CSR will be discussed in more detail in chapter four.

The prominence of the idea of 'partnership' in contemporary CSR discourse highlights another way in which it operates within the prevailing consensus. In keeping with the neo-liberal market-based model of economic and social development, with its emphasis on free trade, freedom of movement for capital and limited state intervention in and regulation of economic affairs, contemporary CSR does not promote the legal regulation of corporations by the state but rather, *self-regulation* by corporations themselves. Indeed, its emphasis on voluntarism and self-regulation is one of its defining characteristics. Reflecting this, the EU Commission's Green Paper on Promoting a European framework for corporate social responsibility, defined CSR as 'a concept whereby companies integrate social and environmental concerns in their business operations and in their interactions with their stakeholders on a voluntary basis (emphasis added).'¹¹² In similar vein, a 2001 United Nations Committee on Trade And Development (UNCTAD) paper on 'Social Responsibility' in transnational corporations (TNCs)¹¹³ indicated that CSR may

¹¹² European Commission, *Promoting a European framework for corporate social responsibility* (Office for Official Publications of the European Communities, Luxembourg 2001) 8 <http://ec.europa.eu/employment_social/soc-dial/csr/greenpaper_en.pdf> accessed 17 August 2008.

¹¹³ It might be useful to state here that UN practice distinguishes between corporations owned and controlled by entities from one country but operating across national borders (transnationals) and those owned and controlled by entities from more than one country (multinationals). In this thesis, TNCs and Multinational Enterprises (MNEs) will be used interchangeably.

assume economic, social, political and ethical dimensions in that TNCs are expected to conduct their economic affairs in good faith and in accordance with proper standards of economic activity while also observing fundamental principles of good socio-political and ethical conduct.¹¹⁴

The standard mechanisms of contemporary CSR are thus codes of conduct, standards, statements of intent and partnerships, in which the maximisation of shareholder value - supposedly efficiency and growth enhancing in itself - is implicitly portrayed as a goal which can be reconciled with socially responsible behaviour by corporations and the interests of non-shareholding groups. These mechanisms are dealt with in more detail in chapter three of the thesis.

Given its essentially ameliorative, voluntary, self-regulatory nature, it is not surprising that contemporary, and what I label, self-regulatory CSR¹¹⁵ has gained, at least at the level of rhetoric, such widespread corporate acceptance. It is clearly arguable that it is precisely because of its modest impact on actual corporate practices and positive impact on corporate images and reputation - something which can of course itself be marketed - that it has been embraced so warmly by the corporate world. Indeed, some claim that CSR has become a key element in corporate strategies to stave off direct government regulation and public criticism by projecting an image of corporate responsibility and fairness in a world where inequality and social injustice are growing. From this rather cynical perspective, the adoption of codes of conduct by corporations appears to be an effective way of carrying on business as usual - including prioritising the maximisation of shareholder value - while claiming to be caring and socially responsible. This 'corporate embrace' of CSR is discussed in chapter three.

The seeming limitations of CSR in its contemporary form have not, however, prevented it from being embraced by more and more development agencies. Nowadays, governments, civil society institutions and corporations all seem to see self-regulatory CSR as a potential bridge between business and development, and in the developing world self-regulatory CSR programmes are commonly discussed in terms of their potential contribution to poverty alleviation and the achievement of

¹¹⁴ UNCTAD, *UNCTAD Series on Issues in International Investment Agreements* (UN, New York and Geneva 2001) 11.

¹¹⁵ See chapter 3 of the thesis.

social and economic objectives.¹¹⁶ For Antonio Vives of the Inter-American Development Bank, for example, ‘CSR, by its very nature, is development done by the private sector, and ... perfectly complements the development efforts of governments and multilateral development institutions.’¹¹⁷ But is meaningful CSR really reconcilable with the maximisation of shareholder value by corporations? Or was the business executive who told a reporter from *Marketing Week* that ‘the idea that making a profit can be reconciled with being ethical is nonsense’¹¹⁸ getting closer to the truth? What potential does CSR in its contemporary form really have, not least in fostering economic and social development in the global south? These are some of the questions that this thesis seeks to answer.

V. Organisation of the thesis

As identified earlier, in order to attempt to answer these questions, one of the main aims of the thesis is to explore the changing nature of CSR as well as the various meanings associated with the concept. From this perspective, one of the main arguments of the thesis is that there has been a shift from the idea of transformative CSR - which emerged in the 1920s and 30s - to an ameliorative conception of CSR in recent years. In light of this, the thesis is divided into three parts. Parts One and Two focus in more detail on the historical development of the idea of CSR, the different meanings that have been attached to it and the different conceptions of the corporation which underlie different conceptions of CSR. Against this backdrop, Part Three looks at the understandings of and meanings attached to CSR by the corporate sector in contemporary Mauritius.

Part One of the thesis explores the changing nature of CSR in more detail, and, more specifically, seeks to locate the different conceptions of CSR within the wider context

¹¹⁶ *Blowfield and Frynas* (n 9) 499.

¹¹⁷ A Vives, ‘The role of multilateral development institutions in fostering corporate social responsibility’ (2004) 47(3) *Development* 45, 46.

¹¹⁸ D Benady, ‘The Light Fantasy’ *Marketing Week* (London 12 February 2004) 21.

of different models of the corporation and corporate governance. It is made up of two chapters. Chapter one looks at the shareholder-oriented, profit-maximising Anglo-American model of the corporation. It traces the different justifications which have been offered for shareholder primacy, focusing on the older rights-based approaches (based on claims of shareholder ownership) and the newer instrumental or consequentialist approaches (based on claims of efficiency). The chapter argues that this model of the corporation is fundamentally anti-CSR, as CSR has no real place in it: socially responsible behaviour is imposed on corporations from *without* by means of external regulation (taking the form of, what I later label, 'regulatory' CSR), rather than being something that comes from *within* the corporation. This is because the main goal of the corporation is to maximise profits for the shareholders, a goal from which corporate managers should not ultimately deviate.

Chapter two examines the stakeholder models of the corporation, which, it argues, underpinned the ideas about CSR which emerged in the 1920s and 30s. Building on arguments put forward by Merrick Dodd in the Berle-Dodd debate¹¹⁹ and also by Berle and Means in the closing chapters of *The Modern Corporation and Private Property*¹²⁰, it identifies the emergence of the new conception of the corporation as a social institution, described earlier, from which the idea of the SRC developed in the 1950s. The chapter argues that the idea of the SRC was potentially transformative in nature, calling for the abandonment of shareholder primacy in favour of a conception of the corporation in which a range of different stakeholder interests had to be balanced. As such, it can be said to be a precursor to the more radical stakeholding models of the corporation which have emerged in recent years. However, the idea of the SRC was laid to rest from the 1970s onwards with the rise of the shareholder value conception of the corporation, as discussed in chapter one. The chapter moves on to discuss briefly the more stakeholder-friendly models of the corporation which have developed in Japan (a 'fiduciary' model) and Germany (a 'representative' model) respectively, especially in the post- Second World War era. It also looks briefly at the corporate governance reforms in these countries, which have focused on shareholder value, and have been implemented since the 1990s. The next section of the chapter argues that, in recent years, a new shareholder-oriented model of the

¹¹⁹ See note 59.

¹²⁰ See note 58.

corporation has emerged, which leaves some room for the consideration of the interests of other stakeholding groups within the boardroom. This model of the corporation is exemplified by the idea of the 'Enlightened Shareholder Value' (ESV), which was developed by the UK Company Law Review (CLR), and has been newly enacted in section 172 in the UK Companies Act 2006. This 'new' shareholder-oriented stakeholding model of the corporation seeks to temper the narrow-minded focus on shareholder value which has characterised the traditional Anglo-American model of the corporation by emphasising on the *long-term* rather than short-term pursuance of shareholder value. The section also traces the origins of the idea of the ESV to the belief, widely held in the 1980s, that the Japanese and German stakeholder-friendly models of the corporation were economically superior to the Anglo-American shareholder-oriented one. The final section of the chapter examines the place of CSR within the more radical stakeholder models of the corporation and compares it with the place of CSR within the ESV model. It argues that CSR is intrinsic to radical stakeholder models of the corporation in that the latter conceptualise the corporation as a social or public institution rather than as a purely private enterprise, decisively moving away from the shareholder primacy and profit-maximising norms. By contrast, although the ESV model focuses on shareholder value, the fact that it is a long-term rather than short-term focus means that some space is created for the exercise of managerial discretion to take into account CSR issues. It, therefore, makes a business case for shareholder-oriented stakeholding. In fact, a similar business case has been made for contemporary CSR, as will be seen in the next part of the thesis.

Part Two of the thesis, which consists of two chapters, explores the nature of CSR and of *contemporary* CSR, in particular, in more detail. Chapter three argues that the key to understanding the relative conservatism of contemporary CSR is to be found in the seismic changes which took place in the corporate world during the neo-liberal counter-revolution of the 1980s and 90s. Just as the earlier idea of the SRC was a product of a particular historical context and part of a wider set of ideas about the nature of the corporation, so too is CSR in its contemporary form. The chapter argues that as the power of finance grew in the 1980s and 90s, the principle of shareholder primacy was vigorously reasserted by financial institutions and corporate managers. The 'shareholder value' model of the corporation which emerged from this has been

endorsed and, indeed, enthusiastically promoted by policymakers around the world. Shareholder-oriented corporations, it has come to be argued, operate so as to maximise productive efficiency and growth for the benefit of society as a whole. Ideally, therefore, the disciplining of corporations (and their managers) should, as far as possible, be left to product and stock markets. In the interests of efficiency, growth and welfare, states should minimise their interventions in the economy and corporate affairs. In this context, the chapter argues that the contemporary CSR movement endorses the shareholder-oriented model of the corporation. Interestingly, however, it does not advocate the external imposition of social responsibilities on corporations - as most supporters of the shareholder-oriented model of the corporation do- but calls for corporate *self*-regulation.

The chapter starts by tracing the origins of contemporary ideas about CSR to the rise of the corporate environmentalism movement, exploring the latter's key characteristics of voluntarism, self-regulation and partnership. These ideas, it is argued, permeate the more 'general' contemporary CSR movement. In this context, the labour dimension of contemporary CSR is used as an exemplar. The chapter argues that because of its essentially conservative and unthreatening nature, corporations have whole-heartedly embraced contemporary CSR, which is seen by many of them as a potential source of legitimacy in a world in which corporate power and income and wealth inequalities are growing. The chapter also introduces the idea that there is a gap between the rhetoric and reality of CSR: although corporations express a rhetorical commitment to it, in practice, shareholder primacy prevails. Hence, the chapter argues that CSR in its contemporary form, is best understood as an *adjunct* to the revived and re-invigorated, shareholder-oriented conception of the corporation, which appeals both to corporate interests and to those who wish to modify corporate behaviour. The final section of the chapter brings together some of the ideas elaborated in parts one and two of the thesis in order to identify a number of different models of CSR. I label contemporary CSR as *ameliorative* to contrast it with the radical, *transformative* CSR model - at the heart of which was the SRC. Contemporary ameliorative CSR is then further sub-divided into what I call 'regulatory' CSR - a model premised upon external, state-led regulation- and 'self-regulatory' CSR - a model premised upon notions of voluntarism, self-regulation and partnership. Both of these models, it is argued, are founded upon a shareholder-

oriented conception of the corporation and, as such, are markedly different from the earlier transformative version of CSR, which was grounded upon a more radical stakeholding conception of the corporation as a social institution. However, whereas both the idea of the SRC and the ameliorative regulatory CSR model recognise the conflicts of interest that exist between shareholders and other groups within the corporation, the self-regulatory contemporary model of CSR downplays these conflicts, emphasising the scope for 'partnership'.

Having examined the defining characteristics of contemporary, ameliorative CSR, chapter four investigates the arguments made for and against it focusing on work that has been most influential. The chapter is divided into three sections. The first section examines the attacks levelled at the concept of CSR by critics such as Milton Friedman and David Henderson. It is argued that although their arguments differ in form, all of them reach the same conclusion: 'the only responsibility of business ... is the maximization of profits.'¹²¹ The critics of CSR tend to subscribe not only to the Anglo-American private shareholder-oriented model of the corporation, however, but also to an essentially neo-liberal view of the world. The second section moves on to explore the pro-CSR literature, much of which is a counter-attack on the criticisms which have been aimed at the concept. It is noted that many advocates of contemporary CSR actually build their case on the claim that far from compromising the interests of shareholders, CSR in fact is good for them – it makes 'good business sense'. Contemporary CSR, it is argued, is thus generally seen as a way of trying to temper the effects of the increasingly ruthless corporate pursuit of 'shareholder value' without challenging the seemingly inviolable and common-sense principle of shareholder primacy and the political consensus of which it is part. Equally importantly, the chapter argues that the business case for CSR mirrors the case made for shareholder-oriented (ameliorative) stakeholding: company managers should look to maximise long (rather than short) term profits for shareholders. To illustrate the nature of the business case for shareholder-oriented stakeholding and CSR, the chapter refers to the UK CLR, with its concept of 'Enlightened Shareholder Value' (already discussed in greater detail in chapter two). The final section of the chapter notes the emergence in recent years of the 'corporate accountability' movement and

¹²¹ Milton Friedman, 'The Social Responsibility of Business is to Increase Its Profits' *New York Times Magazine* (New York 13 September 1970) 32-33.

the challenge that it is beginning to mount to some of the neo-liberal premises upon which contemporary CSR is currently based. The origins of the corporate accountability movement, it argues, lie in an increasingly widespread belief that CSR is often treated by corporations as little more than a public relations or window dressing exercise¹²² and that many of the claims corporations are making, not least in relation to their contribution to social and economic development, are largely empty. The chapter thus looks at the various mechanisms proposed by the corporate accountability movement for holding corporations to account as an alternative to simply urging them voluntarily to improve standards or report. The chapter argues that although it is in its infancy and often sets itself against contemporary CSR, the corporate accountability movement is in some ways an attempt to re-engage CSR with its radical roots and to challenge some of the tenets of the neo-liberal consensus. In particular, it reasserts the importance of states and intergovernmental institutions positively regulating and wielding authority over corporations. The corporate accountability movement thus calls for a restructuring and rethinking of the relationship between business and the state, for more *legal* regulation of corporations by the state and other agencies, and for a return to 'hard' (or, at least, 'harder') law. It is further noted in the chapter that in practice, the corporate accountability movement articulates its arguments mainly within a development context.

Having explored in general terms the nature of contemporary ideas about CSR, **Part Three** of the thesis shifts the emphasis on to the development angle of CSR. It seeks, in effect, to evaluate the potential contribution that CSR can make within Mauritius, a developing country. As such, the case-study seeks to examine how the idea of CSR is understood by corporate executives in the country and what it is thought to entail. This part of the thesis comprises three chapters.

Chapter five sets the scene for the empirical study. It begins by looking at how neo-liberalism has established itself as the new economic orthodoxy in both developed and developing countries, including Mauritius. It is argued that neo-liberal policies have been forcefully propounded in recent decades by international financial institutions

¹²² P Utting, 'Regulating Business via Multistakeholder Initiatives: A Preliminary Assessment' in UN Non-Governmental Liaison Service (NGLS) and UNRISD, *Voluntary Approaches to Corporate Responsibility: Readings and a Resource Guide* (NGLS and UNRISD, Geneva 2002) 69 <<http://www.unsystem.org/ngls/Section%20II.pdf>> accessed 14 September 2008.

(IFIs) such as the World Bank and the International Monetary Fund when providing financial assistance to developing countries and advising them on the best route to economic and social development. As a result, they have exerted considerable influence over policy formulation and state-business relations in developing countries. The chapter argues that the ascendancy of neo-liberalism has been accompanied not only by a push to extend the sphere of the market and to 'deregulate' but also by a fierce reassertion of the principle of shareholder primacy and the shareholder-oriented model of the corporation. Indeed, both the OECD and the World Bank have been promoting the latter in developing countries via the OECD's recently revised *Principles on Corporate Governance*¹²³ and the World Bank's Reports on the Observance of Standards and Codes (ROSCs). Paradoxically, it is in this context that contemporary CSR has risen in prominence: in recent years, big business has been encouraged by the international development community and non-governmental organisations (NGOs) to engage more proactively in social development and poverty reduction, and to support the Millennium Development Goals (MDGs) through CSR.¹²⁴ Yet, the voluntary, self-regulatory nature of contemporary CSR has also begun to meet with more and more criticism in the developing world, with commentators pointing to the discrepancy between CSR rhetoric and reality. The rise of the corporate accountability movement, introduced in chapter four, is re-examined in this context.

Chapter six provides an overview of the history and the socio-economic conditions prevalent in Mauritius as well as of the country's corporate governance framework. It explores the implications of the neo-liberal policy reforms being advocated by the IFIs and looks at how the IFIs have pressed for the establishment of an Anglo-American regime of corporate governance in Mauritius, although it does not readily fit the structure of Mauritian firms. The result has been the implementation of the Mauritian Code of Corporate Governance. The chapter argues that the latter embodies the principle of the ESV and, therefore, makes possible a business case for CSR: companies should look to profit-maximise in the long-term, thus allowing corporate managers to take some account of stakeholders' interests in making decisions whilst ultimately prioritising the shareholder interest. The final section of the chapter looks

¹²³ See note 91.

¹²⁴ See the point made earlier by Visser: *Visser* (n 4).

at the rising profile of CSR in the country, noting, for instance, how the number of newspaper articles on the subject has increased since the beginning of the twenty-first century.¹²⁵ It also explores how recently, the Mauritian government has turned CSR into one of its main policy objectives, especially in the current context of the global financial crisis. The chapter again raises the issue of rhetoric and reality: can CSR really contribute to sustainable development if it is simply an adjunct to the private shareholder-oriented corporation?

Chapter seven seeks to answer the question posed at the end of chapter six by exploring how CSR is actually perceived and practised in Mauritius. Broadly speaking, it is an analysis of the impact of CSR on corporate executives' opinion in the country. It examines their rhetorical commitment to the concept as well as what they thought that rhetorical commitment entailed in practice. The methodology (semi-structured, questionnaire-based interviews) used for the fieldwork is discussed in the first section of the chapter. The next section of the chapter is a detailed analysis of the findings of the study. The chapter concludes that, amongst other things, although the rhetorical commitment to CSR is prominent amongst the different corporate executives' interviewed, CSR practice, as understood by them is, in general terms, equated to corporate philanthropy. As such, CSR is not seen as being an integral part of the companies in Mauritius. The findings of the study thus seem to suggest that the account of contemporary CSR given in the thesis is accurate; that contemporary CSR is indeed an adjunct to the private, shareholder-oriented corporation which lies at the heart of neo-liberal thought.

Conclusions are drawn together in the final chapter.

¹²⁵ From around ten in 2003 to around fifty in 2007.

Part I:
**CSR and Models of the
Corporation**

Chapter One

CSR and the Shareholder-Oriented Corporation

Introduction

The introduction to the thesis provided a brief overview of the ways in which the meanings attached to the idea of CSR have changed over time. As such, it mapped out a general historical landscape of the concept of CSR, taking into account developments in history, law and politics. As part of this process, it briefly examined the different models of the corporation associated with different conceptions of CSR. This first part of the thesis seeks to explore these models in more detail. It is argued that different models of the corporation tend to entail different ideas about corporate social responsibilities; or, to put it slightly differently, that different conceptions of CSR tend to embody different conceptions of the nature of the corporation. The next two chapters will, therefore, examine in general terms the two main models of the corporation which have been vying for attention in recent years – the shareholder-oriented model and the stakeholder model – and seek to specify the place of CSR within each of them.

This chapter examines the shareholder-oriented, profit-maximising Anglo-American model of the corporation. It is divided into three main sections. The first explores the two different bases and justifications for the exclusively shareholder-oriented model. It looks first at traditional ownership- or rights-based justifications which assert that corporations should be run in the interests of shareholders because the latter ‘own’ them. From this perspective, shareholder primacy is a matter of ownership right, from which it follows that there is no need for further justification for the priority given to their interests and no need to consider the consequences of shareholder primacy. It then moves on to look at the efficiency-based instrumental and consequentialist justifications which have risen to prominence in recent years. These justifications rely far less on claims about shareholder corporate ownership - which, as we shall see, are problematic - arguing instead that corporations operated exclusively in the shareholder interest are defensible by reference to the outcomes they generate:

shareholder-oriented corporations, it is argued, operate for the benefit of society as a whole because they enhance 'efficiency'.

The second section explores the ways in which the strong efficiency claims made for shareholder primacy led, from the 1980s onwards, to the rise of the idea of shareholder value and the emergence of a so-called 'shareholder value' conception of the corporation. Such is the perceived economic superiority of this model of the corporation that at the beginning of the twenty-first century, some commentators declared that the 'end of corporate history'¹ had been reached. Indeed, an Anglo-American, shareholder-oriented model of the corporation is now being actively promoted around the world by the World Bank and the Organisation for Economic Cooperation and Development (OECD).

The final section contends that the shareholder-oriented model of the corporation is fundamentally anti-CSR; that CSR has little (if any) place in it. On the contrary, within the shareholder-oriented model, managerial decision-making should not be clouded by ideas of social responsibility; managers should not deviate from the profit maximisation goal of the corporation. It is noted that proponents of this model of the corporation do not rule out the state seeking to constrain corporate behaviour in various ways but here, social responsibility is externally imposed, coming from *without* rather than coming from *within* the corporation itself as in the stakeholder models of the corporation which are examined in the next chapter.

¹ See Henry Hansmann and Reinier Kraakman, 'The End of History for Corporate Law' (2001) 89 *Georgetown Law Journal* 439 and the discussion in the second section of this chapter.

I. Justifications for Shareholder Primacy

Ownership: Rights-Based Justifications for Shareholder Primacy

The profit-maximising, exclusively shareholder-oriented corporation is often said to be the traditional Anglo–American model of the corporation. This model finds expression in the principle of shareholder primacy.

It is commonly argued that corporations should be run in the exclusive interests of their shareholders because the shareholders ‘own’ them; corporations are their private property, so to speak. From this perspective, shareholders are seen as having a property right which entitles them to have the corporation run exclusively in their interests: this property right is defensible without reference to its social function or social effects. The ‘ownership’ justification for shareholder rights is thus *rights-based*. Like property rights in general, the alleged corporate property right of the shareholder conveys a sense of absolutism: ‘To own property is to have exclusive control of something- to be able to use it as one wishes, to sell it, give it away, leave it idle, or destroy it.’² Shareholders are not only entitled to determine how the corporation is managed but they are also entitled to have it managed in their interests and their interests alone because they are the ‘owners of the corporation’ (through their ownership of its shares). It follows from this that profit maximisation - what is now referred to as the maximisation of shareholder value - should be the only goal of the corporation and its managers. Shareholders invest in a corporation to get a profitable return; it is ‘theirs’. Although, as we shall see below, it has long been argued that shareholder primacy is also defensible because it ensures productive efficiency and thus maximises total social wealth, from this rights perspective, the consequences of shareholder corporate ownership are irrelevant. Subject to the general provisions of the law, corporate shareholders are entitled to do whatever they like with ‘their’ property – no matter what the consequences.

² Thomas C Grey, ‘The Disintegration of Property’ in J R Pennock and J W Chapman (eds), *Nomos XXII: Property* (New York University Press, New York 1980) 69 cited in Jill E Fisch, ‘Measuring Efficiency in Corporate Law: The Role of Shareholder Primacy’ (2005-2006) 31 *Journal of Corporation Law* 637, 649. Fisch also notes that property scholars have for the most part rejected the absolutist view of property rights.

Although the idea that shareholders ‘own’ the corporations in which they hold shares is for many people ‘common sense’, the idea of shareholder corporate ‘ownership’ is in fact highly problematic.³ A brief sketch of the development of the joint stock company (JSC)- what we now call a public company- in the UK, where JSCs first emerged in their modern form, will help us to understand the source of the problems surrounding the claim that shareholders are corporate ‘owners’.

Although JSCs can be traced back as far back as the sixteenth century, they only began to grow significantly in number in the eighteenth century. It was in the UK, the first country to experience the transition to industrial capitalism, that JSCs first proliferated. Initially, the law regulating them was drawn heavily from the law of partnership. In partnerships, partners were, inter alia, conceptualised as the joint owners of the partnership assets, an idea which was applied to JSCs during the eighteenth and early nineteenth centuries. In similar vein, at this time, JSCs were conceptualised, like partnerships, as aggregates of people. This was true even of incorporated companies. Although incorporation created a separate legal entity, the ‘body corporate’ was conceptualised as ‘several individuals, united in such a manner that they and their successors constitute but one person in law, a person distinct from that of any of the members, **though made up of them all** ... (emphasis added).’⁴ In effect, the shareholders were ‘the company’ and the JSC was not seen as an object autonomous and fully separate from its shareholders; on the contrary even incorporated companies were seen merely as the shareholders merged into one body, a distinct entity but ‘made up of them all’. It followed from this conceptualisation of the JSC that directors were seen as agents of the ‘company’, interpreted to mean the shareholders; directors were therefore subject to the control of the shareholders – ‘the company’ – in general meetings.⁵ The legal distinction between ‘the company’ and its shareholders was thus far less well-defined than it is today. In short, there was nothing resembling the modern doctrine of separate corporate personality.

³ In fact, a number of legal commentators refer to it as a ‘myth’. See P Ireland, ‘Company Law and The Myth of Shareholder Ownership’ (1999) 62(1) MLR 32 and Lynn A Stout, ‘The Mythical Benefits of Shareholder Control’ (2006) UCLA School of Law, Law-Econ Research Paper No. 06-19 <http://papers.ssrn.com/sol3/Papers.cfm?abstract_id=929530> accessed 02 September 2008.

⁴ J W Smith, *A Compendium of Mercantile Law* (3rd edn Maxwell, London 1843) 81 cited in *Ireland* (n 3) 39.

⁵ *Ireland* (n 3) 39.

For many years JSCs were conceptualised as ‘public’ rather than ‘ordinary’ or ‘private’ partnerships, a distinction based on *quantitative* grounds – their larger number of members - rather than any perceived *qualitative* differences between them and ordinary partnerships. Correspondingly, the laws regulating JSCs was based on the law of partnership. As Ireland explains, although ‘incorporation was seen as offering joint stocks certain important legal privileges which took them to some extent outside the principles of the law of partnership, ... it was not thought to provide a fully fledged alternative legal form.’⁶ One important consequence of the application of partnership principles to JSCs was the legal treatment of the JSC share as a direct proprietary interest in a company’s assets. Shareholders were legally conceptualised as the equitable co-owners of the company’s assets.⁷ Shareholders were, therefore, conceptualised not only as ‘the company’, but as, quite literally, the equitable owners of the company’s assets.⁸

The close identification of shareholders and company was reinforced by the fact that at this time, many joint stock shareholders took an active interest in the companies in which they held shares; many had personal links to companies and were involved in their operations. As Mason puts it, in the eighteenth and nineteenth-century economies,

[the] owner, if not the manager himself, selected the management, and the management was responsible to the owners. The traditional justification not only of private enterprise but of private property rested on that assumption.⁹

However, from the mid-nineteenth century shareholders became increasingly less involved in the companies in which they held shares and JSCs began increasingly to be seen as qualitatively quite different from ‘ordinary’ partnerships. Gradually they came to be regarded as entities cleansed of and quite separate from their shareholders.¹⁰ The catalyst for this development was the rapid growth in the number

⁶ Ireland (n 3) 39.

⁷ P Ireland, ‘Defending the Rentier: Corporate Theory and the Reprivatisation of the Public Company’ in John Parkinson, Andrew Gamble and Gavin Kelly (eds), *The Political Economy of the Company* (Hart Publishing, Oxford 2000) 146.

⁸ Ireland (n 3) 40.

⁹ E S Mason, ‘Introduction’ in E S Mason (ed), *The Corporation in Modern Society* (Athenaeum, New York 1973, originally published by Harvard University Press) 5.

¹⁰ For a complete and interesting account of the emergence of autonomous company law, see Ireland (n 3) 41- 44.

and size of JSCs following the development of the railway system. Railway companies were much larger than previous JSCs, boasting many more shares and shareholders, the great majority of whom regarded their shares as nothing more than rights to dividends. One result of this was the rapid emergence of a developed market in JSC shares after 1830. By mid-century, shares - which in the absence of a developed market had been readily saleable - had become readily marketable and liquid commodities. This change in the economic nature of the JSC share was reflected in its gradual legal re-conceptualisation. Following the case of *Bligh v Brent* in 1837¹¹, the share ceased to be regarded in law as an equitable interest in the assets of the company and came instead to be seen as a right to profit which provided no legal rights over the assets themselves; it had become an intangible form of property in its own right, independent of the assets of the company. Henceforth, shareholders owned shares, intangible rights to revenue, while companies owned tangible assets. Companies thus emerged as fully separate, property-owning legal persons – asset-owning entities in their own right quite independent of their shareholders.

Underlying these changes was a crucial change in the status of the shareholder and nature of the share. Whereas in the eighteenth and early nineteenth centuries, shareholders had been legally treated, partnership-style, as active ‘co-partners’, they were now merely passive owners of titles to revenue, ‘outside’ the companies in which they held shares. External to the process of production, shareholders had become functionless ‘rentiers’. The change in their status was both further reflected in and advanced by the gradual transfer of power from the general meetings to boards of directors and managers. Gradually, shareholders relinquished many of the rights and powers traditionally associated with ownership, taking an active part neither in management nor in its monitoring. Indeed, by the late nineteenth century more and more investors, taking advantage of the new laws on limited liability (which came about in 1855), had started holding ‘diversified baskets of securities’ rather than shares in one or a small number of companies in which they took an active interest¹², thereby spreading their risks and seeking an easy life. They were the ‘blind capital

¹¹ (1837) 2 Y & C Ex 268, 160 ER 307.

¹² *Ireland* (n 3) 42.

seeking its 5 per cent.’¹³ Professional managers were hired to run the day-to-day business of the companies and shareholders took the back seat. In the words of Sealy,

As the transformation of shareholders from active participants to passive investors was completed, shareholders were not only clearly established (both in law and in economic reality) as money capitalists standing *outside* the company and the production process, the company, the sole legal and equitable owner of the firm’s industrial capital, was itself depersonified ... ceasing to be an association and ... becoming an institution (emphasis in original).¹⁴

The establishment of the company as an *asset-owning legal person* was reflected in its ‘depersonalification’. Thus while the Joint Stock Companies Act 1844 saw people ‘forming themselves’ into companies, by the time of the 1856 Act, people were ‘forming companies’, objects external to them, made *by* them but not *of* them. Moreover, corporate status was made available on mere registration.¹⁵

Crucially, as the notions that shareholders were ‘the company’ and were owners of assets were both displaced, there gradually emerged a new notion of shareholders as the owners of ‘the company’ itself, a reified entity external to them.¹⁶ This development was associated with the emergence and development of the modern doctrine of separate legal personality, as reflected in the celebrated landmark case of *Salomon v Salomon & Co Ltd*¹⁷, in which Lord Macnaghten asserted that the ‘company is at law a different person altogether from the subscribers to the memorandum’.¹⁸ In the US, it was associated with the development of the ‘entity theory’ of the corporation. It is useful to note here that, according to Ireland,

the legal meaning of incorporation in a business context was reinterpreted in the latter half of the nineteenth century to accommodate the radical *economic* separation of joint stock companies from their shareholders.¹⁹ (emphasis in original)

¹³ J H Clapham, *An Economic History of Modern Britain Vol 1* (CUP, Cambridge 1928) 388 cited in *Ireland* (n 3) 42.

¹⁴ Len Sealy, ‘Perception and Policy in Company Law Reform’ in D Feldman and F Miesel, *Corporate and Commercial Law: Modern Developments* (Lloyds, London 1996) 24-26 cited in *Ireland* (n 3) 42.

¹⁵ *Ireland* (n 3) 41-42.

¹⁶ *Ireland* (n 7) 148.

¹⁷ [1897] AC 22.

¹⁸ [1897] AC 22 (HL) 51.

¹⁹ *Ireland* (n 3) 43.

The 'complete separation' of the company from its shareholders meant that the company came to be seen as an 'object' capable of being 'owned'. Although the shareholders no longer owned the assets of the company - these were now owned by 'the company' as a separate entity - they were said to own 'the company' itself as a separate asset-owning entity external to them.²⁰ It is this common sense notion of shareholder corporate ownership that many defenders of shareholder primacy rely on.

The assertion of shareholder corporate ownership came despite the fact that corporate shareholders had relinquished many of the traditional rights of ownership. It nevertheless played a key role in cementing the idea that the role and duty of corporate managers was to further the shareholder interest. In recent years this has found expression in the claim that managers are the agents of shareholder-principals and therefore obliged to further the latter's interests. Unless the shareholders explicitly agree that they want to pursue some socially responsible course of action, a manager has no right to assume that they are interested in anything other than the best possible return on their investment. 'In his capacity as a corporate executive', argues Milton Friedman:

the manager is the agent of the individuals who own the corporation...and his primary responsibility is to them [and that] responsibility is to conduct the business in accordance with their desires, which generally will be **to make as much money as possible** while conforming to the basic rules of the society, both those embodied in law and those embodied in ethical custom.²¹
(emphasis added)

From this 'ownership' perspective, shareholders have a right to have the corporations in which they hold shares - corporations which are their private property - run in their interests. Their claims are rights-based and, as such, in no further need of justification.

²⁰ The entity theory is particularly important as Merrick Dodd (as explained in the next chapter) uses it to assert that the corporation is a public institution with broad social responsibilities.

²¹ M Friedman, 'The Social Responsibility of Business is to Increase its Profits' *The New York Times Magazine* (New York 13 September 1973) 32-33.

Efficiency: Instrumental and Consequentialist Justifications for Shareholder Primacy

However, as will be discussed in greater detail in the next chapter, and as mentioned briefly in the introduction to the thesis, the ‘shareholder ownership’ justification for shareholder primacy came under sustained attack during the first half of the twentieth century. Shareholders, it came to be argued, could not in any meaningful sense be described as corporate ‘owners’; correspondingly, it was inappropriate to describe corporations as their private property. From the critique of shareholder corporate ownership there thus emerged the idea that corporations should be re-conceptualised as *public* institutions with wider social responsibilities. One result of this, as we shall see in the next chapter, was that during the course of the 1950s and 60s belief in the principle of shareholder primacy waned and the idea of the ‘socially responsible corporation’ became increasingly popular.

From the 1970s, however, new instrumental and consequentialist justifications for shareholder primacy and the shareholder-oriented conception of the corporation were developed, with financial economists leading the way. These justifications were based less on shareholder ownership claims and more on ‘efficiency’ claims. In this process, the fundamentally *private* nature of the corporation was re-asserted. Indeed, by the close of the twentieth century, the shareholder-oriented model of the corporation had become so dominant that some commentators claimed that we had reached ‘the end of corporate history’. The shareholder-oriented model of the corporation had triumphed for once and for all.²² At the core of these justifications is the free market, seen as a device which ruthlessly assesses the ‘efficiency’, or otherwise, of corporations. Only when they operate exclusively in the shareholder interest, it is argued, will corporations achieve the highest levels of efficiency for the general social benefit.

‘The Invisible Hand’

In fact, these consequentialist justifications for shareholder primacy were implicit in the work of Adam Smith when he advanced the idea that the ‘invisible hand’ of the market operated to co-ordinate the activities of individuals pursuing their own

²² See *Hansmann and Kraakman* (n 1).

personal self-interest in such a way as to promote the interests of society as a whole. This section gives an account of Adam Smith's theory of the 'invisible hand' of the market and how firms in general - JSCs and corporations in particular - fit into it.

The classical school of British economic theory - Adam Smith followed by David Ricardo, John Stuart Mill and Alfred Marshall - assumed that all firms would be guided by the overriding principle of 'profit-maximisation', seeing individual self-interest (which came to be translated into profit maximisation) as the dominant force in the capitalist system. For Smith, the driving force of the system was the individual, self-interested pursuit of more financial gain²³:

The consideration of his own private profit is the sole motive which determines the owner of any capital to employ it either in agriculture, in manufactures, or in some particular branch of the wholesale or retail trade.²⁴

This led Smith to emphasise the importance of keeping restrictions of trade, movement and intervention to a minimum so that every man 'is left perfectly free to pursue his own interest in his own way, and to bring both his industry and capital into competition with those of any other man.'²⁵ Crucially, Smith argued that the self-interested pursuit by individuals of financial gain would benefit society as a whole by maximising wealth. An individual pursuing his own interest is, he claimed:

led by an invisible hand to promote an end which was no part of his intention. Nor is it always the worse for the society that it was no part of it. **By pursuing his own interest, he frequently promotes that of the society more effectually than when he really intends to promote it.** I have never known much good done by those who affected to trade for the publick (sic) good.²⁶ (emphasis added)

For Smith, economic growth was the source of all progress – social as well as economic and the engine providing this growth was considered to be the drive for profits by competitive private enterprise.²⁷

²³ S Sheikh, *Corporate Social Responsibilities: Law and Practice* (Cavendish, London 1996) 23.

²⁴ A Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (Campbell, Skinner and Todd (eds) Liberty Classics, Indianapolis 1976) Book IV, chapter ii, 374.

²⁵ *Smith* (n 24) Book IV, chapter ix, 687.

²⁶ *Smith* (n 24) Book IV, chapter ii, 456.

²⁷ R A Buchholz and S B Rosenthal, 'Social Responsibility and Business ethics' in R E Frederick (ed), *A Companion to Business Ethics* (Blackwell Publishers Ltd, London 1999) 317.

It followed that in producing goods and services whilst seeking the maximum profit in so doing, business was acting in the interests of society as a whole and, in that sense, being socially responsible. Personal self-interest, profit maximisation and social welfare were not in conflict but in harmony.

For Adam Smith, the ideal firm was the owner-managed (and controlled) firm, operating within a competitive product market. He argued, in effect, that economic efficiency was attained by the *internal* mechanism of self-interest of the owner-manager and controller - who would profit-maximise for his own gain but as a result, also contribute to aggregate social welfare - as well as by the *external* mechanism of product market competition.

Because of his belief in the economic superiority of the small owner-managed firm, Smith had reservations about the JSC with its separation of ownership and management:

The directors of such [joint stock] companies, however, being the managers rather of other people's money than of their own, it cannot well be expected, that they should watch over it with the same anxious vigilance with which the partners in a private copartnery (sic) frequently watch over their own. Like the stewards of a rich man, they are apt to consider attention to small matters as not for their master's honour, and very easily give themselves a dispensation from having it. **Negligence and profusion, therefore, must always prevail, more or less, in the management of the affairs of such a Company.**²⁸ (emphasis added)

Smith thus feared that the separation of ownership from management in joint stock companies would inevitably lead to inefficiency.

Although Smith's belief that the JSC was inherently inefficient continued to be influential well into the nineteenth century - it was, for example, shared by a number of leading Victorian economists - as JSCs became larger and more numerous, it came to be assumed that even though they were not generally owner (shareholder) managed, they were still *controlled* by their shareholders, and that they were therefore both profit-maximising and efficient. Significantly, from a Smithian perspective, with its faith in the 'invisible hand', it is clearly possible to argue that when corporations

²⁸ *Smith* (n 24) Book V, chapter i, e, 741.

pursue the shareholder interest and seek to maximise profits they are acting in a socially responsible manner, for in doing this, they operate so as to maximise productive efficiency and total social wealth. Hence Milton Friedman's famous claim that 'there is one and only one social responsibility of business- to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game.'²⁹

This view is part of the libertarian or 'classical' liberal approach to economic affairs: individuals have certain rights and these rights are absolutely fundamental; only free, open and voluntary exchange is justified since any positive duty that is not voluntarily assumed is unjustifiable as it necessarily involves someone's negative rights. It is often argued on this basis that states should not generally intervene in economic affairs, other than to secure private property rights and voluntary exchanges (by protecting against fraud, for instance). As Hayek explains, the 'argument against specific interference of [the state] in the conduct of business corporations rests on the assumption that [the latter] are constrained to use the resources under their control for a specific purpose.'³⁰ This 'specific purpose' is to maximise profits. It follows that if business, instead of pursuing the goal of profit-maximisation, starts engaging in activities under 'that vague and almost meaningless term social', it is putting efficiency at risk.³¹ From this perspective, to allow the state to interfere in business affairs also risks the end of the free market economy more generally and the free societies based upon it. The state should instead focus on enabling the market - and corporations - to operate unencumbered.

The consequentialist case for shareholder primacy thus posits that if corporations are permitted to operate unencumbered solely in the shareholder interest, maximum economic efficiency will result, benefiting society as a whole. Indeed, economists such as Friedman argue that it is in fact the market which selects 'efficient' firms and that the latter only achieve maximum efficiency when they pursue the goal of profit maximisation:

²⁹ M Friedman with the assistance of R D Friedman, *Capitalism and Freedom* (The University of Chicago Press, Chicago and London 1962, reissued with new Preface, 1982) 133.

³⁰ F A Hayek, 'The Corporation in a Democratic Society: In Whose Interest Ought It and Will It be Run?' in M Anshen and G L Bach (eds), *Management and Corporations* (Greenwood Press Publishers, Westport, Connecticut 1985) 107.

³¹ *Hayek* (n 30) 106.

Whenever this determinant (of business behaviour) happens to lead to behavior consistent with rational and informed maximisation of returns, the business will prosper and acquire resources with which to expand; whenever it does not the business will tend to lose resources and can be kept in existence only by the addition of resources from the outside. The process of natural selection thus helps to validate the hypothesis (of profit maximisation) or, rather, given natural selection, acceptance of the hypothesis can be based largely on the judgment that it summarises appropriately the conditions for survival.³²

It is important here to note that neoclassical economists do not generally theorise about the internal structures or workings of firms. All firms – small partnerships as well as large JSCs - are treated alike as ‘black boxes’ which, it is assumed, seek to maximise their profits; as entities ‘in rational patterns no different from those of human actors’.³³ It thus tends to be assumed that even in JSCs – large corporations - in which ownership and management have been separated market forces discipline managers and control managerial power. Eventually, market forces are meant to root out companies that are ‘inefficient’ or fail to profit maximise.

The Displacement of the Market: ‘The Visible Hand’

However, following the corporate revolution of the late nineteenth and early twentieth centuries, in which large JSCs came to dominate economic life, increasing doubts began to be expressed not only about the control exercised by shareholders over managers but about the extent to which product markets, now increasingly dominated by a few very large firms, could be said to be truly competitive. As Alfred Chandler asked, had the corporate revolution not in effect generated the replacement of the invisible hand of the market by the visible hand of corporate planning and/or administration? This was Chandler’s main argument in his celebrated book, *The Visible Hand*³⁴:

[The] modern business enterprise took the place of market mechanisms in coordinating the activities of the economy and allocating its resources. In

³² M Friedman, *Essays in Positive Economics* (University of Chicago Press, Chicago 1953) 22.

³³ William W Bratton Jr, ‘The New Economic Theory of the Firm: Critical Perspectives from History’ (1989) 41 *Stanford Law Review* 1471, 1496.

³⁴ Alfred D Chandler Jr, *The Visible Hand: The Managerial Revolution in America* (Belknap, Harvard 1977).

many sectors of the economy the **visible hand of management replaced ... the invisible hand of market forces.**³⁵ (emphasis added)

In effect, Chandler was questioning whether market mechanisms worked in the ways traditionally ascribed to them in the modern corporate economy. Paradoxically, for Chandler, the decline of market mechanisms which accompanied the rise of the modern corporation was itself driven by efficiency considerations. Thus the principal reason for the rise of the modern corporation, he argued, was technological³⁶:

Technological innovation, the rapid growth and spread of population, and expanding per capita income made the processes of production and distribution more complex and increased the speed and volume of the flow of materials through them. **Existing market mechanisms were often no longer able to coordinate these flows effectively.** The new technologies and expanding markets thus created for the first time a **need for administrative coordination.** To carry out this function entrepreneurs built multiunit business enterprises and hired the managers needed to administer them.³⁷ (emphasis added)

Hence, although corporations were productively efficient, it was not because they were subject to the traditional disciplines of the market but because of their ability to supersede the market, to displace those mechanisms, and to allocate resources efficiently from *within, using* non-market mechanisms. The 'administrative coordination' of resources by corporate managers thus allowed for 'greater productivity, lower costs, and higher profits than coordination by market mechanisms.'³⁸ And this efficiency was achieved by the corporation being 'managed by a hierarchy of salaried executives.'³⁹ In effect,

[a]s modern business enterprise acquired functions hitherto carried out by the market, it became the most powerful institution in the American economy and its managers the most influential group of economic decision makers. The rise of modern business enterprise in the United States, therefore, brought with it **managerial capitalism.**⁴⁰ (emphasis added)

³⁵ Chandler (n 34) 1. The book described the development of American business from about 1790 to about 1940, focussing on the period from 1840 to 1910. Geert Hofstede, 'Book Review of Alfred Chandler' (1980) 3(1) Organization Studies 294. Hofstede explains that Chandler's main proposition was that "Free" economic development was in fact heavily guided, but the guiding force was not a traditional government or ruling class but a new managerial class'. See Hofstede 294.

³⁶ Richard R John, 'Elaborations, Revisions, Dissents: Alfred D Chandler, Jr's "The Visible Hand" after Twenty Years' (1997) 71(2) The Business History Review 151, 153-154.

³⁷ Chandler (n 34) 484.

³⁸ Chandler (n 34) 6.

³⁹ Chandler (n 34) 1.

⁴⁰ Chandler (n 34) 1.

The implication of Chandler's analysis was that the economic sphere - the sphere of the free, unregulated market - had been politicised: the corporation was efficient not as a result of market mechanisms but as a result of the operation of (hierarchical) power structures within it. As Chandler asserted, '[t]op managers, in addition to evaluating and coordinating the work of middle managers, took the place of the market in allocating resources for future production and distribution.'⁴¹ As such, Chandler's argument in some ways echoed that of Berle and Means' decades earlier in their seminal⁴² 1932 book *The Modern Corporation and Private Property*⁴³, with its suggestion that modern corporations needed to be seen as political or social institutions rather than as purely private, economic enterprises. However, while Chandler questioned the market nature of corporations but thought them nevertheless efficient, it is arguable that Berle and Means implicitly questioned both. For Berle and Means it was by no means clear that corporations still profit maximised, for their managers were no longer subject to either *internal* shareholder controls – hence their idea of the 'separation of ownership and control' – or to the *external* disciplinary mechanisms of competitive markets.

The Reassertion of Market Controls over the Corporation: 'The Market for Corporate Control'

Berle and Means' work cast doubt over the shareholder-orientation of the modern corporation and thus over what they called the 'traditional logic of profit'⁴⁴ according to which firms, in seeking maximum profit for their owners, had to be efficiently run in order to survive. In the new world of giant corporations in which ownership and control had been separated and managers were increasingly in charge, the traditional logic of profit, they suggested, simply did not apply. The disciplinary forces which had previously ensured that managers pursued the shareholder interest had been seriously weakened. Moreover, the decline of competitive product markets and the rise oligopolistic and monopolistic markets had significantly diluted the *external* product market pressures on managers; at the same time the separation of ownership

⁴¹ Chandler (n 34) 7.

⁴² J L Weiner, 'The Berle-Dodd Dialogue on the Concept of the Corporation' (1964) 64 Columbia Law Review 1458, 1462.

⁴³ A A Berle Jr and G C Means, *The Modern Corporation and Private Property* (The Macmillan Company, New York 1932).

⁴⁴ Berle and Means (n 43) 340.

and control had diminished the *internal* pressures coming from shareholders. Corporate managers, Berle and Means suggested, who ‘own[ed] so insignificant a fraction of the company’s stock’ had little or no incentive to increase the corporation’s value. In turn, shareholders, ‘to whom the profits of the corporation [went], [could not] be motivated by those profits to a more efficient use of the property, since they [had] surrendered all disposition of it to those in control of the enterprise.’⁴⁵ ‘The discipline of the market [had been] attenuated’, with the result that ‘the scope for managerial choice [was] considerable.’⁴⁶ What was there to stop corporate managers from using the property of the corporation in self-interested and inefficient ways? Indeed, was it still appropriate for these increasingly powerful corporations - which, arguably, now more closely resembled social institutions than private enterprises - to be run solely in the interests of their passive, detached, rentier shareholders? As we shall see in the following chapter, Berle and Means’ work led many to question the legitimacy and validity of the doctrine of shareholder primacy and to posit new, radical conceptions of the nature of the corporation.

By the 1950s and 60s, however, it was coming to be argued that corporations and their managers were subject to other, newly emerging and powerful market disciplines, derived not from product markets but from capital markets; and in the 1980s and 90s, these new market disciplines formed the basis of a fierce reassertion of the consequentialist case for shareholder primacy. Henry Manne, one of the founding fathers of the law and economics movement, was one of the first to reassert the importance of capital markets in disciplining corporations and their managers. Like Chandler, Manne thought corporations efficient; but unlike Chandler he attributed this to the operation of market mechanisms: whereas Chandler saw efficiency as coming from within the corporation (the visible hand of administrative planning), Manne saw it as coming from without and from within, from a mixture of the invisible hand of the market *and* shareholders’ rights.⁴⁷

⁴⁵ A A Berle and G C Means, *The Modern Corporation and Private Property* (Revised edn Harcourt, Brace & World Inc, New York 1968) 9.

⁴⁶ Rakesh Khurana, *From Higher Aims to Hired Hands: The Social Transformation of American Business Schools and the Unfulfilled Promise of Management as a Profession* (Princeton University Press, Princeton 2007) 2.

⁴⁷ See below.

Manne did not actually directly engage with Chandler's arguments but he did engage with those of Berle and Means. He sought to challenge their 'belief that the modern corporation could no longer be analysed in traditional economic terms'⁴⁸ by re-emphasising the role of the market in controlling their behaviour. Unlike Berle and Means, he saw the 'separation of ownership and control' as a positive development. For him, shareholders had never performed the traditional functions of ownership but had, on the contrary, always been mere 'investors', the 'traditional capital investor[s] of economic theory' who put 'money at risk for use by entrepreneurs and managers.'⁴⁹ Indeed, Manne argued, the detachment of shareholders from the corporation was a good thing in that it rendered them ready to sell their shares at any time – to 'exit'. In response to Berle⁵⁰, who was concerned about the accountability of corporate managers whose powers were growing day-by-day⁵¹, he asserted that the 'free stock market' is 'the single great protective device for shareholders.'⁵² Corporate managers, he argued, *were* subject to market disciplines. Indeed, they were not only still operative, they prevented corporations from deviating from the gospel of profit-maximisation and the furtherance of shareholder interest. Significantly, however, he placed disciplinary reliance on *capital* rather than product markets,⁵³ arguing that managers were disciplined by the constant threat of take-over: the 'proxy fight is the most dramatic example of the workings of this market'.⁵⁴ He coined the phrase 'the market for corporate control'⁵⁵ to describe the operation of this market, explaining it as follows:

If the performance of the [corporate managers] is judged by the market to be unsatisfactory, the market provides a **displacement mechanism**. As the dissatisfied shareholders sell their shares, the price of the shares will naturally drop. If enough shareholders become dissatisfied, the price will be driven down to a point that other potential managers may decide that this corporation offers them an opportunity for substantial capital gains **through**

⁴⁸ Henry G Manne, 'The "Higher Criticism" of the Modern Corporation' (1962) 62(3) Columbia Law Review 399, 407.

⁴⁹ Henry G Manne, 'Our Two Corporation Systems: Law and Economics' (1967) 53 Virginia Law Review 259, 259.

⁵⁰ See discussion in the next chapter.

⁵¹ When Berle in the late 1950s accepted that managers could pursue social responsibilities (see next chapter), Manne actually criticised him. See *Manne* (n 48) 414.

⁵² Henry G Manne, 'Some Theoretical Aspects of Share Voting – An Essay in Honor of Adolf A. Berle' (1964) 64 Columbia Law Review 1427, 1432.

⁵³ As a result, he demarcated his arguments from those of Adam Smith, Chandler and more importantly, Berle and Means.

⁵⁴ *Manne* (n 48) 405.

⁵⁵ This phrase was first introduced in his 1964 article. See *Manne* (n 52).

more efficient management. If they can secure, through a merger, proxy fight or tender offer, enough votes to gain control of the corporation and they then operate **more efficiently** than the previous management, the market will respond to this with a higher share price.⁵⁶ (emphasis added)

For Manne, the 'efficiency' of management and therefore of the corporation is measured by the price of its shares on the stock market. The market for corporate control, Manne argued, compelled managers to profit maximise, ensuring efficiency for the good of society as a whole. If managers deviated from this goal or managed inefficiently, shareholders would sell their shares, the share price of the corporations they were managing would drop, and the company would be at risk of a take-over in which the poorly performing or deviant (non profit-maximising) management would be replaced.

Thus, whereas earlier commentators had seen the detachment of the rentier shareholder from the corporation as a problem, Manne saw it as a virtue, arguing that, actually, the proper operation of the market for corporate control required disloyal shareholders prepared to sell their shares. He therefore criticised those, like J A Livingston, a financial journalist who had urged greater shareholder involvement in corporations and attacked take-overs:

[Livingston] overlooks the obvious fact that a "raider" in a proxy fight is not simply interested in gaining the votes of other shareholders. It may be and usually is a prerequisite to victory that he own or control a substantial block of shares. And nothing, absolutely nothing, will serve as quite the inducement for this venture as a relatively low price for the shares. **This low price, of course, is often a direct result of the attitudes of many small shareholders, who, in their own infinitesimal fashion, by selling their shares, add to the probability of success of a raid on management.**⁵⁷ (emphasis added)

Manne also saw the rise of the institutional investor as 'one of the most dramatic and important events in the recent history of market finance.'⁵⁸ This was because if institutional shareholders sold off the (large number of) shares they owned in a particular company, this would make the price of the shares plummet, and render the

⁵⁶ Henry G Manne, 'Financial Intermediaries and Corporate Responsibilities' (1972) 17 New York Law Forum 725, 727.

⁵⁷ Henry G Manne, 'Book Review of The American Stockholder by J A Livingston' (1959) 5 St Louis University Law Journal 309, 311.

⁵⁸ Manne (n 57) 312.

company vulnerable to take-over and its poorly performing management vulnerable to removal. Hence '[t]he fight for control is a mechanism by which the market operates to weed out the inefficient and less productive'⁵⁹ , and brings in 'improved management'.⁶⁰

As a result, Manne argued, the mere threat of a 'raid' would often be enough: the constant pressure of possible take-over would 'condition managers to a specific point of view perfectly consistent with the shareholders' interest ..., keeping the price of the company's shares as high as possible.'⁶¹ The market for corporate control acts as a sort of measuring rod of the success of the company in terms of the profits it makes, and also, consequently, dictates that profit maximisation should be the goal as otherwise, the company will be driven out of business or, more importantly for managers, taken over:

A fundamental premise underlying the market for corporate control is the existence of a high positive correlation between corporate managerial efficiency and the market price of shares of that company. As an existing company is poorly managed- in the sense of not making as great a return for the shareholders as could be accomplished under other feasible managements- the market price of the shares declines relative to the shares of other companies in the same industry or relative to the market as a whole. ... a lower share price facilitates any effort to take over high-paying managerial positions.⁶² (emphasis added)

The mere 'fear' of displacement resulting from poor performance would, Manne argued, compel managers not to engage in pursuits other than profit maximisation, including those associated with the idea of corporate social responsibility. These pursuits, or 'issues of the moment, could, like ladies of the night, be changed at will.'⁶³ As Ireland observes, Manne's arguments in favour of shareholder rights and shareholder primacy relied not so much on the moral force of their claims as corporate 'owners' but much more on their instrumental value in ensuring 'allocative efficiency'.⁶⁴ Making money for shareholders was the most socially responsible thing

⁵⁹ Manne (n 57) 315.

⁶⁰ Manne (n 52) 1430.

⁶¹ Manne (n 49) 259.

⁶² Henry G Manne, 'Mergers and the Market for Corporate Control' (1965) 73 *Journal of Political Economy* 110, 112.

⁶³ Manne (n 56) 729.

⁶⁴ Ireland (n 7) 155. See further Colin Mayer, 'Corporate Governance, Competition and Performance' (1997) 24 *Journal of Law and Society* 152, 155.

corporations could do. 'Nothing in the current spate of corporate criticism', Manne wrote, 'even comes close to making a case for abandoning financial success as the prime standard of social performance in a free system.'⁶⁵

Contractual Theories of the Corporation

Manne brought the corporation back within the market, so to speak, and his ideas were soon being used by financial economists to develop new economic theories of the firm. In recent years these theories have played a crucial role not only in the defence but also in the promotion of the shareholder-oriented model of the corporation. The conceptual roots of these new theories can be traced back to Ronald Coase's famous 1937 article on the nature of the firm⁶⁶ in which he theorised the firm as a way of reducing the transaction costs that the participants in the firm would incur if they used the market as a forum for their exchange. Coase used the term 'transaction costs' to describe the costs of bargaining over events such as the terms of sale and supply of commodities.⁶⁷ Coase's theory was later developed by others and two alternative conceptions of the firm crystallised: the neoclassical and the institutional.⁶⁸ In this chapter, the discussion will centre primarily on the neoclassical.

The neoclassical conception sees the firm as having 'no power of fiat, no authority, no disciplinary action any different in the slightest degree from ordinary market

⁶⁵ Manne (n 52) 734.

⁶⁶ R Coase, 'The Nature of the Firm' (1937) 4 *Economica* 386 reprinted in Louis Putterman and Randall S Kroszner (eds), *The Economic Nature of the Firm: A Reader* (Cambridge University Press, Cambridge 1996) 89.

⁶⁷ Sally Wheeler, 'Introduction' in S Wheeler (ed), *A Reader on the Law of the Business Enterprise* (OUP, Oxford 1994) 30-31. A simple example to illustrate this would be to take the case of a farmer who delivers vegetables to local customers. He wants to ensure that the vegetables will be delivered; he can therefore hire a local firm to deliver them for him. However, he faces two problems: firstly, he cannot be sure about the reliability of the firm (known as bounded rationality) and secondly, he is dependent on the guarantees the firm offers (known as asymmetric information). By using his own lorry, for instance, and employing a person to drive it, the farmer has greater control over the resource and can be sure that his vegetables will reach his customers, as he can more easily direct the operations of his employee.

⁶⁸ See Bratton (n 33) 1471, 1477-1482. According to the institutional approach, the firm's participants create a hierarchical governance structure as an alternative to the pure market contracting characteristic of the neoclassical approach. David Millon, 'Theories of the Corporation' (1990) 1990 *Duke Law Journal* 201, 230. See O Williamson, 'Organisational Form, Residual Claimants, and Corporate Control' (June 1983) *XXVI Journal of Law & Economics* 351.

contracting between any two people.’⁶⁹ It thus dispenses with Chandler’s management hierarchies of power.⁷⁰ In the words of Jensen and Meckling:

[the corporation is reduced to just] a legal fiction which serves as a focus for [the] complex process in which the conflicting objectives of individuals ... are brought into equilibrium within a framework of contractual [relationships].⁷¹

From this perspective, the corporation is nothing more than a ‘nexus of contracts’, a series of contracts between the different actors within the corporation. When one views the company as a set of contracts in this way,⁷² the company or corporation disappears as an autonomous entity capable of being ‘owned’. This enables the whole debate about corporate ownership to be dismissed as irrelevant⁷³: the corporation is simply a fictional vehicle to facilitate contracting. Each constituency is placed within a contractual paradigm that only recognises bargained rights.⁷⁴ As Lawrence Mitchell points out, it ‘is the special genius of this model, and the corporate form, to permit the specialisation of each of the production factors [which] leads to corporate efficiency.’⁷⁵ Thus shareholders (experts in risk bearing⁷⁶) are seen as the providers of ‘capital’ – one of the factors of production- who expect a return on their capital, which is why managers (experts in coordinating the various inputs into the means of production and their outputs) have to pursue the goal of profit maximisation. Significantly, Eugene Fama explains that ‘ownership of capital should not be confused with ownership of the firm’ as ‘ownership of the firm is an irrelevant concept.’⁷⁷ It has thus been argued that the contractual theory of the firm has the

⁶⁹ A A Alchian and H Demsetz, ‘Production, Information Costs and Economic Organization’ (1972) 62(5) 777.

⁷⁰ Dalia Tsuk, ‘From Pluralism to Individualism: Berle and Means and 20th Century American Legal Thought’ (2005) 30(1) Law and Social Inquiry 179, 210.

⁷¹ M Jensen and W Meckling, ‘Theory of the Firm: Managerial Behaviour, Agency Costs and Ownership Structure’ (1976) 3 Journal of Financial Economics 305 reprinted in *Putterman and Kroszner* (n 6) 321.

⁷² It must be that noted because some of the relationships do not constitute contracts in a technical sense, some commentators refer to them as bargains. See Michael Klausner, ‘Corporations, Corporate Law and Networks of Contracts’ (1995) 81 Virginia Law Review 757, 759.

⁷³ See *Alchian and Demsetz* (n 69) 791-793.

⁷⁴ I Lynch Fannon, *Working within Two Kinds of Capitalism: Corporate Governance and Employee Stakeholding: US and EU Perspectives* (Hart Publishing, Oxford 2003) 77.

⁷⁵ Lawrence E Mitchell, ‘Book Review: The Cult of Efficiency’ (1993) 71 Texas Law Review 217, 220.

⁷⁶ *Mitchell* (n 75) 220.

⁷⁷ Eugene Fama, ‘Agency Problems and the Theory of The Firm’ (1980) 88 Journal of Political Economy 288, 290.

curious effect of turning ‘the corporate-theoretical clock back to the early nineteenth century when ... corporation and shareholders were perceived, for most purposes, as one and the same; when the shareholders *were* the corporation (emphasis in original).’⁷⁸

One of the effects of the elimination of the corporation as a meaningful and significant entity is to turn the relationship between shareholders and managers into a purely contractual, agency relationship. The problem for shareholders is thus interpreted as how to ensure that their managerial agents act in their interests and avoid the risk that managers might not act in their best financial interests but in opportunistic and self-serving ways. In short, their managerial agents might ‘shirk’.⁷⁹ Jensen and Meckling refer to the costs associated with this risk as the ‘agency costs’.⁸⁰

David Millon outlines the theory in this way:

In contrast to creditors and others with fixed claims against corporate revenue, **it is the shareholders as residual claimants who ultimately bear these agency costs.** If the web of contracts that makes up the firm fails to minimise agency costs, shareholders pay these costs because buyers will pay less for their stock and distribution or liquidation proceeds will be lower than they would have been under more efficient management.⁸¹ (emphasis added)

How can corporate managers be made to profit-maximise and to serve the interests of shareholders, thereby ensuring productive efficiency? Various solutions have been proposed by contractual theorists of the corporation, prominent amongst them, the use of share options and the strengthening of the market for corporate control, which is seen as a key external governance mechanism.

Legal theorists started to develop and elaborate on these contractual theories of the firm from the 1980s onwards.⁸² As Winkler states, ‘[The 1980s] marked the

⁷⁸ *Ireland* (n 7) 165. Also see above.

⁷⁹ Andrew Keay, ‘Tackling the Issue of the Corporate Objective: An Analysis of the United Kingdom’s “Enlightened Shareholder Value Approach”’ (2007) 29 *Sydney Law Review* 577, 583.

⁸⁰ See *Jensen and Meckling* (n 71).

⁸¹ *Millon* (n 68) 230. Lee explains further that a ‘venture is worth more in the aggregate if there is a single group of residual claimants, because of lower agency costs compared to a venture in which there are multiple residual claimants’. Ian B Lee, ‘Efficiency and Ethics in the Debate About Shareholder Primacy’ (2005) University of Toronto Legal Studies Series Research Paper No. 15-05, 7 <<http://ssrn.com/abstract=778765>> accessed 20 June 2006.

⁸² See for example, Robert Hessen, ‘A New Concept of Corporations: A Contractual and Private Property Model’ (1979) 30 *Hastings Law Journal* 1327; Reinier H Kraakman, ‘Corporate Liability

emergence of the strongest theoretical defence of shareholder primacy: the nexus-of-contracts model of corporate law.’⁸³ Among the principal legal advocates of the nexus of contracts approach to corporate law are the Americans Frank Easterbrook and Daniel Fischel.⁸⁴ In 1991, they combined and condensed their numerous articles on the subject into a book entitled *The Economic Structure of Corporate Law*.⁸⁵ For them, corporate law is above all else a contractual mechanism aimed at reducing agency costs:

We treat corporate law as a standard-form contract, supplying terms most venturers would have chosen but yielding to explicit terms in all but a few instances. The normative thesis of the book is that corporate law should contain the terms people would have negotiated, were the costs of negotiating at arm’s length for every contingency sufficiently low. The positive thesis is that corporate law almost always conforms to this model. **It is enabling rather than directive.**⁸⁶ (emphasis added)

The goal is wealth-maximisation and the role of the law is nothing more than to provide a set of default rules to assist a collection of individuals in pursuing their self-interest in a free market.⁸⁷ For Easterbrook and Fischel, shareholder-oriented corporations are tendentially efficient because of the operation of the market. They argue:

If the investors know that the managers have lots of discretion, why did they give their money to these managers in the first place? If managers promise to return but a pittance, the investors will not put up very much money. The

Strategies and the Costs of Legal Controls’ (1984) 93 Yale Law Journal 857 and Lucian Arye Bebchuk, ‘Limiting Contractual Freedom in Corporate Law: The Desirable Constraints on Charter Amendments’ (1989) 102 Harvard Law Review 1820.

⁸³ Adam Winkler, ‘Corporate Law or the Law of Business?: Stakeholders and Corporate Governance at the End of History’ (2004) 67 Law and Contemporary Problems 109, 122.

⁸⁴ Easterbrook and Fischel wrote on a number of areas in relation to the nexus of contract theory namely corporate takeovers, shareholder voting, mandatory disclosure, dividends, limited liability and so on. See amongst others F H Easterbrook and D Fischel, ‘The Proper Role of a Target’s Management in Responding to a Tender Offer’ (1981) 94 Harvard Law Review 1161; F H Easterbrook and D Fischel, ‘Corporate Control Transactions’ (1982) 91 Yale Law Journal 737; F H Easterbrook and D Fischel, ‘Voting in Corporate Law’ (1983) 70 Virginia Law Review 395; F H Easterbrook, ‘Two Agency-Cost Explanations of Dividends’ (1984) 74 American Economic Review 650; F H Easterbrook and D Fischel, ‘Limited Liability and the Corporation’ (1985) 52 University of Chicago Law Review 89. See further Kate Litvak, ‘Frank Easterbrook and Daniel Fischel’ (2008) The University of Texas School of Law Law and Economics Research Paper No. 121 <<http://ssrn.com/abstract=1089948>> accessed 30 April 2008.

⁸⁵ F H Easterbrook and D R Fischel, *The Economic Structure of Corporate Law* (Harvard University Press, London 1991).

⁸⁶ *Easterbrook and Fischel* (n 85) 15.

⁸⁷ Lawrence E Mitchell, *Corporate Irresponsibility: America’s Newest Export* (Yale University Press, New Haven 2001) 81.

investors simply pay less for the paper the firms issue. There is therefore a limit on managers' efforts to enrich themselves at investors' expense. Managers may do their best to take advantage of their investors but they find that the dynamics of the market drive them to act as if they had investors' interests at heart. It is almost as if there were an invisible hand.⁸⁸ (emphasis added)

'The market' will root out 'inefficient' players in exactly the manner described by Manne. Once again, the exclusive pursuit of the shareholder interest by managers - profit maximisation - is seen as benefiting society as a whole:

In a market economy each party to a transaction is better off. A successful firm provides jobs for workers and goods and services for consumers. The more appealing the goods to consumers, the more profit (and jobs). Prosperity for stockholders, workers and communities goes hand in glove with better products for consumers.⁸⁹

The contractual theory of the corporation developed by writers such as Easterbrook and Fischel thus echoes the arguments of the proponents of the 'invisible hand'.

It follows that shareholder primacy is justifiable. Indeed, the retention by shareholders of both their residual income and exclusive control rights becomes essential, for the effective functioning of the market for corporate control is dependent on the ability of shareholders to sell their shares and voting rights. The defences of shareholder primacy which these new theories provide, however, are based not so much on grounds of shareholder 'ownership' but on grounds of efficiency.⁹⁰ As Parkinson observes, the central purpose of the nexus of contract theory has been to 'establish that the large publicly owned company ... is efficient, notwithstanding the wide dispersal of shareholdings.'⁹¹ Some have thus seen the development of these new contractual theories of the corporation as an attempt to re-establish, in the face of the weakening ownership claims of shareholders, the legitimacy of shareholder primacy

⁸⁸ F H Easterbrook and D R Fischel, 'The Corporate Contract' in Roberta Romano (ed), *Foundations of Corporate Law* (OUP, Oxford 1993) 103.

⁸⁹ *Easterbrook and Fischel* (n 85) 38.

⁹⁰ *Ireland* (n 7) 163.

⁹¹ John Parkinson, 'The Contractual Theory of the Company and the Protection of Non-Shareholder Interests' in David Feldman and Frank Miesel (eds), *Corporate and Commercial Law: Modern Developments* (London, Lloyds 1996) 122.

and the conception of the corporation as a private enterprise. In the words of Ireland, their aim has been to ‘reprivatise the public company (emphasis added).’⁹²

II. The Rise of Shareholder Value

The nexus of contracts model of the corporation has played an important role in the (re)legitimation of the principle of shareholder primacy. It is important, however, to also understand the context in which this has happened. In the 1970s, the US and other capitalist economies were not performing well and financial property owners, in particular, were suffering.⁹³ There emerged from these problems a somewhat polarised debate between ‘those ranged behind social democracy and central planning on the one hand’ and those who were ‘concerned with liberating corporate and business power and re-establishing market freedoms on the other.’⁹⁴ By the middle of the late 1970s, the latter group was clearly winning the battle.⁹⁵ The owners of financial property began to reassert their power: according to Harvey, they ‘had to move decisively if they were to protect themselves from political and economic annihilation’.⁹⁶ It was precisely as this happened that financial economists began to develop their new theories of the firm which not only defended but vigorously advocated shareholder primacy. In order to get managers to act in the shareholder interest, it began to be argued that the interests of managers and shareholders needed to be realigned - ‘agency costs’ had to be reduced – and it came to be argued that one way to do this was to relate an executive’s compensation to firm performance by means of share options which gave managers an incentive to try to elevate the share

⁹² Ireland (n 7) 163.

⁹³ See Charles R Geisst, *Wall Street: A History* (OUP, New York 1999) Chapter 10. It was a global phase of ‘stagflation’- see David Harvey, *A Brief History of Neoliberalism* (OUP, Oxford 2005) 12.

⁹⁴ Harvey (n 93) 13.

⁹⁵ Harvey (n 93) 13.

⁹⁶ Harvey (n 93) 15. Harvey explains this phase in history as the beginning of neoliberalism. In this context, Duménil and Lévy have argued that neo-liberalism was a project to achieve the restoration of class power. See G Duménil and D Lévy, *Capital Resurgent: Roots of the Neoliberal Revolution* (D Jeffers trans, Harvard University Press, London 2004).

prices of the companies they were running.⁹⁷ Share price was, it came to be argued, the key metric for judging firm performance. It was in this context that the market for corporate control was thought to play a vital role - as the market in which 'alternative managerial teams competed for the right to manage corporate resources.'⁹⁸ It thus came to be argued that managers should concentrate on shareholder value, on maximising shareholder returns (dividends) and capital growth (share price). The economic sociologist Neil Fligstein describes what he calls 'the shareholder value conception of the firm' as the idea that the job of top managers is to ensure that the assets of a company are returning the highest possible profits for their shareholders.⁹⁹ Managers, it was now argued, needed to pay more attention to increasing the returns on the assets of the firm in order to increase the value of those assets to shareholders. It followed, of course, that they should be paying less attention to other constituencies, such as employees, customers, suppliers and the community more generally.¹⁰⁰ The idea of the 'socially responsible corporation' which had risen to prominence in the post-war period was rapidly fading.

The claims about the disciplinary powers of the market for corporate control were bolstered by the fact that the 1980s were marked by an unprecedented level of hostile takeovers in the US.¹⁰¹ For financial economists such as Michael Jensen, takeover activities served a fundamental economic function:

In the corporate takeover market, managers compete for the right to control - that is, to manage - corporate resources. Viewed in this way, the market for corporate control is an important part of the managerial labour market ... After all, potential chief executive officers do not simply leave their applications with personnel officers. **Their on-the-job performance is subject not only to the normal internal control mechanisms of their**

⁹⁷ See *Jensen and Meckling* (n 71) in relation to stock options. Jensen then became a leading advocate of the leveraged buy-out, which peaked in the late 1980s, but was later replaced by 'shareholder activism' by institutional investors. See *Ireland* (n 7) 159-160. See also P J Beck and T S Zorn, 'Managerial incentives in a stock market economy' (1982) 37 *Journal of Finance* 1151 and R A Haugen and L W Senbet, 'Resolving the agency problems of external capital through options' (1981) 36 *Journal of Finance* 629.

⁹⁸ Michael Jensen and Richard Ruback, 'The Market for Corporate Control' (1983) 11 *Journal of Financial Economics* 5, 5.

⁹⁹ See Neil Fligstein, *The Architecture of Markets: An Economic Sociology of Twenty-First-Century Capitalist Societies* (Princeton University Press, Princeton 2001).

¹⁰⁰ Neil Fligstein and Taekjin Shin, 'Shareholder Value and the Transformation of the US Economy, 1984-2000' (2007) 42(4) *Sociological Forum* 399, 399-400.

¹⁰¹ *Fligstein and Shin* (100) 403.

organizations but also to the scrutiny of the external market for control.¹⁰² (emphasis added)

More recently, however, economic sociologists have questioned whether this growth in take-over activity is evidence of the operation of an efficiently operating market for corporate control. Zorn and others, for example, attribute the rise of the shareholder value conception of the firm to changes in the balance of economic power rather than to efficiency considerations, pointing to such things as the growing importance of institutional investors and securities analysts.¹⁰³ From the 1970s, they argue, driven in significant part by the explosion of defined contribution plans and the growing popularity of mutual funds as a form of investment among American households, institutional investors - the potential importance of whose rise Manne had noted in the 1950s - came to be the dominant group of corporate shareholders.¹⁰⁴ Securities analysts also began significantly to increase in number, especially as institutional investors came to rely on their reports as a basis for their investment decisions.¹⁰⁵ Gradually, the financial performance of firms became ever more important, not least to the survival of their managers. Thus Zorn and others describe how in the 1990s, share prices started to rise and fall on the strength of profits *vis-à-vis analysts' forecasts* as opposed to the strength of profits per se. Stock price began to move more frequently in tandem with quarterly earnings reports and with analysts' 'buy and sell' recommendations.¹⁰⁶ In this way, they argue, corporate managers were gradually pressurised into looking to maximise shareholder value in various ways. They had to make sure that they were meeting analyst profit targets (which affected share prices) as otherwise institutional investors would sell their shares with a potentially disastrous effect on their market price, which would, in turn, affect their own remuneration and job security. In the US, this led, amongst other things, to the rise of the Chief Financial Officer (CFO) whose main role was 'to manage relations with shareholders,

¹⁰² Michael Jensen, 'Takeovers: Folklore and Science' (1984) 62(6) Harvard Business Review 109, 110.

¹⁰³ Dirk Zorn and others, 'Cui Bono: Institutional Investors, Securities Analysts, Agents, and the Shareholder Value Myth' (2005) New Public and Private Models Management: Sensemaking and Institutions Conference, Copenhagen Business School, May 2005 <<http://www-management.wharton.upenn.edu/guillen/Dobbin/Dobbin.KonstanzCopenhagen5-05.doc>> accessed 20 April 2008.

¹⁰⁴ Dirk Zorn, 'Here a Chief, There a Chief: The Rise of the CFO in the American Firm' (2004) 69(3) American Sociological Review 345, 351.

¹⁰⁵ Zorn and others (n 103) 9.

¹⁰⁶ Zorn and others (n 103) 12.

market expectations, and the firm's stock price'.¹⁰⁷ Whereas before, a company would have a CEO and a Chief Operations Officer(COO) to reflect the conglomerate model of the firm, in the 1980s, the CEO-COO dyad was replaced by the CEO-CFO dyad¹⁰⁸ as it was felt that firms should focus on one or two lines of business, and leave the job of diversification to investors.¹⁰⁹ In short, these economic sociologists argue, the US economy was transformed by the logic of shareholder value during the 1980s and 1990s.¹¹⁰

Shareholder Value in the UK

The UK broadly followed in the US footsteps, similarly giving priority to capital markets in corporate governance. The move towards a shareholder value conception of the corporation in the UK can be traced back to the early 1990s and it has since been cemented into place by a series of quasi-voluntary codes specifying a range of governance mechanisms designed to increase the accountability of senior managers to shareholders.¹¹¹ They originated with the Report of the Cadbury Committee¹¹², followed by that of the Greenbury Committee on Executive Remuneration¹¹³, and the Hampel Committee¹¹⁴, after which the Combined Code on Corporate Governance was produced for the first time in 1998. The commitment to shareholder value has since been reinforced, following the high profile corporate financial scandals which occurred at the beginning of the new Millennium: Enron, WorldCom, Global Crossing, Tyco, Adelphia, Parmalat and so on. These scandals led in the US to the Sarbanes-Oxley Act, rushed into place by Congress in the summer of 2002. Not insignificantly, Sarbanes-Oxley completely ignored stakeholder claims in favour of further entrenching accountability to shareholders. In the UK, the Higgs review on the

¹⁰⁷ Zorn (104) 352.

¹⁰⁸ Zorn and others (n 103) 16.

¹⁰⁹ Zorn and others (n 103) 14.

¹¹⁰ Fligstein and Shin (100) 419.

¹¹¹ John Armour, Simon Deakin and Suzanne J Konzelmann, 'Shareholder Primacy and the Trajectory of UK Corporate Governance' (2003) 41(3) *British Journal of Industrial Relations* 531, 539.

¹¹² Cadbury Committee, *Report of the Committee on the Financial Aspects of Corporate Governance* (Gee, London 1992).

¹¹³ Greenbury Committee, *Directors' Remuneration: Report of a Study Committee Chaired by Sir Richard Greenbury* (Gee, London 1995).

¹¹⁴ Hampel Committee, *Final Report of the Committee on Corporate Governance* (Gee, London 1997).

role of non-executive directors,¹¹⁵ while milder than Sarbanes-Oxley in terms of the requirements it would impose upon companies, shared its philosophy of shareholder primacy.¹¹⁶ Higgs referred to non-executive directors (NEDs) as the ‘custodians of the governance process’,¹¹⁷ and recommended a strengthening of non-executive representation and independence on boards, stricter rules on the separation of the chair and CEO roles, and a new position of ‘senior independent director’ set up to facilitate liaison between the board and shareholders.¹¹⁸

The Combined Code was thus revised in 2003 to take these recommendations into account.¹¹⁹ It contains broad principles and more specific provisions. It sets out standards of good practice in relation to issues such as board composition and development (focusing mainly on the role of NEDs), remuneration, accountability and audit and relations with shareholders. The Combined Code focuses on disciplinary mechanisms to ensure shareholder primacy that are *internal* to the corporation. Although voluntary in nature, listed companies are required to report on how they have applied the main principles of the Code, and either to confirm that they have complied with the Code's provisions or - where they have not - to provide an explanation. Obviously, were they not to comply with it, it would send the wrong signals to the market. The *external* mechanism for disciplining corporations is the market for corporate control – the threat of hostile takeover. In this context, it is worth noting that the UK takeover regulation is, in certain respects, even more pro-shareholder than that of the US. Takeovers of public companies are regulated in the UK by the City Code on Takeovers and Mergers¹²⁰, a self-regulatory framework dating from the late 1960s, adherence of which is overseen by the Panel on Takeovers

¹¹⁵ Derek Higgs, *Review of the role and effectiveness of non-executive directors* (DTI, London 2003) <<http://www.berr.gov.uk/files/file23012.pdf>> accessed 13 August 2008.

¹¹⁶ *Armour and others* (n 111) 532. See also Simon Deakin and Suzanne J Konzelmann, ‘Learning from Enron’ (2004) 12(2) *Corporate Governance* 134.

¹¹⁷ *Higgs Review* (n 115) para. 1.6.

¹¹⁸ See Jack Keenan, ‘Corporate Governance in UK/USA Boardrooms’ (2004) 12(2) *Corporate Governance* 172.

¹¹⁹ The latest version of the Code dates from June 2008, taking into account the review of the impact and effectiveness of the Code held during 2007. For full text see <<http://www.frc.org.uk/CORPORATE/COMBINEDCODE.CFM>> accessed 22 July 2008.

¹²⁰ For the latest version of the full text see

<<http://www.thetakeoverpanel.org.uk/wpcontent/uploads/2008/11/code.pdf>> accessed 7 July 2009.

and Mergers, a group of specialists drawn from practice and from regulatory organisations in the City of London.¹²¹ As Paul Davies explains,

[t]he Code is founded upon two central ideas, both of which are apt to promote the idea of shareholder value, viewed from the perspective of the target company's shareholders: equal treatment of target shareholders¹²² and the 'non-frustration' rule designed to place the decision on the fate of the bid exclusively in the hands of the shareholders of the target company and to reduce the target management to an information-providing and persuading role.¹²³ (emphasis added)

These rules therefore prohibit any defensive tactics once a bid is on the horizon by the target management, tactics which might include the issuing of non-voting stock or the implementation of various 'poison pill' defences – pre-commitments to engage in some activity or restructuring if a hostile bid succeeds that will destroy any value the bidder would obtain from the firm.¹²⁴ The latter are more frequently observed in the US¹²⁵, where takeover rules are predominantly the province of state corporation laws, which, according to Davies¹²⁶, partly explains their more stakeholder-friendly nature. Indeed, some US states have enacted what are known as 'constituency statutes' which allow management to take into consideration constituencies other than shareholders when evaluating a takeover bid.¹²⁷ These statutes have (obviously) been criticised by contractual theorists mentioned above¹²⁸, who argue that stakeholders of the company are better protected by (private) contracts with the company or even other areas of law.¹²⁹ In any event, the various market and internal disciplinary mechanisms in the UK all work together to constrain corporate managers to pursue the goal of shareholder value. In effect, the corporate culture is one geared towards protecting and furthering the shareholder interest, and, above all, to raising share prices.

¹²¹ *Armour and others* (n 111) 534.

¹²² Designed to deal with acquirer opportunism.

¹²³ Paul Davies, 'Shareholder Value, Company Law, and Securities Markets Law: A British View' in Klaus J Hopt and Eddy Wymeersch (eds), *Capital Markets and Company Law* (OUP, Oxford 2003) 280.

¹²⁴ *Armour and others* (n 111) 534.

¹²⁵ Simon Deakin and Giles Slinger, 'Hostile Takeovers, Corporate Law, and the Theory of the Firm' (1997) 24 *Journal of Law and Society* 124, 140.

¹²⁶ *Davies* (n 123) 284.

¹²⁷ The first constituency statute was enacted in Pennsylvania in 1983. However, it must be noted that the statutes have had limited practical application. See *Keay* (n 79) 594-596 and *Millon* (n 68).

¹²⁸ See *Millon* (n 68) 235-240.

¹²⁹ See the section on CSR below.

‘The End of Corporate History’

There is a clear link between the rise of the shareholder value conception of the corporation and the reassertion of the principle of shareholder primacy and the rise of neo-liberalism. Like the new shareholder-oriented theories of the corporation which have emerged in recent years, neo-liberalism attaches huge importance to the ability of market forces, left as far as possible unimpaired by state intervention, to generate economic efficiency and growth. During the course of the 1990s it came widely to be argued that Anglo-American style economies which allowed market forces freer reign were intrinsically more efficient than those in which market forces were constrained. In similar vein, in the corporate context, it came widely to be argued, and believed, that jurisdictions which created impediments¹³⁰ to shareholder primacy and the operation of the market for corporate control were almost inevitably going to be economically inferior and less efficient than those that allowed this market to operate unimpeded. These beliefs, it was argued, were borne out in practice by the relatively strong performance of the US and UK economies in the 1990s vis-à-vis their less market-oriented rivals. As a result, two American law professors, Henry Hansmann and Reinier Kraakman announced ‘the end of corporate history’ at the beginning of the twenty-first century.¹³¹ They argued that a ‘broad normative consensus’ had emerged among the ‘academic, business and governmental elites in leading jurisdictions’ that ‘ultimate control over the corporation should rest with the shareholder class’, with managers giving priority to their interests; indeed, there was ‘no longer any serious competitor to the view that corporate law should principally strive to increase long-term shareholder value.’¹³²

As Ireland says, ‘[o]ne does not have to endorse Hansmann and Kraakman’s ... extravagant claims ... to recognise that there does indeed seem to be a growing consensus in favour of the shareholder-oriented [model of the] corporation.’¹³³ And

¹³⁰ For instance, La Porta and others argue that jurisdictions which favour block-holding and have inadequate minority shareholder legal protection do not have well-developed capital markets. See La Porta and others, ‘Investor Protection and Corporate Governance’ (2000) 58 *Journal of Financial Economics* 3.

¹³¹ See *Hansmann and Kraakman* (n 1).

¹³² *Hansmann and Kraakman* (n 1) 439-441.

¹³³ Paddy Ireland, ‘Shareholder Primacy and the Distribution of Wealth’ (2005) 68(1) *MLR* 49, 49. For instance, Branson has labelled Hansmann and Kraakman’s thesis as ‘Americanocentric’ and ‘chauvinistic’. See D M Branson, ‘The Very Uncertain Prospect of “Global” Convergence in Corporate Governance’ (2001) 34 *Cornell International Law Journal* 321, 331.

that consensus has moved towards favouring specifically an Anglo-American, stock-market-based model of the corporation. For instance, there has recently been a move towards institutionalising the takeover regulations found in the UK across the European Union (EU). In spring 2004, the EU enacted Directive 2004/25/EC of the European Parliament and of the Council on takeover bids¹³⁴ after fifteen years of negotiations. According to Nilsen, the reason they took such a long time is because ‘the issue at the heart of the directive, whether hostile acquisitions should be encouraged or whether defences should be allowed, is a proxy for the nature of capitalism at the European level.’¹³⁵ The original Commission proposal was to open all companies in Europe to the market for corporate control by outlawing defences against hostile acquisitions. This, explains Nilsen, would have contributed to the creation of a liberal rather than a coordinated variety of capitalism¹³⁶ at the EU level, forcing systemic change in member states that have coordinated market economies such as Germany and the Nordic countries.¹³⁷ In the end, a compromise was reached: Article 12 makes Article 9 (on neutrality¹³⁸) and Article 11 (on breakthroughs¹³⁹) optional. However, what is significant about the Directive is that the Anglo-American option, with its implicit belief in the efficacy and desirability of an active market for corporate control, is proposed as the default position. Indeed, at the wider international level, the OECD and the World Bank have also been actively promoting an essentially Anglo-American, stock-market-based model of the corporation, vigorously promoting the OECD’s recently revised *Principles on Corporate Governance* (OECD Principles hereafter)¹⁴⁰ around the world through its ‘Regional

¹³⁴ For full text see

<<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0025:EN:HTML>> accessed 22 July 2008.

¹³⁵ André Nilsen, ‘The EU Takeover Directive and the Competitiveness of European Industry’ (2004) Oxford Council on Good Governance Economy Analysis No. 1, 1

<<http://www.oxfordgovernance.org/fileadmin/Publications/EY001.pdf>> accessed 14 September 2008.

¹³⁶ The ‘varieties of capitalism’ literature looks at questions of convergence and divergence amongst the different ‘models of capitalism’, creating an analogy with corporate governance systems. See, amongst others, P A Hall and D Soskice, *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage* (OUP, Oxford 2001) and chapter 2 of the thesis.

¹³⁷ Nilsen (n 135) 6.

¹³⁸ It outlaws post-bid defences against hostile bids by obliging the board of directors of target companies to remain neutral and not take any actions that could frustrate the bid.

¹³⁹ It enables the hostile bidder to break through pre-bid defences such as multiple voting rights and other measures that distribute control rights disproportionate to cash-flow rights.

¹⁴⁰ Initially adopted in 1999, revised in 2004. OECD, *Principles of Corporate Governance* (OECD, Paris 2004) For full text see <<http://www.oecd.org/dataoecd/32/18/31557724.pdf>> accessed 8 July 2009.

Roundtables'.¹⁴¹ The Principles advocate a combination of external and internal disciplinary mechanisms to ensure shareholder primacy (as in the UK), and they are discussed in more detail¹⁴² in chapters five and six.

III. CSR and the Shareholder Value Corporation

In recent decades, then, a fiercely shareholder-oriented, shareholder-value-maximising model of the corporation has gradually gained ground around the world. From the perspective of this model, agent-managers should attend to the needs and wants of their shareholder-principals by making sure that the latter receive the maximum possible return on their investments. Indeed, if managers compromise the goal of shareholder value, it is suggested, they not only put their own positions at risk (in the market for corporate control) but also undermine productive efficiency and aggregate social welfare. There is little or no place for social responsibility in this traditional model of the corporation. On the contrary, CSR is a 'fundamentally subversive doctrine'¹⁴³ whose widespread application 'would destroy a free society'.¹⁴⁴

The belief that CSR undermines corporate enterprise and free market capitalism is far from new. Writing in 1958, Theodore Levitt, for instance, argued that CSR was nothing more than a form of 'self-flattery practised at an occasional community chest banquet or a news conference celebrating a "selfless example of corporate giving" to some undeserving little college in Podunk.'¹⁴⁵ The main function of a corporation in a free market economy, Levitt argued, was profit-maximisation; there were no benefits

¹⁴¹ See <http://www.oecd.org/document/9/0,3343,en_2649_34813_2048457_1_1_1_1,00.html> accessed 22 July 2008. See also Fianna Jesover and Grant Kirkpatrick, 'The Revised OECD Principles of Corporate Governance and their Relevance to Non-OECD Countries' (2005) 13(2) *Corporate Governance* 127.

¹⁴² Especially in relation to developing countries and specifically, Mauritius.

¹⁴³ *Friedman* (n 29) 133.

¹⁴⁴ *Friedman* (n 29) 120.

¹⁴⁵ T Levitt, 'The Dangers of Social Responsibility' (1958) 36(5) *Harvard Business Review* 41, 41.

to be derived from engaging in allegedly socially responsible behaviour. In fact, Levitt seemed to have thought the latter a fashionable fad:

[it] is not fashionable for the corporation to take gleeful pride in making money. What *is* fashionable is for the corporation to show that it is a great innovator; more specifically, a great public benefactor; and, very particularly, that it exists to 'serve the public'.¹⁴⁶ (emphasis in original)

Levitt warned of the dangers of corporate involvement in social issues in that 'all these things will turn the corporation into a twentieth century equivalent to the medieval church. The corporation would eventually invest itself with all-embracing duties, obligations, and finally powers.'¹⁴⁷ For Levitt, the promotion of CSR would lead 'uncontrollable' powers to fall into the hands of management, defeating the purpose of the creation of a company: the shareholders have invested capital so that they can have profitable returns on that investment, with an element of risk present.

Similarly, for Milton Friedman, in pursuing the so-called social responsibilities of the corporation, the executive would be failing to act in the interest of the owners of the firm, for whom he is supposed to be an agent. CSR thus entails a breach of trust. In effect, the manager is acting unjustly and irresponsibly¹⁴⁸ as he is spending someone else's money. Indeed, according to Friedman, when a manager diverts profits into social causes he is guilty of 'taxation without representation': the shareholder is, in effect, being taxed through the diminished return on his investments and the consumer is, in effect, being taxed by higher prices for the company's goods or services that might result from decreased profitability. For Friedman, this is undemocratic, as quasi-governmental powers were effectively being invested in business executives, who had not been given those powers through any legitimate political process. It is also futile as corporate managers are unlikely to know what they are doing as they do not have the necessary knowledge or skills to realise the sort of changes that they are supposedly aiming at:

¹⁴⁶ Levitt (n 145) 42.

¹⁴⁷ Levitt (n 145) 44.

¹⁴⁸ 'What right does the executive have to spend his stockholders' money? To spend his employees' money? Or his customers' money? Who gave him the right to decide how their money should be spent? If 'socially responsive' business executives would stop and think, they would recognise that in effect they are acting irresponsibly' quote from M Friedman in J McClaughry, 'Milton Friedman Responds' (1972) 1 Business and Society Review 5, 6.

If business [does] have a social responsibility other than making maximum profits for stockholders, how are they to know what it is? Can self-selected private individuals decide what the social interest is? Can they decide how great a burden they are justified in placing on themselves or their stockholders to serve that social interest?¹⁴⁹

Friedman has been echoed by Friedrich Hayek:

[I]n the sense in which an individual may be rich, that is, in the sense of having a large disposable income or capital he is free to devote to what seems to him most important, a corporation cannot be rich. In the strictest sense, the corporation has no more an income of its own than a trustee has in his capacity as trustee. That its management has been entrusted with large resources for one purpose does not mean that it is entitled to use them for others.¹⁵⁰

Hayek is also of the view that if managers are allowed to use funds other than towards the 'materially most productive use', it would 'create centers of uncontrollable power never intended by those who provided the capital.'¹⁵¹ Because of this, he recommends changing the law so as to reduce the increasing powers of management. Hayek concludes that unless 'we believe that the corporations serve the public interest best by devoting their resources to the single aim of securing the largest return in terms of long-term profits, the case for free enterprise breaks down.'¹⁵²

Within the shareholder-oriented model of the corporation, then, both in its traditional form and in its modern, shareholder value form, there would seem to be little, if any, place for the idea of CSR. As Friedman and Hayek make clear, within this model, directors and managers simply should not concern themselves with social and 'public' causes – these are the dominion of the state and should remain so. Business - and corporations - should remain 'private' in a free market society; they should not delve into public affairs and social policy. Thus, for Manne, CSR was simply

a convenient peg on which to hang every hackneyed criticism of business conduct and even a few new ones, like the lack of democracy and due process in dealing with employees, customers or the community.¹⁵³

¹⁴⁹ Friedman (n 29) 133.

¹⁵⁰ Hayek (n 30) 106.

¹⁵¹ Hayek (n 30) 107.

¹⁵² Hayek (n 30) 116-117.

¹⁵³ Henry G Manne and Henry C Wallich, *The Modern Corporation and Social Responsibility* (American Enterprise Institute, Washington DC 1972) 10.

This does not mean that supporters of the shareholder-oriented model of the corporation do not recognise that corporations have an impact on the societies in which they operate - whether it be by helping economic development or by causing pollution. Social responsibility, however, is seen as something which the state has to impose on corporations from *without*, rather than something that comes from the corporation itself. Easterbrook and Fischel sum up the approach of many contractual theorists of the corporation to CSR:

what is the goal of the corporation? Is it profit, and for whom? Social welfare more broadly defined? Is there anything wrong with corporate charity? Should corporations try to maximise profit over the long run or the short run? **Our response to such questions is: who cares?**¹⁵⁴ (emphasis added)

For them, the 'strength' of the corporation lies in its ability to maximise efficiency and social welfare. This is done by pursuing the shareholder interest, *not* by taking on wider social responsibilities. This does not mean that corporations cannot be made to adapt to what is considered – by those outside the corporation – to be in the public interest. Thus, for Easterbrook and Fischel, 'society must choose whether to conscript the firm's strength (its tendency to maximise wealth) by changing the prices that it confronts or by changing its structure so that it is less apt to maximise wealth.'¹⁵⁵ They contend that it is much better to change the incentives by establishing rules that attach prices to acts – such as pollution and redundancies- while leaving management free 'to maximise the wealth of the residual claimants subject to the social constraints.'¹⁵⁶ They thus view each activity in the market as a commodity which can be bought and sold. Consequently, a price tag is attached to everything: if the company wants to lay off workers, it has to pay the price the market has attached to such an activity. This promotes efficiency of resources once again and it makes everyone happy. It follows that if one wants the corporation not to pollute the environment in which it is based, for example, the efficient thing to do would be to make it pay for the pollution it causes. Thus financial penalties can be imposed on the corporation which is breaching environmental regulations. This would reduce profits if the company keeps having to pay for numerous breaches of such regulations, and

¹⁵⁴ Easterbrook and Fischel (n 85) 35-36.

¹⁵⁵ Easterbrook and Fischel (n 85) 38.

¹⁵⁶ Easterbrook and Fischel (n 85) 38.

would in turn, make it go out of business in the long run. Market forces once again are seen to root out the inefficient player.

From this perspective, it is for society, operating through the state, to decide what is (or is not) socially irresponsible behaviour and to regulate and/or prohibit it. Thus legal regulations such as those imposing pollution controls or pertaining to safety of employees, for example, are part and parcel of the framework in which corporations have to operate. But these legal rules – aimed at compelling ‘socially responsible’ behaviour - are *external* to the company. The constraints on corporate behaviour are imposed from the outside rather than coming from within. Directors are not asked to change the way they run the business or to stop profit-maximising; they are merely told that certain things are prohibited; or that certain actions carry certain consequences. Their main goal is still the maximisation of shareholder value. Indeed, contractual theorists of the corporation have pointed to the *external regulation* of corporate behaviour by the state as justifying the corporate law principle of shareholder primacy.¹⁵⁷ Thus, according to Hansmann and Kraakman:

The most efficacious legal mechanisms for protecting the interests of nonshareholder constituencies- or at least all constituencies other than creditors- **lie outside of corporate law**. For workers, this includes the law of labour contracting, pension law, health and safety law, and antidiscrimination law. For consumers, it includes product safety regulation, warranty law, tort law governing product liability, antitrust law, and mandatory disclosure of product contents and characteristics. For the public at large, it includes environmental law and the law of nuisance and mass torts.¹⁵⁸ (emphasis added)

The argument is that since the financial penalties that are imposed if the company does not operate within the law will impact directly on the turnover of the corporation, it will have a knock-on effect on the profits they produce, on the dividends they distribute to shareholders, on share price and so on. Because corporations have to operate within the law, they will have no choice but to face the (financial) consequences of their breaches. The impact of laws external to corporate law ‘on corporate management is not transformed or minimised by their categorization as

¹⁵⁷ Stephen M Bainbridge, *Corporation Law and Economics* (Foundation Press New York, New York 2002) 428-429.

¹⁵⁸ *Hansmann and Kraakman* (n 1) 442.

labour law or environmental law rather than corporate law.’¹⁵⁹ But what these ‘other’ laws do, it is argued, is ensure that corporate law is able to insist that managers adhere to the principle of shareholder primacy, thus promoting productive efficiency for the benefit of society as a whole. As a result, contractual theorists such as Easterbrook and Fischel advocate the use of the price mechanism (everything in the market has a price-tag) to expel the *inefficient* - rather than irresponsible - company.

The arguments put forward by contractual theorists have to a considerable extent been embraced at the international level in the OECD Principles.¹⁶⁰ It has already been noted that the latter are primarily shareholder-oriented. Indeed, the contractualists’ approach to CSR - whereby CSR is something imposed on corporations from the outside rather than something that comes from within – is in many ways mirrored by the OECD Principles. Not only do the Principles embrace both the rights-based ownership and consequentialist efficiency justifications for shareholder primacy, referring to the centrality of good, shareholder-oriented corporate governance to efficiency and growth and to the ‘key ownership functions’ of shareholders, but they also stress that the interests of stakeholders should be externally rather than internally protected. Thus, Principle IV states that the

corporate governance framework should recognise the rights of stakeholders as established by law and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.¹⁶¹

At first glance, this seems to suggest that the interests of stakeholders should be protected by corporate law but the annotations tell a different story: ‘the rights of certain stakeholders are established by law ([...] **labour, business, commercial and insolvency laws**) or by **contractual relations** (emphasis added).’¹⁶² Hence these rights are *external* to corporate law, imposed from *without* rather than from *within* the corporation. Once again, we see that CSR has little place in the shareholder-oriented model of the corporation.

¹⁵⁹ *Winkler* (n 83) 132.

¹⁶⁰ *OECD* (n 140).

¹⁶¹ *OECD* (n 140) Principle IV, 21.

¹⁶² *OECD* (n 140) Annotations, 46. They thus echo almost verbatim Hansmann and Kraakman’s arguments.

Concluding Remarks

This chapter has sought to show how in recent years, an Anglo-American, shareholder-oriented, stock-market-based model of the corporation - sometimes referred to as the 'shareholder-value' model of the corporation - has risen to prominence and come widely to prevail. This model of the corporation, which was originally defended and justified on the (problematic) grounds of shareholder 'ownership' rights, has in recent years come primarily to be defended and justified on the consequentialist grounds that it is economically superior and more efficient and thus able to deliver higher rates of growth than its rivals.¹⁶³ Hence the idea that the social responsibility of business is to make profits. The chapter further noted how the shareholder-value model of the corporation is very much part of the neo-liberal orthodoxy that has come to predominate. It is a model of the corporation in which there is little room for CSR as traditionally understood. Socially responsible behaviour is, in essence, something which comes not from within the corporation itself, but which has to be imposed on the corporation from the outside by means of rules and regulations outside corporate law. The 'regulatory' model of CSR which this implies will be looked at in more detail in chapter three of the thesis.

¹⁶³ That is, stakeholder models of the corporation, discussed in the following chapter.

Chapter Two

CSR and Stakeholder Models of the Corporation

Introduction

As noted in the preceding chapter, after shareholders ceased to be conceptualised as the owners (in equity) of the corporate assets, the traditional Anglo-American model of the corporation came to be founded on the belief that shareholders owned the corporation itself as a separate property-owning entity; the corporation or company was their private property and as its owners, they had the inalienable right to have it run in their interests. The ownership claims of corporate shareholders began to be challenged early in the twentieth century, however. This challenge was closely associated with the rise of the so-called ‘socially responsible corporation’ (SRC) and, later, with what are now called stakeholder models of the corporation. In the 1950s and 60s ideas about the SRC and the transformative potential of the idea of CSR became increasingly popular.¹ But, as outlined in the previous chapter, from the 1970s new instrumental and consequentialist arguments began to be developed to justify shareholder primacy in which the latter was justified on the grounds that it ensured productive efficiency and thereby contributed to aggregate social welfare.

This chapter examines the stakeholder models of the corporation and the place of the idea of CSR within them. It is divided into four main sections. The first expands on the arguments against the ‘ownership claims’ of shareholders introduced in chapter one. It tracks the attack on shareholder rights and the emergence of a new conception of the corporation as a social institution in the 1920s and 30s, from which the idea of the SRC developed in the 1950s. It argues that the idea of the SRC was transformative in aspiration, advocating the abandonment of shareholder primacy in favour of a conception of the corporation in which a range of different stakeholder interests had to be balanced. It bears many similarities to the more radical stakeholding models of the corporation which have been developed in recent years. It is, however, a model

¹ See the introduction to the thesis.

which has suffered greatly in the wake of the rise of the shareholder value conception of the corporation in the 1980s.

The second section briefly examines the more stakeholder-friendly models of the corporation which have developed, especially in the post- Second World War era, in Japan (a 'fiduciary' model) and Germany (a 'representative' model) respectively. It elaborates on how from the late 1990s onwards, with both the Japanese and German economies struggling, their corporate governance systems have come under intense pressure to embrace a more shareholder-oriented approach. The implications of these reforms in terms of the wider convergence debate are then briefly looked at.

The third section moves on to explain how, in recent years, a new shareholder-oriented model of the corporation has emerged which leaves some room for some consideration of the interests of other stakeholding groups. This model of the corporation, which is markedly less radical than that which underpinned the idea of the SRC, is exemplified by the idea of 'Enlightened Shareholder Value' (ESV) developed by the Company Law Review (CLR) in the UK. The contrast between ESV and the more radical stakeholding idea of 'pluralism' is explored. It is argued that the ESV model is in effect a restatement of the shareholder value model of the corporation, retaining the principle of shareholder primacy, but that it emphasises the long- rather than the short-term. The idea of pluralism, by contrast, entails the abandonment of shareholder value as the ultimate corporate goal, either in the short or the long run. It is, in other words, a genuinely stakeholder model, which embodies much more radical ideas about stakeholding than the ESV model. The origins of the idea of ESV - shareholder-oriented version of stakeholding - are explored and traced back to the belief, widely held in the 1980s, that the Japanese and German stakeholder-friendly models of the corporation were economically superior.

The final section looks at the place of CSR within the more radical stakeholder models of the corporation and compares it with the place of CSR within the ESV model. It argues that CSR is, in effect, intrinsic to radical stakeholder models; some degree of CSR is, in effect, built into the corporate culture. In these models, the corporation tends to be conceptualised as a social or public institution rather than as a (purely) private enterprise. As a result, the maximisation of shareholder value is

abandoned as the corporate goal. By contrast, in the ESV model, the focus is firmly on shareholder value. Since its focus is on long- rather than short-term shareholder value, however, some space is created for the exercise of managerial discretion that takes into account CSR issues. In other words, CSR becomes 'defensible' on the premise that corporate managers can take into account 'social' considerations in their decision-making processes as the focus is on the long-term pursuance of shareholder value. It becomes easier to argue that CSR is good for the bottom-line. In this respect, it is argued that the ESV model of the corporation is very much in line with the ameliorative model of CSR² that has come to predominate in recent years, as will be discussed in the next part of the thesis.

I. The Challenge to Shareholder 'Ownership'

The Changing Nature of Shareholding: Are shareholders owners?

We saw how the emergence of the modern, large JSC in the wake of the rise of the railways and the emergence of a developed share market in the mid-nineteenth century altered the nature of shareholding and the share. Having originally been legally conceptualised as an equitable and direct proprietary interest in a company's assets, the JSC came to be seen as a property in its own right. In similar vein, shareholders, having initially been likened to active partners, were gradually re-conceptualised as investors. Accordingly, shareholder rights were gradually pared down and control over the company's tangible material assets was transferred to managers. Not only did shareholders no longer directly participate in the management of the company, they increasingly played little or no role in the monitoring of managers either. As a result, they were increasingly conceptualised in law as passive owners of titles to revenue (shares). In this process, they progressively relinquished the rights and powers traditionally associated with ownership.³

² See Part Two of the thesis.

³ In fact, the question of shareholder ownership of the company persists to this day. Using Honoré's analysis of the nature of ownership, John Kay has recently argued that although shareholders are unquestionably the owners of a company's shares, they could hardly be described as the owners of the corporation itself: of Honoré's eleven ownership tests, they only satisfy two unquestionably and three

This was explicitly recognised at the beginning of the twentieth century by the American sociologist, Thorstein Veblen. Veblen argued that with the advent of the modern JSC, 'ownership' now entailed the mere passive possession of intangible corporate capital. He used the phrase 'absentee ownership'⁴ to describe the new breed of shareholders in contradistinction to 'hands-on' ownership of the traditional shareholder-manager who took an active part in the running of his company. For Veblen, the company was 'an incorporation of absentee ownership, wholly and obviously'.⁵ Corporate shareholders had become 'anonymous pensioners' detached from the process of production: they were the 'absentee owners' possessing claims 'to unearned or free income', 'prescriptive rights to get something for nothing'.⁶ He compared them to bondholders, who stood 'outside' the corporation. Shareholders were thus seen as passive and functionless actors within the company whilst the managers were the 'technical experts' acting on behalf of those absentee owners. From Veblen's perspective, Hetherington explains:

Shareholders of large corporations are not owners at all. The lack of shareholder control over the selection of management and over corporate policy, the virtual elimination of risk, and the reduction of the right to profits to the mere expectation that an irresponsible board of directors will maintain and hopefully increase the dividend have not merely produced a separation of control from ownership; these developments have eliminated the attributes held by shareholders. All that remains are the formal trappings: the pro-forma approvals and ratifications required at annual meetings for structural changes ... In reality, the shareholder has become a 'functionless rentier'.⁷ (emphasis added)

Veblen also suggested that ownership and control had been separated, an idea which would later gain more importance⁸: 'management is separated from the ownership of

partially whilst six are not fulfilled at all. Honoré's eleven characteristics of 'ownership' are: possession, use, management, right to income, right to capital value, right to security, power to transmit, no limit on time on rights, duty to refrain from harmful use, right to use in satisfaction of judgement, right to residual control. See A M Honoré, 'Ownership' in A G Guest (ed), *Oxford Essays in Jurisprudence* (OUP, Oxford 1961) 107. See also John Kay and Aubrey Silberston, 'Corporate Governance' (1995) 153 *National Institute Economic Review* 84.

⁴ T Veblen, *Absentee Ownership and Business Enterprise in Recent Times: The Case of America* (B W Huebsch, New York 1923) 3.

⁵ *Veblen* (n 4) 82.

⁶ P Ireland, 'Defending the Rentier: Corporate Theory and the Reprivatisation of the Public Company' in John Parkinson, Andrew Gamble and Gavin Kelly (eds), *The Political Economy of the Company* (Hart Publishing, Oxford 2000) 149.

⁷ J A C Hetherington, 'Fact and Legal Theory: Shareholders, Managers and Corporate Social Responsibility' (1969) 21(2) *Stanford Law Review* 248, 255.

⁸ Namely with the publication of Berle and Means' *The Modern Corporation and Private Property*, see below.

property more and more widely as the size of the corporation finance widens'.⁹ Veblen argued that the separation of ownership from control created the space for corporate managers to diversify their activities to include social objectives to the detriment of profit maximisation.

Ideas of this sort were not confined to the US: in the years after the First World War, Walther Rathenau, a German industrialist and political leader, pointed to the fact that ownership had become de-individualised, the 'primitive personal relationship between a man and a tangible, accurately known affair, has given place to **an impersonal claim upon a theoretical yield** (emphasis added).'¹⁰ There was a diffusion of ownership in the JSC which made it more and more difficult for corporate shareholders to be owners, in the true meaning of the word:

The community of owners still retains the sovereign right of decision, but this right grows increasingly **theoretical**, inasmuch as a multiplicity of other collective organisms ... are entrusted by the shareholders with the maintenance of their rights, and inasmuch as these fiduciaries in their turn work hand in hand with the directors of the enterprise.¹¹ (emphasis added)

Rathenau cautioned that since the directors of these big corporations were now the ones who made all the decisions, an enormous amount of power lay in their hands and that this power could be abused:

The power, the archetypal reality, of the institution has become an end in itself. Covetousness, as the motive force, has been completely superseded by the sense of responsibility.¹²

Private Enterprise or Social Institution? : The Corporation and The Berle-Dodd debate

As a result of the separation of shareholders from the companies in which they held shares, large corporations came increasingly to be seen as radically distinct from their

⁹ T Veblen, *The Theory of Business Enterprise* (With the Addition of a Review by J H Tufts, A M Kelley Bookseller, New York 1965, originally published in 1904) 157

¹⁰ W Rathenau, *In Days to Come*, Translated from the German by Eden and Cedar Paul, (George Allen & Unwin Ltd, London 1921) 120.

¹¹ Rathenau (n 10) 121.

¹² Rathenau (n 10) 123.

shareholders. The development of the modern doctrine of separate corporate personality, with its complete separation of shareholders and company, reflected this. In the words of Rathenau:

No one is a permanent owner. The composition of the thousandfold complex which functions as lord of the undertaking is in a state of flux ... **This condition of things signifies that ownership has been depersonalised The depersonalisation of ownership simultaneously implies the objectification of the thing owned ... The claims to ownership are subdivided in such a fashion, and are so mobile, that the enterprise assumes an independent life, as if it belonged to no one ...**¹³ (emphasis added)

Ideas about the changed status of the shareholders - their transformation from owners to 'functionless rentiers' - were, therefore, well established in certain circles by the late 1920s. It was increasingly recognised that shareholders in many large corporations had ceased to be not only managers but effective monitors of corporate management, and that they bore little resemblance to traditional owners. In this context, concerns about the growing powers of management began to emerge. It was felt by more and more commentators that they were growing increasingly unaccountable day by day, with ample opportunity to divert profits into their own pockets.¹⁴

These ideas about the changing nature of the shareholder and corporation were taken to a new level when Adolf Berle and Gardiner Means published *The Modern Corporation and Private Property*¹⁵ in 1932. Berle and Means raised vital questions about the very nature of the corporation: was it still appropriate to describe and conceptualise it as a private enterprise or was it more accurately now described as a social institution? This question became the centrepiece of a fierce debate between Berle and another American corporate lawyer, Merrick Dodd. The rest of this section will examine this debate.

The Berle- Dodd debate centred around the question of to whom corporate managers owed their fiduciary obligations: was it to shareholders only or to other groups as

¹³ Rathenau (n 10) 120-121.

¹⁴ Although it must be said that Veblen thought that they would pursue 'social' objectives instead of self-interest. See above.

¹⁵ A A Berle Jr and G C Means, *The Modern Corporation and Private Property* (The Macmillan Company, New York 1932).

well? And what was the nature of those obligations? To maximise shareholder wealth or to maximise social welfare or a combination of the two? The fundamental issue which underlay these questions was whether the corporation should be understood as a purely private enterprise (as private property) or as a social or quasi-social institution (as something other than purely private property).

A number of commentators have argued that Berle was the original champion of shareholder primacy¹⁶ but, while Berle did indeed defend shareholder primacy '[h]is reasons for doing so ... have been misunderstood.'¹⁷ Berle's arguments were, in fact, a purely pragmatic response to the problem of managerial accountability: he was mainly concerned that corporate managers, lacking accountability to anyone, could act with impunity in self-interested ways. One means of ensuring that this would not happen was to reassert the importance, and to extend, the fiduciary duties owed by directors to shareholders. By contrast, for Dodd, running corporations exclusively in the shareholder interest was no longer justifiable. Shareholders and corporations were increasingly separate and public opinion was coming to believe that corporations had obligations not only to shareholders but to the wider society of which they were part.

The debate started in 1931 with an article by Berle¹⁸ which dealt with the powers granted in law to the managers of corporations. In it, Berle argued that the powers granted to corporate managers and officers had to be exercised in the sole interest of shareholders because otherwise managerial power would become uncontrollable. Managers would be able to do as they pleased:

It is the thesis of this essay that all power granted to a corporation or to the management of a corporation, or to any group within the corporation, whether derived from statute or charter or both, are necessarily and at all

¹⁶ See, amongst others, Stephen Bainbridge, 'Director Primacy: The Means and Ends of Corporate Governance' (2003) 97 *Northwestern University Law Review* 547, 561; Ronald Chen and Jon Hansen, 'The Illusion of Law' (2004) 103 *Michigan Law Review* 1, 34; John Matheson and Brent A Olsen, 'Corporate Law and the Long-Term Shareholder Model of Corporate Governance' (1992) 76 *Minnesota Law Review* 1313, 1330; Lynn Stout, 'Bad and Not-So-Bad Arguments for Shareholder Primacy' (2002) 75 *California Law Review* 1189, 1189; Adam Winkler, 'Corporate Law or the Law of Business?: Stakeholders and Corporate Governance at the End of History' (2004) 67 *Law and Contemporary Problems* 109, 115-116.

¹⁷ P Ireland, 'Enlightening the Value of Shareholders: To Whom should Directors owe Duties?' in Mads Andenas and David Sugarman (eds), *Directors Conflicts of Interest: Legal, Socio-Legal and Economic Analyses. Developments in European Company Law Vol. 3/1999* (Kluwer Law International, London 2000) 132.

¹⁸ A A Berle Jr, 'Corporate Powers as Powers in Trust' (1931) 44 *Harvard Law Review* 1049.

times exercisable **only for the ratable benefit of all shareholders as their interests appears.**¹⁹ (emphasis added)

He contended that the way in which corporate managers should apply these powers was by acting as fiduciaries, that is, as trustees of the shareholders. Berle then purported to demonstrate how this worked in practice by comprehensively analysing how the law dealt with five of the most important powers of corporate management, such as the power to issue additional stock and the power to declare or withhold dividends. Although these powers were seen as 'absolute', Berle argued, they were, in fact (and ought to be), subject to 'equitable limitations'. Therefore, Berle saw the principles of equity as regulating directors' powers so as to ensure that corporate management acted in good faith towards all shareholders in the same way as trustees towards their beneficiaries:

in every case, corporate action must be tested twice: first, by the technical rules having to do with the existence and proper exercise of the power; second, by equitable rules somewhat analogous to those which apply in favor of a *cestui que trust* to the trustee's exercise of wide powers granted to him in the instrument making him a fiduciary.²⁰

Corporate law was thus for Berle, 'in substance a branch of the law of trusts'²¹ and the corporate charter an 'agreement which, like a trust deed, [was] cognizable in equity.'²² He acknowledged that greater flexibility was required when running a corporation and that, consequently, the application of the trusteeship principle should be less rigorous in that area.²³ To make corporate management more accountable therefore, Berle proposed that fiduciary duties of managers be stiffened towards shareholders. As one contemporary reviewer observed, Berle's equitable strategy for dealing with managerial power and abuse of power seemed to imply that the 'corporation [was] largely the creation of the individuals composing it.'²⁴

¹⁹ Berle (n 18) 1049.

²⁰ Berle (n 18) 1049.

²¹ Berle (n 18) 1074.

²² Joseph Kline, 'Review of A A Berle, *Studies in the Law of Corporation Finance*' (1929) 42 *Harvard Law Review* 714, 716.

²³ John C C Macintosh, 'The issues, effects and consequences of the Berle–Dodd debate, 1931–1932' (1999) 24(2) *Accounting, Organisations and Society* 139, 144.

²⁴ Kline (n 22) 716. See also Ireland (n 17) 131.

In May 1932, Dodd responded to Berle in an article entitled 'For Whom are Corporate Managers Trustees?'.²⁵ Dodd argued that when the corporation is incorporated, it becomes a distinct legal entity in its own right and that it cannot therefore be seen as nothing more than an aggregate of shareholders: 'our legal tradition is rather in favour of treating it as an institution directed by persons who are primarily **fiduciaries for the institution rather than for its members** (emphasis added)'.²⁶ When one conceptualised the corporation as a legal entity in its own right, Dodd argued, its directors and other agents are fiduciaries for it and *not* for its shareholders. Dodd thus sought to take the doctrine of separate corporate personality seriously: the company and the shareholders really were completely separate. This being the case, Dodd argued, why should the company be run solely in the shareholders' interests? For Dodd, the law should ensure that corporations were accountable to the wider community of which they were part. He therefore proposed a far wider application of the concept of fiduciary duty, 'us[ing] entity theory to provide a theoretical basis for the corporation as a partially, if not predominantly, **public institution with broad social responsibilities** (emphasis added)'.²⁷

In fact, according to Dodd, the law and public opinion were already beginning to accept the broader social responsibilities owed by corporations and their managers:

... public opinion, which ultimately makes law, has made and is making substantial strides in the direction of a view of the **business corporation as an economic institution which has a social service as well as a profit-making function**, that this view has already had some effect upon legal theory, and that it is likely to have a greatly increased effect upon the latter in the near future.²⁸ (emphasis added)

In effect, Dodd was proposing a radically different conception of the corporation as a social (or quasi-social) institution, and sowing the seeds for what is now referred to as the stakeholding conception of the corporation. For Dodd, 'business is permitted and encouraged by the law primarily because it is of service to the community rather than because it is a source of profit to its owners'.²⁹ Corporate managers had a

²⁵ E M Dodd, 'For Whom are Corporate Managers Trustees?'(1932) 45 Harvard Law Review 1145.

²⁶ *Dodd* (n 25) 1162-1163.

²⁷ *Ireland* (n 6) 150.

²⁸ *Dodd* (n 25) 1148.

²⁹ *Dodd* (n 25) 1149.

responsibility to consider the interests of those affected by their operations. He emphasised the ‘voluntary assumption of responsibility’ that managers should take. Directors, ‘who control business today should voluntarily and without waiting for legal compulsion manage it in such a way as to fulfil those responsibilities’.³⁰ In making these arguments, Dodd pointed to leading industrialists, such as Owen D. Young of the General Electric Company³¹, who had forcefully argued that corporate managers were no longer merely attorneys for stockholders and had become trustees for the corporation as a separate institution. In answer to the questions ‘If I am a trustee, who are the beneficiaries of the trust?’ and ‘To whom do I owe my obligations?’, Young had argued that he had a responsibility to stockholders, the employees, customers and the general public.³² Dodd concluded that this showed that power ‘over the lives of others tends to create on the part of those most worthy to exercise it a sense of responsibility’.³³ With greater power came greater responsibility. Because of the enormous power that managers of big corporations exercised not only over the management of the company but also over the community in which they operated, Dodd argued, they had to be ‘guardians of all interests which the corporation affects and not merely servants of its absentee owners’.³⁴

Dodd was entirely in sympathy with Berle’s efforts to establish legal controls over corporate managers so that they would not divert profits into their own pockets and agreed with many of the specific rules Berle had deduced from his principle of trusteeship. He felt, however, that Berle’s contention that ‘business corporations exist for the sole purpose of making profits for their stockholders’³⁵ was unwise, particularly given the economic circumstances – the US was amidst a major economic depression - of the time.³⁶ To make corporate managers fully and properly accountable, therefore, their fiduciary duties had to be extended to society as a whole. Managers owed a duty not only to the shareholders of the company but also to all those whose interests the company affected. The suggestion was that corporations had

³⁰ *Dodd* (n 25) 1153.

³¹ *Dodd* (n 25) 1154. See also the introduction to the thesis for his views on the role of business and businessmen.

³² *Macintosh* (n 23) 145.

³³ *Dodd* (n 25) 1157.

³⁴ *Dodd* (n 25) 1157.

³⁵ *Dodd* (n 25) 1148.

³⁶ *Macintosh* (n 23) 145.

to be viewed and were in the process of becoming social institutions which could no longer be said to be 'owned' by their shareholders.

Berle's response came in the form of a note entitled 'For Whom Corporate Managers *Are* Trustees'.³⁷ Berle agreed that Dodd's arguments held true in terms of economic and social theory but not in law: 'it is theory, not practice'.³⁸ Berle argued that from time to time, the claims of other groups like organised labour had been recognised but only as a cost of doing business. Berle's main concern was that directors' powers would become absolute and that it would become virtually impossible to hold them accountable. It remained the case that in law the interests that were recognised were those of shareholders and not of the community as a whole. If, as Dodd argued, a 'voluntary assumption of responsibility' by management was favoured, then it would cause all sorts of problems and would be 'unsafe', for the effect would be to further reduce managerial accountability. 'It is one thing to say that the law must allow for such developments', Berle argued but 'quite another to grant uncontrolled power to corporate managers in the hope that they will produce that development.'³⁹ For Berle, therefore, the older rule (that is, corporate managers acting as trustees towards shareholders) offered the only chance of ordering business affairs in ways which would minimise managerial over-reaching and self-seeking.⁴⁰

Berle and Means

The Berle-Dodd debate took place as the final touches⁴¹ were being put to *The Modern Corporation and Private Property*, on which Berle collaborated with the economist Gardiner Means.⁴² Arguably, the book demonstrated that Berle was already becoming more sympathetic towards Dodd's views since he and Means also came to the conclusion that 'the American corporation had ceased to be a private business

³⁷ A A Berle Jr, 'For Whom Corporate Managers *Are* Trustees' (1932) 45 Harvard Law Review 1365.

³⁸ Berle (n 37) 1367.

³⁹ Berle (n 37) 1372.

⁴⁰ Eugene V Rostow, 'To Whom and For What Ends is Corporate Management Responsible?' in E S Mason (ed) *The Corporation in Modern Society* (Athenaeum, New York 1973, originally published by Harvard University Press) 62.

⁴¹ Jordan A Schwarz, *Liberal: Adolf A Berle and the Vision of an American Era* (Free Press, New York, 1987) 64.

⁴² Berle and Means (n 15).

device and had become an institution'.⁴³ Berle and Means suggested in the book that a new concept of the corporation might shortly emerge, one very much along the lines outlined by Dodd.⁴⁴ They noted that shareholders had become less influential in monitoring directors' owing to the wide dispersion of share ownership in the companies they surveyed: '[i]n its new aspect the corporation is a means whereby the wealth of innumerable individuals has been concentrated into huge aggregates and whereby control over this wealth has been surrendered to a unified direction'.⁴⁵ The nature of ownership in the company had therefore changed:

[i]n place of actual physical properties over which the owner could exercise direction and for which he was responsible, the owner now holds a piece of paper representing a set of rights and expectations with respect to an enterprise.⁴⁶

Schumpeter described the state of affairs in even more grim terms a few years later:

The capitalist process, by substituting a mere parcel of shares for the walls of and the machines in a factory, takes the life out of the idea of property ... The holder of the title loses the will to fight, economically, physically, politically, for "his" factory and his control over it, to die if necessary on its steps ... **Dematerialized, defunctionalized, and absentee ownership** does not impress and call forth moral allegiance. Eventually there will be nobody left who really cares to stand up for it⁴⁷ (emphasis added)

Berle and Means made it clear that 'over the enterprise and over the physical properties - the instruments of production - in which he has an interest, the owner has little control'.⁴⁸ Shareholders had become 'passive owners':

[in the] corporate system, the 'owner' of industrial wealth is left with a mere symbol of ownership while the power, the responsibility and the substance which have been an integral part of ownership in the past are being transferred to a separate group in whose hands lies control.⁴⁹

⁴³ *Berle and Means* (n 15) v.

⁴⁴ *Berle and Means* (n 15) vii.

⁴⁵ *Berle and Means* (n 15) 2.

⁴⁶ *Berle and Means* (n 15) 66.

⁴⁷ J A Schumpeter, *Capitalism, Socialism and Democracy* (Allen and Unwin Ltd, London 1943) 142.

⁴⁸ *Berle and Means* (n 15) 66.

⁴⁹ *Berle and Means* (n 15) 68.

The separation of ownership from management had thus been supplemented by a growing separation of ownership and control⁵⁰, Berle and Means argued, and this was producing a state in which ‘the interests of owner and of ultimate manager may, and often do, diverge, and where many of the checks which formerly operated to limit the use of power disappear’.⁵¹ Shareholders had become passive and functionless, and, in effect, no longer owned the company in the traditional sense: the ‘traditional logic of property’⁵² no longer applied to them. As Mason later put it, ‘[the] rugged individualist has been supplanted by smoothly efficient corporate executives participating in the group decision. The equity owner is joining the bondholder as a functionless “rentier”’.⁵³

There was clearly some similarity between these ideas and those forwarded by Veblen in the opening decades of the century. While Berle continued to be primarily concerned with making corporate managers accountable to someone, lest they become ‘economic autocrats’⁵⁴ who took advantage of the dispersal of shareholders to ‘become a self-perpetuating body even though its share in the ownership is negligible’⁵⁵, it is clear from the closing chapters of the book that he and Means were becoming increasingly sympathetic to Dodd’s ideas and to the latter’s critique of shareholder primacy and proposed re-conceptualisation of the corporation. ‘On the one hand’, they wrote:

the owners of passive property, by surrendering control and responsibility over the active property, have surrendered the right that the corporation should be operated in their sole interest, **-they have released the community from the obligation to protect them to the full extent implied in the doctrine of strict property rights.** At the same time, the controlling groups, by means of the extension of corporate powers, have in their own interest **broken the bars of tradition which require that the corporation be operated solely for the benefit of the owners of passive property.**⁵⁶
(emphasis added)

⁵⁰ *Berle and Means* (n 15) 89.

⁵¹ *Berle and Means* (n 15) 6.

⁵² *Berle and Means* (n 15) 333.

⁵³ E S Mason, ‘Introduction’ in E S Mason (ed), *The Corporation in Modern Society* (Athenaeum, New York 1973, originally published by Harvard University Press) 5.

⁵⁴ *Berle and Means* (n 15) 124.

⁵⁵ *Berle and Means* (n 15) 87-88 (footnote omitted).

⁵⁶ *Berle and Means* (n 15) 355.

Since it appeared that shareholders had surrendered most of their powers (and ownership rights) to directors, it was, they recognised, arguable that society could legitimately 'demand that the modern corporation serve not alone the owners or the control but all society'⁵⁷ and that the managers should become 'a neutral technocracy, balancing a variety of claims by various groups in the community and assigning to each a portion of the income stream on the basis of public policy rather than private cupidity (emphasis added)'.⁵⁸ For Berle, however, the new, wider conception of corporate managerial responsibilities - one which encompassed not only shareholders but workers, consumers and the State⁵⁹ - was for the future. As things stood, there were simply no mechanisms in place whereby directors could be made accountable to the community as a whole. As a result, he argued that it was only, '[w]hen a convincing system of community obligations is worked out and is generally accepted' that 'the passive property right of today [could] yield before the larger interests of society'.⁶⁰ Berle and Means therefore restated Berle's previous argument that all the powers granted to management and control were powers in trust for the benefit of the shareholders.⁶¹ In effect, one commentator has argued, the differences between Berle and Dodd's viewpoints 'seemed to reduce themselves to the absence of machinery for enforcing a legitimate community demand'.⁶²

Models of The Corporation: Shareholder Primacy versus the Socially Responsible Corporation

Broadly speaking, two different models of the corporation are generally thought to have emerged from the Berle-Dodd debate. The first model – that proposed by Berle, albeit somewhat inconsistently - is one which leaves the legal model essentially unchanged. The corporation remains firmly shareholder-oriented and shareholder primacy prevails, supported by stronger fiduciary duties towards shareholders. The second model proposed by Dodd is very different. It suggests that corporations be re-conceptualised as social institutions whose directors owe fiduciary duties not only to

⁵⁷ *Berle and Means* (n 15) 356.

⁵⁸ *Berle and Means* (n 15) 356.

⁵⁹ *Berle and Means* (n 15) 6.

⁶⁰ *Berle and Means* (n 15) 356.

⁶¹ *Berle and Means* (n 15) 335.

⁶² J L Weiner, 'The Berle-Dodd Dialogue on the Concept of the Corporation' (1964) 64 *Columbia Law Review* 1458, 1462.

shareholders but also to a wide range of other groups. In this model, managers should be concerned with wider social objectives and not merely with increasing shareholder returns. Managers need to be educated to behave in a socially responsible manner and their fiduciary duties drawn up in such a way as to take account not only of shareholders but also of, what we now call, the other 'stakeholders' of the company. As such, Dodd's conception of the corporation was a precursor of the stakeholder conceptions of the corporation which have surfaced in recent years. Indeed, the term 'stakeholder' is used precisely to express the broader set of responsibilities that the company is meant to take on: a company's 'stakeholders' are defined as anyone who is affected by its operations, including its customers, employees and the wider community.⁶³ Just as for Dodd, for advocates of stakeholding, corporations should not be seen as purely private enterprises concerned only with the interests of shareholders but as *public* institutions with broad social responsibilities.

The Socially Responsible Corporation and Managerialism

In formulating his new conception of the corporation, Dodd focussed on the separate personality of the modern corporation and its radical separateness from its shareholders, and on its public/ quasi-public nature. He was, in effect, proposing a restructured 'socialised corporation' which could not shirk its duties towards the public. The legal implication was that directors should not pursue only the pecuniary objectives of shareholders but should concern themselves also with the interests of other groups.

In the post-war period, it very much looked as though Dodd had won the argument with Berle. Indeed, by the 1950s, Berle was conceding that the 'argument has been settled (at least for the time being) squarely in favour of Dodd's contention'.⁶⁴ Berle came to the conclusion that there was now clear evidence that the greatest leaders in the corporate field 'forcefully argue that corporations are always citizens of the community in which they operate, while large ones necessarily play a mighty part in

⁶³ See generally R E Freeman, *Strategic Management-A Stakeholder Approach* (Pitman, Boston 1984). See also T Donaldson and L Preston, 'The Stakeholder Theory of the Corporation: Concepts, Evidence, Implications' (1995) 20 *Academy Management Review* 65.

⁶⁴ A A Berle Jr, *The 20th Century Capitalist Revolution* (Harcourt, Brace and Company, New York 1954) 169.

the life of their time'.⁶⁵ The preface to the revised edition of *The Modern Corporation and Private Property*, which appeared in 1968, makes it even clearer:

At the same time that economic power has built up in the hands of corporate management, the separation of ownership and control has released management from the overriding requirement that it serve stockholders. Profits are an essential part of the corporate system. **But the use of corporate power solely to serve the stockholders is no longer likely to serve the public interest.**⁶⁶ (emphasis added)

These ideas were expressive of the rise of so-called 'managerialist' ideas in the post-war period. Managerialism is the idea that because of the dispersal and rentier nature of most corporate shareholders, managers rather than shareholders are in a position to determine corporate goals and policies. Writing in the 1960s, Theo Nichols contended that there were two types of managerialism: sectional and non-sectional.⁶⁷ 'Sectional' managerialism meant that managers pursued their own interests, that is, they were self-interested; 'non-sectional' managerialism, on the other hand, was based on the idea that managers sought to balance a range of interests – those of shareholders, employees, consumers and the community at large. In other words, managers sought to fulfil a variety of social responsibilities.

Nichols was of the opinion that sectional managerialism was closer to reality than the non-sectional managerialist notion of managers pursuing socially responsible objectives. In this respect Nichols was following James Burnham⁶⁸, who first coined the term 'managerialism' in the early 1940s, and who envisaged the emergence of a new managerial society and a managerially dominated world in which managers exercised power in their sectional, self-interest.⁶⁹ It is important to note, however, that Burnham was mainly concerned with state enterprises and the emergence of a new ruling class: 'control over access is decisive, and, when consolidated, will carry control over preferential treatment in distribution with it: that is, will shift ownership

⁶⁵ Berle (n 64) 167.

⁶⁶ G C Means, 'Preface' in A A Berle Jr and G C Means, *The Modern Corporation and Private Property* (Revised edn, Harcourt, Brace & World Inc, New York 1968) xxxv.

⁶⁷ T Nichols, *Ownership, Control and Ideology, An Inquiry into Certain Aspects of Modern Business Ideology* (Allen and Unwin Ltd, London 1969) 43.

⁶⁸ See J Burnham, *The Managerial Revolution or What is happening in the world now?* (Putnam, London 1942, published with a new preface, Penguin, London 1962).

⁶⁹ S Sheikh, *Corporate Social Responsibilities: Law and Practice* (Cavendish, London 1996) 30.

unambiguously to the new controlling, a new dominant class'.⁷⁰ Burnham's theories were, however, soon discredited even though he was responsible for popularising managerialist ideas⁷¹, and by the time that Nichols was writing in the late 1960s, the sectional variant of managerialism was markedly less popular than the more optimistic non-sectional variant.

Non-sectional managerialism saw corporate managers balancing a range of interests rather than ruthlessly pursuing the pecuniary interests of shareholders.⁷² During the course of the 1950s and 60s, non-sectional managerialist ideas became increasingly popular, both prescriptively and as a description of reality. As Lord Wedderburn put it, the director's 'free hand' was being 'freed from the dominance of profit so as to conjure out of the corporate hat a rabbit fit to feed all comers'.⁷³ Indeed, according to Baran and Sweezy,

corporate managements, being self-appointed and responsible to no visible group, are free to choose their aims and in the typical case ... subordinate the old-fashioned hunt for profits to a variety of other, quantitatively less precise but **qualitatively more worthy, objectives**.⁷⁴ (emphasis added)

Non-sectional managerialism was the direct predecessor of the more radical modern stakeholding models of the corporation which have surfaced in recent years. Indeed it was associated with a widespread belief that corporations had become more 'socially responsible' and that managers were no longer bound to profit maximise. It found expression in the ideas of the 'soulful corporation'⁷⁵ and 'corporate conscience'⁷⁶, and, most prominently, in the idea of the 'socially responsible corporation'. Managers, it was said, no longer needed to profit maximise; it was enough to be

⁷⁰ Burnham (n 68) 73. See also Burnham (n 68) 74, 87.

⁷¹ Paddy Ireland, 'Corporate Governance, Stakeholding, and the Company: Towards a Less Degenerate Capitalism?' (1996) 23 (3) *Journal of Law and Society* 287, 291.

⁷² Sheikh (n 69) 33.

⁷³ Lord Wedderburn, 'The Legal Development of Corporate Responsibility- For Whom Will Corporate Managers be Trustees?' in K J Kopt and G Teubner (eds), *Corporate Governance and Directors' Liabilities: Legal, Economic and Sociological Analyses on Corporate Social Responsibility* (Walter de Gruyter, Berlin, NY 1985) 7.

⁷⁴ P A Baran and P M Sweezy, 'Monopoly Capital' (1962) 14 *Monthly Review* 131, 138-139 cited in Nichols (n 67) 55.

⁷⁵ Carl Kaysen, 'The Social Significance of the Modern Corporation' (1957) 47(2) *The American Economic Review* 311, 314.

⁷⁶ Berle (n 64) 113.

‘profit satisficing’ – that is, to make enough profit to keep shareholders happy whilst pursuing other objectives. Marris refers to ‘satisficing’ as

a form of behaviour in which the subject is faced with a difficult problem to solve prefers to sacrifice some of the rewards of the optimum solution in order to reduce the pains incurred in searching for it. Rather than maximise, he chooses to “satisfice”, that is to accept some solution which is “good enough” in relation to various criteria.⁷⁷

From this perspective, although the company must achieve at least a critical level of profit, thereafter priority is attached to the attainment of other goals such as socially responsible goals. This led some commentators to refer to the 1950s and 60s as the era of ‘managerial’ or ‘welfare capitalism’.⁷⁸ In the words of Mason:

Control has passed from ownership’s hands into the hands of management; management personnel is more highly specialized and selected for professional competence; its motivations are substantially different from those of the owner-capitalist; its areas of discretionary action and the character of the limitations that bound that area differ markedly from those relevant to the enterprise of an earlier capitalism ... (hence) ... the term ‘managerial’.⁷⁹

As for Berle, having endorsed Dodd’s ideas about the social responsibilities of corporate managers, he came to view the latter as ‘administrators of a community system’⁸⁰, and wrote about the rise of a ‘People’s Capitalism’ or ‘Collectivism’.⁸¹ In the UK, similar views were expressed by sociologists like Ralf Dahrendorf, who claimed that in the ‘post-capitalist’ society ‘the imputation of a profit motive’ had ‘never been further ... from the real motives of men than it is for modern bureaucratic managers.’⁸² Anthony Crosland echoed him. It was ‘manifestly inaccurate’ and, indeed, ‘misleading’, he argued, to call contemporary Britain a capitalist society.⁸³ Although profit was still important, its role had ‘undergone a subtle change’⁸⁴:

⁷⁷ R Marris, *The Economic Theory of Managerial Capitalism* (Macmillan, London 1964) 108 and see chapter 2 cited in *Sheikh* (n 69) 33.

⁷⁸ See the Introduction to the thesis and Morrell Heald, ‘Management’s Responsibility to Society: The Growth of an Idea’ (1957) 31 *The Business History Review* 375, 375.

⁷⁹ E S Mason, ‘The Apologetics of Managerialism’ (1958) 31(1) *Journal of Business* 1, 1.

⁸⁰ A A Berle, ‘Foreword’ in *Mason* (n 40) xxi.

⁸¹ See A A Berle Jr, *Power Without Property: A New Development in American Political Economy* (Harcourt Brace, New York 1959) 19.

⁸² Ralf Dahrendorf, *Class and Class Conflict in Industrial Society* (Stanford University Press, Stanford 1959) 46-47.

⁸³ C A R Crosland, *The Future of Socialism* (Jonathan Cape, London 1956) 62 and 67.

⁸⁴ *Crosland* (n 83) 35.

companies had become ‘very sensitive to public opinion’⁸⁵ and talk about ‘the social responsibilities of industry - to workers, consumers, the locality, retiring employees, disabled workers ...’ was in part ‘genuine’.⁸⁶

It was widely believed that the key to social change lay in the education of corporate managers in de facto control of industry; or, more radically, in alterations to the composition of corporate boards of directors.⁸⁷ It was felt that other groups - employees, consumers, the community - should be represented on company boards to ensure that all social interests had a voice in corporate decision-making. This idea underlay the considerable pressure that was exerted from the mid-1950s in the UK for the introduction of ‘industrial democracy’ or ‘worker participation’ which would have seen the appointment of employees’ representatives on the boards of large corporations, along the lines of the German co-determination model.⁸⁸ However, the 1970s and 80s saw the rapid decline not only of managerial ideas but of the idea of the socially responsible corporation. With this, transformative CSR bit the dust.⁸⁹

II. Stakeholder Models of the Corporation

Although ideas about CSR took a back seat in Anglo-American jurisdictions from the 1970s onwards, more stakeholder-friendly models of the corporation had always been popular in continental Europe and Japan, though not always described as such. These jurisdictions are now commonly contrasted with Anglo-American ones not only in corporate governance circles but also in what is known as the ‘varieties of capitalism’ literature.⁹⁰ This literature usually makes the distinction between ‘liberal market economies’ and ‘coordinated market economies’ or between Anglo-Saxon and

⁸⁵ *Crosland* (n 83) 36.

⁸⁶ *Crosland* (n 83) 37.

⁸⁷ See *Ireland* (n 71) 294.

⁸⁸ Lord Wedderburn, ‘Consultation and Collective Bargaining in Europe: Success or Ideology?’ (1997) 26(1) *Industrial Law Journal* 1. See also the discussion below on the German co-determination model.

⁸⁹ See chapter 1 of the thesis.

⁹⁰ P A Hall and D Soskice, *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage* (OUP, Oxford 2001). See further R Dore, W Lazonick and M O’Sullivan, ‘Varieties of Capitalism in the Twentieth Century’ (1999) 15(4) *Oxford Review of Economic Policy* 102.

Rhenish versions of capitalism.⁹¹ Rhenish capitalism is associated with having a stakeholder economy, defined as

one which derives competitive strength from a cohesive national culture, in which the exercise of property rights is conditioned by shared values and cooperative behaviour ... The stakeholding solution offers a means of legitimising the tempestuous mechanics of capitalism and of preserving human and social capital in the interests of competitive advantage.⁹²

In terms of corporate governance, the Anglo-American model of corporate governance is stylised 'in terms of financing through equity, dispersed ownership, active markets for corporate control, and flexible labour markets' whilst the continental European and Japanese models are characterised by 'long-term debt finance, ownership by large blockholders, weak markets for corporate control, and rigid labour markets.'⁹³ Put another way, the Anglo-American model has an 'outsider' system of corporate governance, which valorises shareholder value while the continental European and Japanese models have 'insider' systems, which valorise a broader social class of stakeholders-employees, creditors, suppliers, communities, and even the environment.⁹⁴

Consequently, the model of the corporation associated with continental Europe and Japan is frequently characterised as one in which corporations are seen, at least in part, as public or quasi-public institutions with broader social responsibilities.⁹⁵ On the shareholder-stakeholder spectrum, they are clearly much closer to the stakeholder end than their Anglo-American counterparts. John Kay clarifies:

[i]n continental Europe, and in Japan, the corporation is an institution with personality, character, and aspirations of its own. Its objectives encompass the interests of a wide range of stakeholder groups- investors, employees,

⁹¹ See Michel Albert and Rauf Gonenc, 'The Future of Rhenish Capitalism' 67(3) *The Political Quarterly* 184. See also Michel Albert, *Capitalism Against Capitalism* (WileyBlackwell, London 1992).

⁹² J Plender, *A Stake in the Future- The Stakeholding Solution* (Nicholas Brealey, London 1997) 23, 24, 256 cited in Ben Pettet, 'Towards a Competitive Company Law' (1998) 19 *Company Lawyer* 134, 139.

⁹³ Ruth V Aguilera and Gregory Jackson, 'The Cross-National Diversity of Corporate Governance: Dimensions and Determinants' (2003) 28(3) *Academy of Management Review* 447, 447.

⁹⁴ C A Williams and J M Conley, 'An Emerging Third Way?: The Erosion of the Anglo-American Shareholder Value Construct' (December 9, 2004) UNC Legal Studies Research Paper No. 04-09, 1 <<http://ssrn.com/abstract=632347>> accessed 31 July 2008. See also *Aguilera and Jackson* (n 93)458-460.

⁹⁵ John Parkinson, 'Models of the Company and the Employment Relationship' (2003) 41(3) *British Journal of Industrial Relations* 481, 481.

suppliers, customers and managers- but cannot be equated with any of them. The corporation is therefore **naturally perceived as a social institution, with public responsibilities, and a proper public interest in defining the ways in which it is run and governed.**⁹⁶ (emphasis added)

It must be noted that models of the corporation which are located closer to the stakeholder end of the spectrum can and do take various forms. In the following section, two of the most prominent are briefly considered: what have been labelled the ‘fiduciary’⁹⁷ or ‘trusteeship’⁹⁸ model (as exemplified in Japan); and the ‘representative’⁹⁹ model (as exemplified in Germany). It is also important to make the point here that Japanese and Germans do not refer to their corporations as ‘stakeholder companies’. As mentioned above, the term ‘stakeholder’ is very much an Anglo-American construct which gained prominence in the 1980s.¹⁰⁰ As Deakin and Whittaker observe:

In Japan, and to a certain degree also in mainland Europe, the language of stakeholding ... is not appropriate in this context, since [interests other than those of shareholders] are in any event integrated into the firm in a way which has no clear parallel in Anglo-Saxon systems.¹⁰¹

The ‘Fiduciary’ Model of the Stakeholder Company

In this model of the stakeholder company, the board of directors functions as a neutral coordinator of the contributions of and returns to all stakeholders in the firm. Only investors are given direct representation on the corporate board but protection to the interests of other stakeholders is provided through a relaxation of the board’s duty or incentive to represent only the interests of shareholders. As a consequence of this, the board is given greater discretion to look after other stakeholders’ interests.¹⁰²

⁹⁶ John Kay, ‘The Stakeholder Corporation’ in G Kelly, D Kelly and A Gamble, *Stakeholder Capitalism* (Macmillan, London 1997) 126.

⁹⁷ Henry Hansmann and Reinier Kraakman, ‘The End of History for Corporate Law’ (2001) 89 *Georgetown Law Journal* 439, 447.

⁹⁸ See Kay (n 96) and Kay and Silberston (n 3). It must be noted that the latter propose such a model within Anglo-American jurisdictions.

⁹⁹ Hansmann and Kraakman (n 97) 447.

¹⁰⁰ See discussion below and chapter 4.

¹⁰¹ S Deakin and D H Whittaker, ‘Re-embedding the Corporation? Comparative perspectives on corporate governance, employment relations and corporate social responsibility’ (2007) 15(1) *Corporate Governance* 1, 2.

¹⁰² Hansmann and Kraakman (n 97) 447.

The 'fiduciary' stakeholder model of the company is often thought to be best exemplified by Japanese companies. In a study of the Japanese corporate governance model, Charkham asserts that the 'main general features that affect Japanese attitudes towards corporate governance are their concepts of "obligation", "family", and "consensus"'.¹⁰³ Loewenstein argues that in Japan:

corporate governance is strongly influenced by relationships: relationships between the company and its employees ... relationships between the company and its customers and suppliers, and, most importantly, relationships between and among the company and its banks.¹⁰⁴

Therefore,

although profit is important, the long-term preservation and prosperity of the family (which is how companies are viewed) are and should be primarily the aim of all concerned, and **not profit maximisation or shareholders' immediate values.**¹⁰⁵ (emphasis added)

In fact, the prospectus on which Sony began its operations says: 'We shall eliminate any untoward profit-seeking, shall constantly emphasise activities of real substance, and shall not seek expansion of size for the sake of the size'.¹⁰⁶ Moreover, corporate growth

is appreciated and sought after primarily for its contribution to utilising the enriching human resources and in creating promotion opportunities ... workers identify their interests with those of the **company which, as a consequence, is regarded as a sort of community.**¹⁰⁷ (emphasis added)

The Japanese company is, therefore, often described as a 'community firm'¹⁰⁸ working in a larger community and as a result, is thought to aim at taking the interests of all its stakeholders into account when pursuing its function. Indeed, since the

¹⁰³ Jonathan Charkham with Hélène Ploix, *Keeping Better Company: Corporate Governance Ten Years On* (OUP, Oxford 2005) 108.

¹⁰⁴ M J Loewenstein, 'What can we learn from Foreign Systems? Stakeholder Protection in Germany and Japan' (2001-2002) 76 *Tulane Law Review* 1673, 1684. See also S M Jacoby, 'Employee Representation and Corporate Governance: A Missing Link' (2001) *University of Pennsylvania Journal of Labour and Employment Law* 449, 457-458.

¹⁰⁵ J Charkham, *Keeping Good Company: A Study of Corporate Governance in Five Countries* (OUP, Oxford 1995) 74.

¹⁰⁶ *Kay and Silberston* (n 3) 87.

¹⁰⁷ H Odagiri, *Growth Through Competition, Competition Through Growth* (Clarendon Press, London 1991) 106 cited in *Kay and Silberston* (n 3) 87.

¹⁰⁸ T Inagami and D H Whittaker, *The New Community Firm: Employment, Governance and Management Reform in Japan* (CUP, Cambridge 2005) 3-5.

company commands allegiance and prime attention of everyone from top to bottom, they in turn expect to be treated as befits a member of the family.¹⁰⁹

In this context, the company is seen *as an entity* and as an end in itself - in direct contrast to the traditional Anglo-American model of the company which, despite the doctrine of separate corporate personality, tends to conflate companies with their shareholders, hence the sole corporate goal is the maximisation of profits *for shareholders* (whether in the short or long-term). Thus one of Charkham's interlocutors on the Japanese system described it as being based on 'community logic' unlike the US system which is based on 'market logic'.¹¹⁰ This is reflected in the fact that the directors sitting on the boards of Japanese companies are seen to have more of a technical background rather than a financial one since the perceived strategy of these companies is to secure markets through technological strength rather than to maximise profits as such.¹¹¹ Yamamoto is one of the many commentators who note that Japanese management puts employees and customers miles before shareholders.¹¹² One of the reasons for putting employees before shareholders' interests is known as one of the 'sacred treasures' of Japanese management¹¹³, that is, lifetime employment: an employee who devotes his life to a business is said to have morally a bigger stake in it than a shareholder.¹¹⁴

It might come as a surprise therefore to find that Japanese corporate law presupposes that a corporation is a shareholder's property and the role of management is to maximise the interests of shareholders.¹¹⁵ Indeed, shareholders' general meetings

¹⁰⁹ Charkham with Ploix (n 103) 109

¹¹⁰ Charkham with Ploix (n 103) 110.

¹¹¹ Charkham (n 105) 89.

¹¹² I Yamamoto, 'Corporate Governance in Japan', Paper given at Namura Equity Seminar, 1992 cited in Charkham (n 105) 109.

¹¹³ The other two being the seniority wage system and enterprise union – see R J Gibson and M J Roe, 'The Political Economy of Japanese Lifetime Employment' and N Hiwatari, 'Employment Practices and Enterprise Unionism in Japan' in M M Blair and M J Roe (eds), *Employees and Corporate Governance* (Brookings Institution Press, Washington DC 1999).

¹¹⁴ Charkham (n 105) 116.

¹¹⁵ Takashi Araki, 'Corporate Governance Reforms, Labour Developments and the Future of Japan's Practice-Dependent Stakeholder Model' (2005) *Japan Labor Review* 26, 26 <http://www.jil.go.jp/english/documents/JLR05_araki.pdf> accessed 31 July 2008. It must be noted that the Japanese Commercial Code of 1899 was influenced by German Codes- see below- and reflected corporate responsibility to all stakeholders but after Japan's defeat in World War II, American influence on Japanese corporate law displaced the German influence and the reforms reflected a US-style shareholder-centric model. See *Loewenstein* (n 104) 1685.

retain broad powers and voting rights reflect a majority principle. Yet Japan has few protections for minority shareholders and weak information disclosure requirements to address collective action problems in corporate control. As such, these features reduce the liquidity of capital and weaken the position of financial interests within Japanese corporations.¹¹⁶

Furthermore, in Japan, societal norms play a larger role than legal or economic influences, and accordingly, it has long been held that employees are the corporation's most important stakeholders.¹¹⁷ Thus, Charkham makes the interesting point that:

what has made Japan different is not so much attitudes within the company – though these count- but the fact that outside the company the interested parties, banks and shareholders, share the company's view that the shareholders' interest does **not** have to be satisfied by a growing dividend stream.¹¹⁸ (emphasis added)

As a consequence, the Japanese system of corporate governance 'isolates corporate management from market forces and direct shareholder influences'.¹¹⁹ It is said to be characterised by 'internalism', which is defined as '**control at all levels by long-serving, internally promoted managers** who identify with the company's interests because they belong to a cohesive and rewarding [community firm]. (emphasis added)'.¹²⁰ The boards of large Japanese companies are thus generally composed of internally appointed executive directors who control affairs with a minimum amount of external supervision.¹²¹ This leaves Japanese managers unfettered from the constraint of profit maximisation which results in them being able to pursue other more 'social' objectives, enabling shareholders' interests to 'be pushed to the back of the queue' although not wholly neglected.¹²² The Japanese model is thus a model which creates some space for CSR. Indeed, it could be argued that the conception of the corporation which underpins it is one in which some degree of CSR is intrinsic.

¹¹⁶ *Aguilera and Jackson* (n 93) 453.

¹¹⁷ Zenichi Shishido, 'Japanese Corporate Governance: The Hidden Problems of Corporate Law and Their Solutions' (2000) 25 *Delaware Journal of Corporation Law* 189, 201.

¹¹⁸ *Charkham* (n 105) 116.

¹¹⁹ *Loewenstein* (n 104) 1683.

¹²⁰ John Buchanan, 'Japanese Corporate Governance and the Principle of "Internalism"' (2007) 15(1) *Corporate Governance* 27, 27.

¹²¹ *Buchanan* (n 120) 28.

¹²² *Charkham* (n 105) 116.

The 'Representative' Model of the Stakeholder Company

As already mentioned, after the Second World War, especially in the 1950s and 60s, ideas about worker participation and industrial democracy gained in prominence. This was particularly so in Europe. The expression 'industrial democracy' had been coined by the Webbs¹²³ in the early twentieth century to indicate the presence within industrial companies of an organised trade union which, through the process of collective bargaining, could contribute to extending democratic participation. Industrial democracy, it was suggested, could combine administrative efficiency with genuine control by the people. The idea was central to the development in Continental Europe, and particularly in Germany, of a corporate model with marked differences from the shareholder-focused models found in Anglo-American jurisdictions. In Germany, it is argued, the corporation is indeed seen as something more - or, indeed, as something other - than a purely private enterprise. It is seen much more as an institution, as a community in itself, 'an organisation in turn embedded in a community'.¹²⁴ As Gunther Teubner explains, in German companies, the 'social substratum to be personified is not simply a (static) social structure. Instead, it is an internal dynamics system, with selections of its own, and with a capacity for self-organisation and self-reproduction'.¹²⁵ The company is seen as a legal person having a distinct separate identity from that of its shareholders; as an 'enterprise in itself'. It thus serves its own self-interest as a separate productive enterprise. Inevitably, it is argued, this compels managers to take account of the interests of the various stakeholders in the firm: shareholders are simply one of these, to be placed alongside employees, creditors, suppliers and customers. Indeed, because the concern is with the overall well-being of the company as an enterprise, particular importance is to be attached to the interests and concerns of those thought to contribute most to its activities: the employees. The German model of stakeholding has therefore come to be characterised by worker participation in the form of worker representatives on the board of directors of large companies. In fact, the German co-determination model has come to be widely cited as an example of how to put stakeholding ideas into

¹²³ Sydney and Beatrice Webb, *Industrial Democracy* (Longmans, Green and Co, London 1902).

¹²⁴ *Kay and Silberston* (n 3) 87.

¹²⁵ G Teubner, 'Enterprise Corporatism: New Industrial Policy and the "Essence" of the Legal Person' (1988) 36 *American Journal of Comparative Law* 130, 136. This view can be traced back to what is called the 19th century 'organic' theory of the corporation which is associated with the German legal historian Otto von Gierke. According to this theory, the company is a real (rather than an artificial) person and not the aggregation of its members.



practice: co-determination (*Mitbestimmung*) is the right to participate in decisions about matters that affect employees and getting crucial background information about the enterprise, and it is also seen as promoting trust, co-operation and harmony.¹²⁶ Thus, according to Charkham, cooperation is important to Germans as a

more cooperative approach facilitates taking a long perspective in thinking about things and people and it lowers concern about potential conflicts of interest by trusting people to use sensitive information in an appropriate way and not improperly. If one cherishes a relationship one does not betray it.¹²⁷

Co-determination is seen as consisting of two key elements: employee representation on the supervisory board of companies, and employee representation on works councils that operate at the level of plants and enterprises.¹²⁸ It is in many ways a more radical model of stakeholding principles than the fiduciary model. It is a 'representative' stakeholder model.¹²⁹ As a result, the board elaborates policies that maximise the joint welfare of all stakeholders, subject to the bargaining leverage that each group brings to the boardroom table. The board functions ideally then as a kind of collective fiduciary, even though its individual members remain partisan representatives.¹³⁰

As explained by Albert and Gonenc, the backbone of the Rhenish model of capitalism associated with German co-determination is a form of corporate governance which ensures that shareholder and employee interests are simultaneously taken into account within a framework of stable and long-term relations between the two parties. This pattern has ancient historical roots, but it acquired its modern form in the period after the Second World War as part of the social reconstruction of central European (and Japanese economies) when a consensus between capital and labour was urgently sought.¹³¹ The two-tier system was introduced in the General Commercial Code of 1861 and made mandatory in 1870 when it no longer became necessary to have a governmental representative on the board¹³² to protect small shareholders and the

¹²⁶ Charkham (n 105) 13.

¹²⁷ Charkham with Ploix (n 103) 29.

¹²⁸ M O'Sullivan, 'Employees and Corporate Governance' in P K Cornelius and B Kogut (eds), *Corporate Governance and Capital Flows in a Global Economy* (OUP, Oxford 2003) 109.

¹²⁹ Hansmann and Kraakman (n 97) 447.

¹³⁰ Hansmann and Kraakman (n 97) 447.

¹³¹ Albert and Gonenc (n 91) 191.

¹³² Charkham with Ploix (n 103) 30.

public from self-serving insiders.¹³³ After the Second World War, in Germany, it was felt that political democracy needed to be combined with social constraints over the use of private capital, a concept that has been termed ‘economic democracy’ (*Wirtschaftsdemokratie*).¹³⁴ In fact, Article 14(2) of the 1949 German Constitution explicitly states that property is not only a right but also an obligation, and that the exercise of private property rights shall also benefit society as a whole.¹³⁵ In line with this, the rationale for the concept of co-determination was to empower employees so as to enable them to become equal partners with capital in the production process. The idea was that workers would participate in key strategic decision-making – in the decisions that ultimately determine their own fates.¹³⁶

Legislation was initially adopted in 1951 for the coal and steel industries (*Montan*) which granted employees equal representation on supervisory boards (*Aufsichtsrat*). Further Co-determination Acts from 1952 to 1976 had the effect of extending equal representation on the supervisory board to all the large companies in Germany irrespective of the industry sector. The members of the supervisory board are in charge of appointing and dismissing the executive board (*Vorstand*) of the company (the latter are in charge of the day-to-day management of the company), of supervising the executive board and of providing management with advice.¹³⁷ The function of supervising management is therefore seen as being separated and made more explicit here.¹³⁸

As already mentioned, in continental Europe and Japan, ‘blockholders such as banks and families retain greater capacity to exercise direct control and, thus operate in a

¹³³ R K Morck and L Steier, ‘The Global History of Corporate Governance- An Introduction’ (2005) National Bureau of Economic Research Working Paper Series No. 11062, 9 <<http://www.nber.org/papers/w11062>> accessed 29 June 2008. See further Klaus J Hopt, ‘The German Two-Tier Board (Aufsichtsrat): A German View on Corporate Governance’ in K J Hopt and Eddy Wymeersch (eds), *Comparative Corporate Governance* (1997) 6 cited in *Loewenstein* (n 104) 1675.

¹³⁴ Katharina Pistor, ‘Codetermination: A Sociopolitical Model with Governance Externalities’ in M M Blair and M J Roe (eds), *Employees and Corporate Governance* (Brookings Institution Press, Washington DC 1999) 167 .

¹³⁵ It states: ‘Property imposes duties. Its use should also serve the public weal.’ See *Charkham with Ploix* (n 103) 32.

¹³⁶ *Pistor* (n 134) 172.

¹³⁷ *Pistor* (n 134) 168. See also K J Hopt and P C Leyens, ‘Board Models in Europe. Recent Developments of Internal Corporate Governance Structures in Germany, the United Kingdom, France, and Italy’ (2004) European Corporate Governance Institute Law Working Paper No.18/2004, 7 <<http://ssrn.com/abstract=487944>> accessed 20 July 2008.

¹³⁸ *Charkham* (n 105) 17.

context with fewer market-oriented rules for disclosure, weaker managerial incentives, and greater supply of debt.’¹³⁹ From this perspective, the modern German economy consists primarily of family controlled pyramidal groups and nominally widely held firms that are actually controlled by the top few banks via proxies.¹⁴⁰ Indeed, corporate holdings frequently take the form of complex webs of holdings and pyramids of intercorporate holdings. In this respect, banks’ influence and control are extensive where shareholdings are widely dispersed.¹⁴¹ As a result, the German system of corporate governance has been referred to as being ‘bank-based’.¹⁴²

Creditors in Germany have stronger rights than they do in the US, but shareholder rights are weaker. It would appear, therefore, that shareholder value is not given too much importance. As Aguilera and Jackson explain, in contrast to US corporate managers who receive education focused on finance and hence the diffusion of shareholder value as management ideology,

German managers typically hold PhD degrees in technical fields such as engineering or chemistry. German management ideology has traditionally stressed Technik- achieving technical excellence as managers’ central goal. German managers thus tend to adopt a corporatist or pluralistic view of the firm as serving multiple constituents. **These factors lean away from pursuing merely financial interests and toward strengthening functional orientations.**¹⁴³ (emphasis added)

In addition, it can be seen that Germany has a system of governance by both permanent large shareholders, for whom the existing legal rules suffice to exercise their power, and by banks, but has virtually no participation by small investors in the market. Therefore, because of its high concentration of ownership, which does not favour liquid equity markets, hostile takeovers are rare.¹⁴⁴ The overall effect, as in Japan, is a model of the corporation in which consideration of non-shareholder interests and CSR are, arguably, to some extent at least, intrinsic.

¹³⁹ Aguilera and Jackson (n 93) 448.

¹⁴⁰ Morck and Steier (n 133) 9.

¹⁴¹ Julian Franks and Colin Meyer, ‘Ownership and Control of German Corporations’ (2001) 14(4) *The Review of Financial Studies* 943, 944.

¹⁴² E Kühne and J Fuss, ‘Corporate Governance in Germany’ (2003) 24(10) *Business Law Review* 226, 228.

¹⁴³ Aguilera and Jackson (n 93) 458.

¹⁴⁴ A Shleifer and R W Vishny, ‘A Survey of Corporate Governance’ (1997) 52(2) *Journal of Finance* 737, 770.

Stakeholding under Pressure: The Reassertion of Shareholder Value

From the 1980s, however, following an extended period of high growth, productivity gains, enhanced trade performance, remarkable per capita income, balanced income distribution and world-wide competitiveness in human-capital intensive sectors, both the Japanese and Rhenish models of the corporation – and of capitalism – were confronted by a series of difficult economic challenges.¹⁴⁵ The 1990s saw them outperformed as Anglo-American jurisdictions enjoyed relatively high levels of growth. This lent support to – and, indeed, generated – claims that ‘the end of (corporate) history’¹⁴⁶ had been reached and that the Anglo-Saxon model of capitalism and the Anglo-American, shareholder-oriented model of the corporation had both ‘won’ the day. The collapse of Enron and others at the beginning of the twenty-first century cast serious doubts on this account¹⁴⁷, but has not prevented the introduction of corporate governance reforms in both Japan and Germany.

In Japan, from the late 1990s onwards, drastic corporate law reforms to facilitate corporate restructuring along the lines of the Anglo-American models of corporate governance have occurred. These changes were felt to be necessary because of the collapse of the bubble economy in the 1990s as well as the ‘internationalisation’ of the Tokyo market, which has seen an increase in the number of foreign investors.¹⁴⁸ The latter have pushed forward a corporate governance agenda which is more conscious of shareholder value. The 2002 revision of the Commercial Code and related laws thus introduced the American model of a board of directors with great emphasis on external directors.¹⁴⁹ This is known as the ‘Company with Committees’ system, which rests on the fundamental concepts that a degree of external supervision is necessary for good governance and that supervision should be separated from execution in order to promote objectivity.¹⁵⁰ Until 2002, Japan had a unique dual monitoring system: both the board of directors and auditors were meant to monitor

¹⁴⁵ *Albert and Gonenc* (n 91) 188. Albert and Gonenc attribute the strains to the underperforming product market as well as capital market.

¹⁴⁶ *Hansmann and Kraakman* (n 97) and see chapter 1.

¹⁴⁷ See chapter 1.

¹⁴⁸ Ronald Dore, ‘Deviant or Different? Corporate Governance in Japan and Germany’ (2005) 13(3) *Corporate Governance* 437, 441.

¹⁴⁹ *Araki* (n 115) 28, 31.

¹⁵⁰ *Buchanan* (n 120) 29.

corporate management.¹⁵¹ The Company with Committees system has introduced the option of relying on an audit committee instead.¹⁵² Moreover, in 2004 the Tokyo Stock Exchange (TSE) published its *Principles of Corporate Governance for Listed Companies*¹⁵³, which have many points in common with the OECD *Principles on Corporate Governance*.¹⁵⁴ A new company law was also legislated in 2005 and a draft of enforcement regulations was published by the Ministry of Justice, which emphasised that one of the duties of the directors of a company is to ensure maximisation of the interests of shareholders.¹⁵⁵ These amendments in regulation¹⁵⁶ have been accompanied by further changes in the make-up of the Japanese system: for instance, cross-shareholdings are being dissolved, and lifetime employment is no longer assured.¹⁵⁷

As in Japan, there has been intense pressure on Germany to revamp its corporate system.¹⁵⁸ The country has thus witnessed a number of events and changes since the late 1990s: the initial public offering of Deutsche Telekom AG, the successful hostile takeover of Mannesmann by Vodafone, the cross-border merger between Daimler Benz AG and Chrysler Corp as well as the introduction of voluntary regulations such as the Takeover Code of 1995 and the Corporate Governance Code of 2002.¹⁵⁹ The Code is being substantiated by the Transparency and Company Disclosure Act (TransPuG), which was passed in May 2002 and came into force in July 2002. The

¹⁵¹ Araki (n 115) 30.

¹⁵² Buchanan (n 120) 31.

¹⁵³ For full text see <<http://www.tse.or.jp/english/rules/cg/principles.pdf>> accessed 19 August 2008.

¹⁵⁴ The TSE Principles cover amongst other things: the rights of shareholders, the equitable treatment of shareholders and the relationship with stakeholders in corporate governance. See chapter 1 for a more detailed discussion of the OECD *Principles*.

¹⁵⁵ N Demise, 'Business Ethics and Corporate Governance in Japan' in GJ (Deon) Roussouw and A J G Sison (eds), *Global Perspectives on Ethics of Corporate Governance* (Palgrave Macmillan, Basingstoke 2006) 155-156.

¹⁵⁶ For a more thorough description of the changes in corporate law and regulations in Japan see Loewenstein (n 104).

¹⁵⁷ See Curtis J Milhaupt, 'Creative Norm Destruction: The Evolution of Nonlegal Rules in Japanese Corporate Governance' (2001) 149 *University of Pennsylvania Law Review* 2083, 2118. See also Tim Larimer, 'Great News: No More Jobs for Life' *Time Magazine* (Tokyo 1 November 1999) <<http://www.time.com/time/asia/magazine/99/1101/japan.nissan.html>> accessed 2 August 2008. For the latest job cuts in Japan see Yuri Kageyama, 'Shrinking US demand spurs layoffs at Japanese Toyota plant' *The Huffington Post* (5 August 2008) <http://www.huffingtonpost.com/2008/08/05/shrinking-us-demand-spurs_n_116935.html> accessed 11 August 2008.

¹⁵⁸ Dore (n 148) 441.

¹⁵⁹ Marc Goergen, Miguel C Manjon and Luc Renneboog, 'Is the German system of corporate governance converging towards the Anglo-American model?' (2008) 12 *Journal of Management and Governance* 37, 38.

latest step in the government's campaign to improve corporate governance is the Ten Point Catalogue presented in the summer of 2003. It focuses on improving investor protection and boosting confidence in the stock markets.¹⁶⁰ The catalogue also includes measures such as the establishment of personal liability for Management and Supervisory Board members to their company for the improvement of shareholders' rights of appeal, as well as the establishment of means for shareholders to file collective claims.¹⁶¹ Furthermore, there is also evidence that listed German firms are progressively applying the principle of shareholder value.¹⁶²

As a result of these changes some commentators have suggested that, globally, corporations are converging on the shareholder value model and that the more stakeholder-oriented models in Japan and Germany are on the wane. While there is undoubted evidence of changes in the direction of shareholders in both jurisdictions, the stakeholding elements of both systems remain. John Buchanan, for example, has recently argued that Japanese corporate governance has *not* been transformed and that an 'Anglo-American paradigm has **not** replaced the former structures (emphasis added).' He notes that although significant regulatory and organisational reforms have taken place and despite some outward changes, corporate governance at the majority of Japanese companies appears to be much as it was before.¹⁶³ Takashi Araki further notes that although shareholder interests cannot be ignored any more and employment security is no longer an absolutely supreme value in corporate governance, however, such reconsideration seems to be occurring within the framework of the stakeholder model, and it is not likely that the model will completely convert into the shareholder value model at least for the time being.¹⁶⁴ As for Japanese managers, '[o]f course profit matters and is essential for survival, but ... it is not all that matters- even in these days when the importance of 'shareholder value' has become a sort of religion elsewhere.'¹⁶⁵

¹⁶⁰ *Kühne and Fuss* (n 142) 229.

¹⁶¹ *Kühne and Fuss* (n 142) 231.

¹⁶² See A Tuschke and G Sanders, 'Antecedents and consequences of corporate governance reform: The case of Germany' (2003) 24 *Strategic Management Journal* 631.

¹⁶³ *Buchanan* (n 120) 27.

¹⁶⁴ *Araki* (n 115) 53.

¹⁶⁵ *Charkham with Ploix* (n 103) 111.

What about in Germany? Is convergence towards the shareholder-oriented model of the corporation occurring? Goergen and others ask precisely this question in a very recent article. They argue that:

[c]onvergence, if any, seems to have occurred *in the function* that certain governance mechanisms perform ([for example] the supervisory board and the remuneration policy); the institutional structure of the system ([that is] its *form*), however, remains largely unaltered.¹⁶⁶ (emphasis in original)

After examining the various legal changes that have taken place on the corporate governance scene, they conclude that, all in all,

there is little doubt that the institutional setting has changed and that some of these changes have introduced Anglo-American practices. ... However, some of these legislative efforts do not seem to have been accompanied by the necessary enforcement. As a result, **they have barely affected the essence of the German corporate governance system.**¹⁶⁷ (emphasis added)

Hence, as in Japan, while Anglo-American style reforms have been implemented which seek to move corporations in a more shareholder-oriented direction, they do not yet seem to have transformed the way in which German and Japanese corporations are run. Charkham explains that:

[in] Germany as elsewhere arguments about maximizing shareholder value tend to beg the question of time scale. **Thinking long has become so ingrained that it is unlikely to change;** and in many industries it is still indispensable for success.¹⁶⁸ (emphasis added)

¹⁶⁶ Goergen, Manjon and Renneboog (n 159) 38-39.

¹⁶⁷ Goergen, Manjon and Renneboog (n 159) 65.

¹⁶⁸ Charkham with Ploix (n 103) 93.

III. The ‘Enlightened Shareholder Value’ Model of the Corporation

‘Efficient’ Stakeholding: The Origins of *Long-term* Shareholder Value

Indeed, it is precisely this ingrained emphasis on ‘thinking long’, which seems to characterise German and Japanese corporations, which many consider to be the source of their competitive advantages over their Anglo-American counterparts, with their allegedly ‘myopic’¹⁶⁹ focus on the short-term interests of shareholders. It was widely being argued in the 1980s and early 1990s that the Anglo-American, shareholder-oriented model of the corporation and corporate governance was inherently *inferior* to the more stakeholder-friendly models of Japan and Germany. In effect, the stakeholder models of the company were being touted for their greater *efficiency*, as reflected in higher levels of growth. For instance, the US business theorist Michael Porter, writing in the early 1990s, commented on how the ‘competitive position of significant parts of the US economy seems to have declined relative to those of other nations.’¹⁷⁰ He attributed the lack of competitiveness of the US economy to the failure of US companies to support investment in the long-term in favour of short-term gain: the US system is sensitive to ‘current returns for many established companies combined with corporate goals that stress current stock price over long-term corporate value.’¹⁷¹ As a result, aggregate investment in property, plant, and equipment, civilian research and development, and intangible assets such as corporate training and related forms of human resource development is lower in the US than in Japan and Germany.¹⁷² In other words, German and Japanese companies were not only more successful in many sectors at sustaining long-term investment programmes, they were also more successful in using their human capital, through devices which rewarded

¹⁶⁹ Steve Letza, Xiuping Sun and James Kirkbride, ‘Shareholding Versus Stakeholding: a critical review of corporate governance’ (2004) 12(3) *Corporate Governance* 242, 244-245.

¹⁷⁰ M E Porter, ‘Capital Choices: Changing the way America invests in industry’ in D Chew (ed), *Studies in International Corporate Finance and Governance Systems: A Comparison of the US, Japan, and Europe* (OUP, Oxford 1997) 7.

¹⁷¹ Porter (n 170) 11.

¹⁷² Porter (n 170) 7.

loyalty and long-term commitment.¹⁷³ For Porter (and others), it was important therefore to reform the system so as ‘to create an environment in which managers make investments that maximise **the long-term value of their corporations** (emphasis added).’¹⁷⁴

Consequently, a number of commentators started making the case for embracing more stakeholder-friendly versions of the corporation and corporate governance on the basis of *economic efficiency*. The idea behind stakeholder value (as opposed to shareholder value) was to make companies focus on the long-term rather than the short-term.¹⁷⁵ It resulted in what Letza and others have called the ‘instrumental stakeholder theory’ which ‘legitimises stakeholder value on the grounds of stakeholding as an effective means to **improve efficiency, profitability, competition and economic success** (emphasis added).’¹⁷⁶ Stakeholder-friendly companies are advocated ‘not because they are more democratic or socially responsible, but because they are more **competitive** than those organised on more traditional Anglo-American lines (emphasis added).’¹⁷⁷ The instrumental stakeholder argument is, in effect, that it is in the long-term interests of *shareholders* for managers to take account of the interests of stakeholders. It is a shareholder-oriented form of stakeholding, which retains a commitment to shareholder primacy but argues for the adoption of a long-term perspective on the shareholder interest and shareholder value. It is a model which creates some space for account to be taken of the interests of other stakeholders, albeit to further the (long-term) interests of shareholders. Stakeholding thus appears on the agenda not as an end in itself but as a means to the end of long-term shareholder value. What has emerged in recent years, therefore, are two rather different cases for stakeholding, what we might call the ‘productionist’ case – taking account of stakeholder interests in order to realise the long-term interest of shareholders - and a ‘real’ stakeholding case in which taking account of the interests of stakeholders is not a means to an end – long-term shareholder value – but an end in itself.

¹⁷³ A Gamble and G Kelly, ‘Shareholder Value and the Stakeholder Debate in the UK’ (2001) 9(2) *Corporate Governance* 110, 113.

¹⁷⁴ Porter (n 170) 13.

¹⁷⁵ A concern which re-appeared with the corporate collapses at the beginning of the twenty-first century.

¹⁷⁶ Letza, Xiuping Sun and James Kirkbride (n 169) 251.

¹⁷⁷ Ireland (n 71) 298.

The 'productionist' case is essentially that a more stakeholder-friendly model of the corporation should be embraced because by focusing less on achieving short-term financial gains for shareholders and more on efficient production in the longer-term, it will ultimately, in the longer-term, produce more value for shareholders. A shift in focus to long-term efficient production and away from short-term shareholder value would, it is argued, enhance the productive capacities of the company, rendering it more competitive and, ultimately, more profitable. Thus, writing from this perspective, Kelly and others advocate stakeholder theory on the grounds that:

Individuals well endowed with economic and social capabilities will be more productive; companies which draw on the experience of all their stakeholders will be more efficient; while social cohesion within a nation is increasingly seen as a requirement for international competitiveness.¹⁷⁸

In this context, in the UK, the businessman and business commentator John Kay has developed what he calls a 'trusteeship model of corporate governance' whereby directors are to act as trustees for the corporation so that the latter can be a 'good business'.¹⁷⁹ He does not envisage this as entailing that the company should pursue social welfare or to be socially responsible as such, but rather that the company should recognise the importance of the development of trusting relationships with all its relevant stakeholders, based on close consultation with, and consideration of, their interests. 'The international competitive successes of Japanese and German companies', he argues, are focused on precisely those types of relationships.¹⁸⁰ In similar vein, John Parkinson advocates a stakeholder conception of the corporation so as to 'improv[e] the economic performance of British industry.'¹⁸¹

Similarly, in the US some commentators advocate a more stakeholder-friendly corporate model on the grounds that it would enhance *corporate efficiency* and, therefore, profitability. Margaret Blair, for example, argues for a recognition of stakeholder rights in terms of the 'firm-specific investments', contributions and risks that stakeholders make and bear in the corporation. As a result, they should have

¹⁷⁸ G Kelly, D Kelly and A Gamble, 'Stakeholder Capitalism' in G Kelly, D Kelly and A Gamble (eds), *Stakeholder Capitalism* (Macmillan, London 1997) 244.

¹⁷⁹ Kay (n 96) 132.

¹⁸⁰ Kay (n 96) 134.

¹⁸¹ John Parkinson, 'Company Law and Stakeholder Governance' in G Kelly, D Kelly and A Gamble, *Stakeholder Capitalism* (Macmillan Press, London 1997) 154.

residual claims and should participate in the corporate decision-makings to enhance corporate efficiency.¹⁸² In the late 1990s, Blair came together with Lynn Stout to posit what is known as the ‘team production’ theory of corporate law, which built on these ideas.¹⁸³ Although the latter also looks at efficiency arguments in the context of stakeholder theory, it is a rather more radical version as it entails the re-conceptualisation of the corporation along the lines of the ‘socially responsible corporation’ as envisaged by Dodd in the 1930s.¹⁸⁴

‘The Third Way’¹⁸⁵: The Enlightened Shareholder Value Model of the Corporation

The criticisms of fiercely shareholder value-oriented conceptions of the corporation which focus on short-term stock price, together with the arguments about ‘efficient’ stakeholding, have contributed to the development of a new, shareholder-oriented model of the corporation which purports to be more long-termist in orientation and to allow for consideration of the interests of stakeholders. In the UK, this model has found expression in the emergence and development by the Company Law Review (CLR) of the concept of ‘enlightened shareholder value’ (ESV). The result is the emergence of what has been called a ‘third way ... long-term enlightened shareholder value perspective’.¹⁸⁶ This perspective has been given added impetus by the spectacular corporate collapses of Enron, World Com and others at the beginning of the twenty-first century.¹⁸⁷

This idea of ESV was developed by the UK CLR and subsequently embodied in the UK Companies Act of 2006. The ESV model of the corporation attempts to draw on the productionist arguments advanced for stakeholding as something which furthers the long-term interests of shareholders. The suggestion is that shareholders who take

¹⁸² See M M Blair, *Ownership and Control: Rethinking Corporate Governance for the Twenty-First Century* (Brookings Institution Press, Washington DC 1995).

¹⁸³ See Margaret M Blair and Lynn A Stout, ‘A Team Production Theory of Corporate Law’ (1999) 85 *Virginia Law Review* 247.

¹⁸⁴ The ‘team production’ theory will be discussed further in chapter 4.

¹⁸⁵ See *Williams and Conway* (n 94).

¹⁸⁶ *Williams and Conway* (n 94) 7.

¹⁸⁷ See Lawrence E Mitchell, *Corporate Irresponsibility: America’s Newest Export* (Yale University Press, New Haven 2001). See also Simon Deakin and Suzanne J Konzelmann, ‘Learning from Enron’ (2004) 12(2) *Corporate Governance* 134.

account of the interests of stakeholders are acting out of enlightened self-interest. The interests of shareholders still take priority but because of the focus on the long- rather than the short-term, management are compelled to take into account other interests in their decision-making processes.

Enlightened Shareholder Value versus Pluralism

The UK CLR, which was established in 1998 by the Department of Trade and Industry (DTI, which then became the Department for Business Enterprise and Regulatory Reform and is now the Department for Business, Innovation and Skills) to review UK company law¹⁸⁸, effectively re-visited the Berle- Dodd debate.¹⁸⁹

The CLR Steering Group published a series of consultation documents between 1999 and 2001.¹⁹⁰ The Final Report was published in July 2001.¹⁹¹ In formulating the corporate objective in terms of directors' duties, the CLR made the distinction between the concepts of ESV and 'Pluralism'. ESV views the 'ultimate objective of companies' as being to 'generate maximum value for shareholders' whilst conceding that this might be framed in an 'inclusive' way so that in assessing what might be likely to promote the success of the company for the shareholders' benefit, directors should take into account the interests of stakeholders in so far as they believed in good faith that these factors were relevant.¹⁹² By contrast, 'pluralism' considers shareholders as one constituency among many¹⁹³, thereby advocating an abandonment

¹⁸⁸ Company Law Review Steering Group (CLRSO), *Modern Company Law for a Competitive Economy: The Strategic Framework* (DTI, London February 1999) 33 <<http://www.berr.gov.uk/files/file23279.pdf>> accessed 7 July 2009.

¹⁸⁹ Lee Roach, 'The Legal Model of the Company and the Company Law Review' (2005) 26(4) *Company Lawyer* 98, 101.

¹⁹⁰ CLRSO, *The Strategic Framework* (n 188); CLRSO, *Modern Company Law for a Competitive Economy: Developing the Framework* (DTI, London March 2000) <<http://www.berr.gov.uk/bbf/co-actz2006/clr-review/page25086.html>> accessed 7 July 2009; CLRSO, *Modern Company Law for a Competitive Economy: Completing the Structure* (DTI, London November 2000) <<http://www.berr.gov.uk/bbf/co-act-2006/clr-review/page25080.html>> accessed 7 July 2009. There were also several consultation papers on specific topics such as company formation and capital maintenance, and company charges.

¹⁹¹ CLRSO, *Modern Company Law for a Competitive Economy- Final Report* (DTI, London July 2001).

¹⁹² Len Sealy and Sarah Worthington, *Cases and Materials in Company Law* (8th edn OUP, Oxford 2008) 276.

¹⁹³ CLRSO, *The Strategic Framework* (n 188) para 5.13.

of shareholder primacy.¹⁹⁴ In other words, the pluralist approach advocates a radical stakeholding model, in which stakeholding is an end in itself rather than a means to the end of maximising shareholder value, whether in the short- or long-term. The CLR explained the pluralist approach in terms of ‘a company [being] required to serve a wide range of interests, not subordinate to, or as a means of achieving, shareholder value ... but as valid in their own right.’¹⁹⁵ Although the CLR did express some support for the objectives behind the pluralist approach, it felt that adopting such an approach would have necessitated substantial reform of the law on directors’ duties.¹⁹⁶ It could therefore see no practical way of enforcing duties that would take into account the pluralist approach.¹⁹⁷ This was mainly due to practical reasons, including the problems associated with policing the directorial discretion to override the interests of shareholders in favour of other stakeholders¹⁹⁸, and the fact that a pluralist approach would potentially permit directors to frustrate a takeover bid.¹⁹⁹ In some ways, the objections voiced by the CLR to pluralism echo those voiced by Berle in his debate with Dodd and his pragmatic defence of shareholder primacy.²⁰⁰

The Final Report thus retained the ESV principle, recommending a ‘sharper focus on the shareholder’²⁰¹ and referring to the ‘Review’s stewardship discipline’.²⁰² The DTI’s intent seems to have been clear right from the launch of the review. The key to improved corporate governance, it argued, lay in ensuring that shareholders more assiduously carry out their ‘responsibilities’ as the owners or ‘stewards’ of corporate assets. A ‘modernised’ company law should, therefore, continue to be predominantly, if not exclusively, shareholder-oriented.²⁰³ The very title of the review – *For a*

¹⁹⁴ In essence, stakeholding arguments. Janice Dean points to the fact that the change of wording marks a subtle shift of emphasis from the inclusivity and rights implied by ‘stakeholding’ to the diversity and conflict emphasised by ‘pluralism’. See J Dean, *Directing Public Companies: Company Law and the Stakeholder Society* (Cavendish Publishing Limited, London 2001) 25.

¹⁹⁵ CLRSO, *The Strategic Framework* (n 188) para 5.1.13.

¹⁹⁶ CLRSO, *Developing the Framework* (n 190) paras 5.1.30 and 5.1.31.

¹⁹⁷ CLRSO, *Developing the Framework* (n 190) paras 3.20 and 3.36 and CLRSO, *Completing the Structure* (n 190) para 3.5. See also Roach (n 189) 101.

¹⁹⁸ CLRSO, *Developing the Framework* (n 190) para 3.24.

¹⁹⁹ CLRSO, *Developing the Framework* (n 190) para 3.24 and 3.33. See also Daniel Attenborough, ‘The Company Law Reform Bill: an analysis of directors’ duties and the objective of the company’ (2006) 27(6) *Company Lawyer* 162, 165.

²⁰⁰ See discussion of the Berle-Dodd debate above.

²⁰¹ CLRSO, *Final Report* (n 191) para 1.56.

²⁰² CLRSO, *Final Report* (n 191) para 6.26.

²⁰³ Paddy Ireland, ‘Back to the future? Adolf Berle, the Law Commission and directors’ duties’, (1999) 20 *Company Lawyer* 203, 204. See DTI, *Modern Company Law: For a Competitive Economy* (DTI, London 1998) <<http://www.berr.gov.uk/files/file23283.pdf>> accessed 7 July 2009.

Competitive Economy – reflects this view. As Pettet observes, had the Government made ‘social justice’, rather than ‘competitiveness’ and ‘efficiency’ the guiding criteria for reform, the review would have had a ‘rough ride from business interests from day one’.²⁰⁴

The idea of the ESV principle represents a modified - or in the words of the CLR ‘modernised’- version of shareholder primacy. In the words of the Review, ‘the enlightened shareholder value approach is **not dependent on any change in the ultimate objective of companies, that is, shareholder wealth maximization (emphasis added)**’.²⁰⁵ In fact, Simon Zadek asserts that the ESV is a sophisticated restatement rather than a refutation of the principle of shareholder primacy.²⁰⁶ What is purportedly different is that the focus should be the long-term rather than the short-term. It involves ‘striking a balance between the competing interests of different stakeholders in order to benefit the shareholders in the long run.’²⁰⁷ Indeed, according to the CLR, under the ESV, directors would be obliged ‘to achieve the success of the company for the benefit of the shareholders by taking proper account of all the relevant considerations for that purpose’, which includes taking ‘a proper balanced view of the short and long term; the need to sustain effective ongoing relationships with employees, customers, suppliers and others’ as well as to ‘consider the impact of its operations on the community and the environment.’²⁰⁸ Consequently, according to Andrew Keay, the notion of ESV:

seems to suggest that it is a different concept from shareholder value in its basic form, with the distinguishing feature being that it is more enlightened and ipso facto, more palatable than that which preceded it. That is, the approach is more enlightened as directors are required to take into account interests other than those of the shareholders.²⁰⁹

²⁰⁴ Pettet (n 92) 137.

²⁰⁵ CLRSO, *The Strategic Framework* (n 188) para 5.1.17. Ireland makes the point that the ‘approach is “enlightened” because it would entail shareholders recognising that it is sometimes in their own self-interest to develop co-operative relationships which will bring longer term benefits’. See *Ireland* (n 17) 124, note 25.

²⁰⁶ Simon Zadek, *The Civil Corporation: The New Economy of Corporate Citizenship* (Earthscan, London 2001) 53.

²⁰⁷ John Armour, Simon Deakin and Suzanne J Konzelmann, ‘Shareholder Primacy and the Trajectory of UK Corporate Governance’ (2003) 41(3) *British Journal of Industrial Relations* 531, 537.

²⁰⁸ CLRSO, *Developing the Framework* (n 190) 13, para 2.19.

²⁰⁹ Andrew Keay, ‘Tackling the Issue of the Corporate Objective: An Analysis of the United Kingdom’s “Enlightened Shareholder Value Approach”’ (2007) 29 *Sydney Law Review* 577, 592.

However, as he then explains, the actions that directors take under the ESV - in taking into account interests other than those of shareholders - *must benefit the members*. As such, the ESV can be classified as a 'shareholders first interpretation.'²¹⁰ It embodies what might be called 'shareholder-oriented stakeholding'.

Following on from the CLR, the Companies Act 2006 was enacted. David Chivers QC explains that

[t]he Companies Act 2006 includes the first ever statement in statute of directors' duties in respect of the environmental and social impacts of their companies' business. The new law enables directors to take into regard these issues, highlighting the important link between responsible business behaviour and business success.²¹¹

The section which enshrines the ESV in the new Act is section 172 which imposes a duty on directors 'to promote the success of the company'. In so doing, directors need to have regard to , amongst other matters, the likely consequences of any decision *in the long term*; the interests of the company's employees; the need to foster the company's business relationships with suppliers, customers and others; the impact of the company's operations on the community and the environment; the desirability of the company maintaining a reputation for high standards of business conduct; and the need to act fairly as between members of the company.²¹² The section therefore accepts that paramount importance should be given to shareholders' interests but points to the fact that the pursuit of shareholder value should be long-term, thus creating the necessary space to make it permissible to bring not only the interests of stakeholders but CSR into the boardroom.

²¹⁰ *Keay* (n 209) 592.

²¹¹ D Chivers, 'The Companies Act 2006: Directors' Duties Guidance' (The Corporate Responsibility (CORE) Coalition, London 2007) 6 < http://www.corporate-responsibility.org/module_images/directors_guidance_final.pdf > accessed 24 May 2008.

²¹² Companies Act 2006 s 172(1) states: 'A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to (a) the likely consequences of any decision in the long term, (b) the interests of the company's employees, (c) the need to foster the company's business relationships with suppliers, customers and others, (d) the impact of the company's operations on the community and the environment, (e) the desirability of the company maintaining a reputation for high standards of business conduct, and (f) the need to act fairly as between members of the company.' This list is not exhaustive.

Yet it still needs to be highlighted here that s 172 is shareholder-centred, as expressed by Paul Davies:

The interests of non-shareholder groups thus need to be considered by the directors, but, of course, in this shareholder-centred approach, **only to the extent that the protection of those other interests promotes the interests of the shareholders.**²¹³ (emphasis added)

It should also be noted that the CLR envisaged the concept of the ESV working together with an Operating and Financial Review (OFR), which would have been part of the annual reports of listed companies and other large ones with significant economic power.²¹⁴ The OFR was:

designed to address the need in a modern economy to account for and demonstrate stewardship of a wide range of relationships and resources, which are of vital significance to the success of modern business, but often do not register effectively, or at all, in traditional financial accounts.²¹⁵

However, in November 2005, Gordon Brown, then Chancellor of the Exchequer, in what has been called an 'unsightly striptease',²¹⁶ announced the abolition of the OFR in a speech to the Confederation of British Industry (CBI).²¹⁷ Since the news was not particularly welcome by business leaders,²¹⁸ a new Business Review was enacted. The new provisions for the Business Review seek to meet the requirements of the EU Accounts Modernisation Directive 2003,²¹⁹ although they are not as comprehensive as the OFR.²²⁰ In fact, Charlotte Villiers does not hold much hope for the whole system

²¹³ Paul L Davies, 'Enlightened Shareholder Value and the New Responsibilities of Directors' Lecture given at the University of Melbourne Law School (the inaugural WE Hearn Lecture), 4.

October 2005, 5 cited in L Cerioni, 'The success of the company in s 172(1) of the UK companies act: towards an enlightened directors' primacy?' (2008) 4(1) *Original Law Review* 1, 3.

²¹⁴ CLRSG, *Modern Company Law for a Competitive Economy: Final Report, Volume 1* (DTI, London July 2001) 49-54.

²¹⁵ CLRSG, *Completing the Structure* (n 190) 34.

²¹⁶ Edward Davey, Liberal Democrat, House of Commons, Hansard, June 6, 2006, col. 147 cited in Charlotte Villiers, 'Editorial: Campaigning, corporate reporting and the Company Law Reform Bill' (2006) 27(9) *Company Lawyer* 257, 257.

²¹⁷ See 'Chancellor gives ONS independence' *BBC News Website* (28 November 2005) <<http://news.bbc.co.uk/1/hi/business/4477516.stm>> accessed 14 August 2008.

²¹⁸ See Jill Treanor and Mark Milner, 'Brown plan to cut red tape for business provokes chorus of disapproval' *The Guardian* (London 29 November 2005)

<<http://www.guardian.co.uk/uk/2005/nov/29/politics.business>> accessed 14 August 2008.

²¹⁹ See *Williams and Conway* (n 94) 18-19.

²²⁰ See *Villiers* (n 216) 257.

of corporate reporting and disclosure as she argues that its character is shaped by the shareholder value conception of the corporation²²¹:

The corporation reporting and disclosure system is closely tied to the profit maximization goal of shareholders and therefore focuses primarily on financial accounting and reporting. This narrow focus influences developments relating to social and environmental reporting so that stakeholder advocates are likely to be disappointed if they rely on the disclosure system in its present form to take their objectives forward.²²²

All this suggests that the operation of s 172 will be 'business as usual': the shareholder-oriented approach prevails. Indeed, just like s 309 of the UK Companies Act 1985, which preceded it and under which directors were required to have regard to the interests of employees, it does not provide any enforcement mechanisms as the duty is owed *to the company* and consequently, only enforceable by the company or *shareholders* in a derivative action.²²³ Moreover, according to Arsalidou, who was writing about the (then) Companies Bill in the context of employees' rights, the wording of the section 'provides less protection than its predecessor by expecting even less of directors.'²²⁴ This is so, she argues, because whereas s 309 referred to employee interests, s 172 refers to the company's relationship with its employees, the implication of which is that directors could, if they wanted, avoid the consideration of the employee's interests on the ground that in their subjective opinion there was no need to pause and consider these interests.²²⁵ As such, the section only appears to be paying lip service to stakeholders' interests although how it operates in practice still remains to be seen.

²²¹ C Villiers, *Corporate Reporting and Company Law* (CUP, Cambridge 2006) xi.

²²² Villiers (n 221) xii.

²²³ See 171 (1) Companies Act (UK) 2006.

²²⁴ See D Arsalidou, 'Shareholder primacy in cl 173 of the Company Law Bill 2006' 28(3) *Company Lawyer* 67, 68.

²²⁵ Arsalidou (n 224) 68.

IV. Stakeholding and CSR

At the root of the more radical stakeholder-oriented models of the corporation is the idea that the corporation is a social institution and as such, it has to live up to its social obligations. This means that it needs to take into account the interests of all the stakeholders affected by its operations. Sometimes it is suggested that this should be a matter of managerial fiduciary duty; sometimes it is suggested that key stakeholders should be involved in corporate decision-making, most notably, of course, employees as in the German model.

Crucially, the more one moves along the spectrum of corporate models towards the stakeholding end, the more CSR is intrinsic to the corporation. In the traditional Anglo-American model of the corporation in which the shareholder interest is primary and profit maximisation the goal, CSR is something which has to be imposed externally on the corporation. By contrast, in the more radical stakeholder models of the corporation, in which the corporation is conceptualised as a social or quasi-social institution, CSR is, in certain key respects, built into it. CSR comes, so to speak, from *within*. In a stakeholding corporation, one might reasonably expect the management culture, shaped by a particular conception of the corporation, its nature and purpose, to be not only more-stakeholder-oriented but also more socially responsible. If, for example, the company is seen as a community within a community, the goal is less likely to be profits per se and more likely to be, for example, the *growth of the company itself* as a productive organisation. In these circumstances, corporate managers might be expected to take account of interests other than those of shareholders when determining policies for the good running of the corporation as a matter of course. Indeed, in this context, 'socially responsible' practices might not even be labelled as such because they are simply seen as 'business as usual'. In contrast to the Anglo-American model of the corporation where the goal of shareholder value permeates managerial culture, the values that permeate the more radical stakeholder models of the corporation reflect notions such as cooperation, consensus and community.²²⁶ Nevertheless, corporate boards within the more radical

²²⁶ See *Charkham with Ploix* (n 103) Chapters 2 and 3.

stakeholder models - just as they were in the SRC which preceded them – are expected to acknowledge that conflicts between the various stakeholder interests will occur. The board in these situations is usually conceptualised as ‘an arena for cooperation with respect to the function of monitoring the management,’ as well as an arena for resolving ‘conflicts with respect to the specific interests of different stakeholder groups.’²²⁷ The role of the board therefore encompasses the mediation of conflict.²²⁸

The place of CSR in the Anglo-American model of the corporation is thus very different from its place in the more radical stakeholder models of the corporation. In essence, CSR has no place in the Anglo-American model. It is, rather, something which has to be imposed from the outside, as Easterbrook and Fischel, among others, openly recognise. By contrast, in the more radical stakeholder models of the corporation, in theory at least, CSR is built in; it comes from *within*.

This is not to say that, for example, German and Japanese corporations have unblemished records of good CSR practice. In the words of David Coates:

behind ... the euphoric descriptions of the “trust” relationships linking Japanese companies and Japanese workers lies the appalling social reality of long working hours, intensive work routines, constant managerial pressure to meet corporate goals and the orchestration of a national culture of social unity by and in which labour resistance was (and is) minimised.²²⁹

Demise further notes that ‘*karoshi* (death from overwork) and harassment at work remain a concern in Japanese companies.’²³⁰ The author remarks that Japanese employees are, however, unlikely to raise such issues because:

many top managers ... were once low-level employees, who were willing to sacrifice in order to be promoted. Hard work and personal sacrifices

²²⁷ Reinhard H Smith and Gerald Spindler, ‘Path Dependence, Corporate Governance and Complementarity- A Comment on Bebchuk and Roe’ (1999) Johann Wolfgang Goethe-Universitat Working Paper Series Finance and Accounting No. 27, 14 cited in *Hansmann and Kraakman* (n 97) 448.

²²⁸ J Robert Branston, Keith Cowling and Robert Sudgeon, ‘Corporate Governance and the Public Interest’ (2006) 20(2) *International Review of Applied Economics* 189, 202.

²²⁹ David Coates, *Models of Capitalism: Growth and Stagnation in the Modern Era* (Polity, Cambridge 2000) 403.

²³⁰ *Demise* (n 155) 153.

guaranteed them promotion, and they now expect similar behaviour from their subordinates.²³¹

This is not true of all Japanese companies, however. As Daniel Franklin of *The Economist* notes:

the Japanese ... see the roots of CSR in the traditions of Japanese business, such as *shobaido* (the way of doing business) and *shonindo* (the way of the merchant) and Japanese firms pay a lot of attention to the environment and to relations with local communities.²³²

It is difficult to assess how far German and Japanese corporations and their managers *actually* engage in CSR, partly because it is hard to say precisely what constitutes CSR and partly because empirical work in this area is virtually nonexistent. The limited available literature, much of which is anecdotal, suggests they do act in a more socially responsible manner than their Anglo-American counterparts, so much so that it might be argued that CSR is to a certain extent amalgamated within their 'normal' practices without any need for it to be labelled 'socially responsible'. As Loewenstein notes, '[t]his would explain why one sees so little discussion in those countries on this issue and why it remains a topic of discussion in [Anglo-American jurisdictions].'²³³ CSR is more of an issue in jurisdictions with shareholder-oriented corporations.

There is little doubt that in recent decades stakeholder models of the corporation have been in retreat. Indeed, even with the advent of the various corporate scandals at the beginning of the twenty-first century, corporate governance reform has focussed even more on shareholder protection. The emphasis has been on disclosure requirements within a framework of shareholder primacy, as discussed in the previous chapter.²³⁴ However, at the same time, CSR has come increasingly to be seen as an important component of management practice as it has come to be felt that the increasingly ruthless orientation towards shareholder value needs to be tempered. However, the conception of CSR which has risen to prominence is very different from its predecessors. Not only is it ameliorative rather than transformative in nature, it

²³¹ *Demise* (n 155) 153.

²³² Daniel Franklin, 'Going global' *The Economist* (London 17 January 2008)

<http://www.economist.com/specialreports/PrinterFriendly.cfm?story_id=10491136> accessed 23 August 2008.

²³³ *Loewenstein* (n 104) 1690.

²³⁴ See also the point made by Villiers earlier at note 221.

focuses on self-regulation by corporations rather than coercive regulation by the state. Although it urges that the interests of other stakeholders be taken into account, it endorses the principle of shareholder primacy.²³⁵ In short, it seeks to embrace and use to its advantage the notion of ‘enlightened value maximization’²³⁶ or ‘enlightened shareholder value’.

It might, therefore be argued that if the concept of ESV represents a form of ‘shareholder-oriented stakeholding’, contemporary CSR represents a form of ‘shareholder-oriented CSR’. Just as ESV demands that corporate managers pursue shareholder value in the long-term, enabling them to *consider* other (stakeholder) interests if the need arises, so does much of the contemporary literature on CSR argue for CSR on the grounds that socially responsible practices are good for the corporate bottom-line. As such, the case for CSR which is being made is predominantly a ‘business case’. This is illustrated by the comments made by Margaret Hodge, then Minister of State for Industry and the Regions, in a guidance document published by the then DTI in 2007,

[p]ursuing the interests of shareholders and embracing wider responsibilities are complementary purposes, not contradictory ones ... businesses perform better, and are more sustainable in the long term, when they have regard to a wider group of issues in pursuing success ... it makes good business sense.²³⁷ (emphasis added)

The business case for CSR will be discussed in more detail in chapter four. For the time being, it is important to underline that in contrast to the traditional Anglo-American model, where CSR was seen to be coming from without (that is, externally imposed by means of state-led regulation in areas other than corporate law), the ESV model of the corporation, in advocating that corporate managers should focus on long-term shareholder value rather than the short-term maximisation of profits, makes it *permissible* for CSR issues to be taken into account in their decision-making processes: it creates room for CSR in the boardroom. As such, CSR is seen to be

²³⁵ See chapter 3 of the thesis.

²³⁶ See M Jensen, ‘Value Maximisation, Stakeholder Theory and the Corporate Objective Function’ (2001) 7(3) *European Financial Management* 297.

²³⁷ DTI, ‘Companies Act 2006- Duties of Directors- Ministerial statements’ (DTI, London June 2007) 2 <www.berr.gov.uk/files/file40139.pdf> accessed 6 May 2008.

ameliorative in nature.²³⁸ Hence, the ESV model of the corporation and ameliorative CSR are in many ways natural allies.

Concluding Remarks

The present chapter has sought to examine the more radical stakeholder models of the corporation. It was argued that in Anglo-American jurisdictions, its origins could be traced back to the idea of the ‘socially responsible corporation’ developed by Merrick Dodd in the 1930s. Whereas the latter’s popularity declined in the 1970s and 80s with the rise of neo-liberalism and the shareholder value conception of the corporation²³⁹, stakeholder models of the corporation of various degrees of radicalism (though not labelled as such) have always had a presence in continental Europe and Japan. Since the more radical of these stakeholder models view corporations as social institutions, it is unsurprising to find that CSR is in certain key respects intrinsic to them: it is part and parcel of the organisation.

As we have seen, in the 1990s and early twenty-first century, stakeholder models have come under growing threat. At the same time, however, stakeholding has made a re-appearance within a new shareholder-oriented model of the corporation exemplified in the UK by the concept of ESV. This model seeks to temper the narrow-minded focus on shareholder value which has recently characterised the traditional Anglo-American model of the corporation by seeking to lengthen the time horizons for the pursuance of shareholder value. In doing this the ESV model creates some space for non-shareholding stakeholder issues to be taken into account by management in their decision-making processes. It makes a business case for shareholder-oriented stakeholding: the latter, it suggests, can be good for the corporate bottom line. As we shall see in the next part of the thesis, a similar case has been made for CSR in its contemporary form.

²³⁸ As mentioned in the introduction to the thesis. This notion of CSR will be discussed in more detail in the next part of the thesis.

²³⁹ See chapter 1 of the thesis.

Part II:
Contemporary CSR

Chapter Three

Contemporary CSR

Introduction

The previous two chapters have examined the place of CSR in the two main models of the corporation which have been vying for supremacy in recent years: the unambiguously shareholder-oriented, profit maximising Anglo-American model and the stakeholder model, found in various diluted forms in Continental Europe and Japan. It was argued that because the Anglo-American model views the corporation as a private enterprise, CSR ultimately has little (if any) role to play since corporate managers, as the agents of shareholder-owners, have to give priority to the shareholder interest. This is not only conceded but also proudly proclaimed by many of the supporters of the shareholder-oriented corporation: the principle of shareholder primacy, they argue, is the guarantor of efficiency.¹ In this model, CSR is something which is imposed on corporations from *without* in the form of external regulation by bodies of law other than company/corporate law itself. On the other hand, more stakeholder-friendly models of the sort found in Continental Europe and Japan see the corporation as an institution with important social dimensions. CSR is in important respects intrinsic to the stakeholder corporation, impacting on its internal practices, not least in the abandonment of the goal of shareholder primacy. In short, when the corporation is seen as a social institution or a ‘community firm’², its aim ceases to be the simple maximisation of shareholder value and the interests of other ‘stakeholders’ – including the community at large – are taken into account. The very goals of the corporation as an institution encompass some notion of social responsibility.

We also noted the emergence in recent years of a new shareholder-oriented model of the corporation, exemplified by the notion of ‘enlightened shareholder value’ (ESV), which, whilst not abandoning the principle of shareholder value, creates some room for the interests of other stakeholders and for the social responsibilities of the

¹ See chapter 1.

² See chapter 2.

corporation to be taken into consideration by *lengthening the time-horizons* over which shareholder value must be pursued. Hence, I suggested, the emergence of what I call ‘shareholder-oriented stakeholding’ under which corporate managers are still bound to profit-maximise but are meant to focus on the long-term rather than the short-term. Under this model, it is *permissible* and *defensible* for them to take into account interests other than those of shareholders as long as it is in the long-term shareholder interest. It renders socially responsible behaviour permissible, thus potentially bringing a certain amount of stakeholding and CSR into the boardroom.

This part of the thesis shifts the emphasis from models of the corporation on to the concept of CSR itself. Consequently, it elaborates and explores some of the ideas and arguments put forward in the introduction to the thesis, which considered the ways in which the nature of and meanings attached to CSR have changed over time. The main focus of this chapter, however, is the nature of *contemporary* CSR. It argues that the contemporary CSR movement, which has emerged in the past decade or so, is different from the earlier movement which culminated in the development of the idea of the ‘socially responsible corporation’ (SRC). Unlike the latter, contemporary ideas about CSR do not fundamentally challenge the principle of shareholder primacy. They also suggest that the various interests of the various groups involved in and affected by corporations are not inherently inimical in nature as previously thought, but rather are capable of harmonious co-existence. More importantly, this chapter argues that the contemporary CSR movement, despite its endorsement of the shareholder-oriented model of the corporation, does not advocate the external imposition of social responsibilities on corporations,³ rather, it advocates corporate *self*-regulation.

As a result, the contemporary CSR movement does not, apparently, see any need for the corporation to be radically re-conceptualised as a social institution. Instead, it implicitly endorses the shareholder primacy norm, apparently accepting the efficiency arguments forwarded in its favour and the claims that the norm and the model of the corporation derived from it operates in the public interest: by maximising profits, the

³ See the section on CSR in chapter 1, especially the points made by Easterbrook and Fischel.

company will be contributing to the overall wealth of society, which in turn will contribute to the latter's well-being.⁴

The chapter is composed of four sections. The first describes the emergence of contemporary CSR in detail. It traces the 'move' from state-led regulation to self-regulation in the context of the neo-liberal ideals and policies which were implemented from the late 1970s onwards. It then tracks the origins of the contemporary CSR movement to the rise of corporate environmentalism, examining the latter in detail and identifying its key features.

The second section examines how the ideas underlying the corporate environmentalist movement spread elsewhere, eventually forming the foundations of the contemporary CSR movement. It also illustrates the ambit of contemporary CSR by looking at the labour dimension, and attempts to briefly evaluate some of the mechanisms used. The third section of the chapter explores the corporate embrace of contemporary CSR. It is argued that because of its unthreatening nature - unlike transformative CSR, it does not seek to radically transform a company's internal practices - big business has whole-heartedly engaged with and embraced the concept.

The final section pulls together some of the ideas elaborated in part one of the thesis in order to identify a number of different models of CSR. In this context, the radical, transformative CSR model of the earlier period is contrasted with the less radical contemporary, ameliorative model of CSR. The latter is further sub-divided into what I call 'regulatory' CSR - a model premised upon external, state-led regulation - and 'self-regulatory' CSR - a model premised upon self-regulation and notions of voluntarism and partnership.

⁴ This is the 'invisible hand' argument, discussed in chapter 1.

I. The Rise and Fall of Transformative CSR and the Socially Responsible Corporation

As we have seen in chapter two, non-sectional managerialism - based on the notion that managers seek to balance a range of interests (those of shareholders, employees, consumers and the community at large) - became the basis of the idea of CSR in its first modern incarnation in the 1920s and 30s. The Berle- Dodd debate in the early 1930s, and Berle and Means' 1932 book, *The Modern Corporation and Private Property*⁵ raised issues about the nature of the modern corporation as well as about the nature of corporate shares and the rights of their 'owners'. They also raised issues about the social responsibilities of corporations. They laid the foundations for the rise of the idea of 'managerialism'. In the non-sectional variant of managerialism, corporate managers were deemed to owe obligations not only to shareholders but also to workers, the local community and society as a whole. After the Second World War, the long economic boom that ensued saw highly optimistic views emerge about corporations and their managers, adding plausibility to the idea that corporations could become and were becoming socially responsible. CSR, therefore, appeared to be placed firmly on companies' agendas. David Rockefeller, for example, surmised that 'the old concept that the owner of a business had a right to use his property as he pleased to maximise profits, has evolved into the belief that ownership carries certain binding social obligations'.⁶ In fact, by the 1950s, even Berle, who, as we have seen, had previously held the opinion that corporate managers' fiduciary duties should be strengthened vis-à-vis shareholders, was displaying faith in the ability of corporate managers to use their power to benefit all groups involved in the corporation. According to Berle, the 'modern American corporation understands well enough that it has a "constituency" to deal with. If its constituents - notably its buyers - are

⁵ A A Berle Jr and G C Means, *The Modern Corporation and Private Property* (The Macmillan Company, New York 1932).

⁶ Herman E Kroos, *Executive Opinion: What Business Leaders said and thought on economic issues, 1920s-1960s* (Garden City, New York 1970) 52 cited in C A Harwell Wells, 'The Cycles of Corporate Social Responsibility: An Historical Retrospective for the Twenty-first Century' (2003) 51 *University of Kansas Law Review* 77, 100.

unsatisfied, they will go to the political state for solution'.⁷ In his book *The 20th Century Capitalist Revolution*, Berle accepted Dodd's claim that once ownership and control were split, managers could take on responsibilities to constituencies other than shareholders.⁸

The belief that that the separation of ownership and control had liberated managers was widely held and many thought this had made it possible for corporations to be socially responsible. For instance, the business commentator Peter Drucker saw corporate managers as wise men capable of balancing the needs of all a corporation's diverse divisions and employees.⁹ The ideal corporation, Drucker implied, would be run by enlightened managers for the benefit of its shareholders, workers, and the wider community.¹⁰ Some even saw the emergence of managerialism and of 'socially responsible corporations' as prefacing a transformation of capitalism itself. Berle, for example, in his preface to the 1967 revised edition of *The Modern Corporation and Private Property*¹¹ described the system which had emerged as one of 'collective capitalism', an affair that yokes together thousands of corporations, and millions of employees, owners and customers - too many people to be considered private enterprise in the classic sense.¹² 'To the 1967 Berle', writes Doug Henwood, 'these changes had moved us "toward a new phase fundamentally more alien to the tradition of profit even than that forecast" in the first edition of their book, published thirty-five years earlier'.¹³ In fact, as late as the close of the 1960s, it was still believed by some that the large corporation - together with its 'socially responsible' managers - had changed and was continuing to change the nature of capitalism, making it more humane and progressive.¹⁴ Profit-maximisation was no longer seen as being the goal of the corporation. According to Galbraith, to prosper, a corporation only needed a

⁷ A A Berle Jr, *The 20th Century Capitalist Revolution* (Harcourt Brace and Company, New York 1954) 56.

⁸ Wells (n 6) 103. See chapter 2 of the thesis.

⁹ According to Stephen Waring, Drucker liked to analogise the manager to an orchestra conductor, charged with making sure the rest of the firm worked in harmony- S P Waring, *Taylorism Transformed: Scientific Management Theory since 1945*(1943) 82-82 cited in Wells (n 6) 105. See P F Drucker, *Concept of the Corporation* (The John Day Company, New York 1946).

¹⁰ Wells (n 6) 103.

¹¹ A A Berle and G C Means, *The Modern Corporation and Private Property* (Revised edn Harcourt, Brace & World Inc, New York 1968) .

¹² Berle and Means (n 11) viii. See also D Henwood, *Wall Street- How it Works and for Whom* (Verso, London 1997) 253.

¹³ Henwood (n 12) 254.

¹⁴ Henwood (n 12) 254.

‘secure minimum of earnings’ that would keep it from having to tap troublesome capital markets or cope with demanding outside stockholders.¹⁵ In similar vein, in the UK, reflecting the idea of the socially responsible corporation, there was considerable pressure from the mid 1950s to appoint workers’ representatives on to the boards of directors of large corporations along the lines of the German co-determination model.¹⁶ This period - the era of the SRC - marks the highpoint of what I have referred to as the ‘transformative’ phase of CSR.

The Decline of Managerialism and the reassertion of the Shareholder Primacy Norm

Transformative CSR was, however, laid to rest in the 1970s and 80s when ‘cold water was poured on all visionary schemes proposed in the public interest’.¹⁷ The bear market of 1973-1974 in the US, and the difficulties faced by capitalist economies worldwide led shareholders and other owners of financial property – increasingly re-concentrated in institutions - to reassert their power. This generated, amongst other things, a fresh wave of takeover activity.¹⁸ Collectively, shareholders, acting through their institutional representatives, became much more active. The rise of the institutional investor and the increase in shareholder activism rapidly precipitated a radical shift in the balance of power within corporations and contributed to dramatic changes in corporate culture. The maximisation of ‘shareholder value’ – a mixture of dividends and capital (share price) growth – emerged as the dominant goal of corporations and their executives: share prices rather than production became the guiding lights of economic activity.¹⁹ Moreover, to re-align the interests of managers with those of shareholders, executive remuneration devices such as share options and performance (often share-price) related bonuses began to emerge.

It was around that time that contractual or nexus-of-contracts theories of the corporation started to come to the fore, justifying what was happening, and reasserting

¹⁵ J K Galbraith, *The New Industrial State* (3rd edn, Houghton Mifflin Co, New York 1967/1978) 151-152 cited in *Henwood* (n 12) 259.

¹⁶ See chapter 2 of the thesis for a discussion of the German model.

¹⁷ William W Bratton, ‘Never Trust a Corporation’ (2000) 70 *George Washington Law Review* 867, 867.

¹⁸ *Henwood* (n 12) 260.

¹⁹ David Harvey, *A Brief History of Neoliberalism* (OUP, Oxford 2005) 32.

the legitimacy and desirability of the principles of profit maximisation and shareholder primacy not so much on the grounds of shareholder 'ownership' rights as on the consequential ground that shareholder-oriented corporations were more efficient and delivered higher rates of growth than their rivals.²⁰ As we have seen, these ideas had earlier roots. In the 1950s and 1960s, picking up on the growth in institutional investment, Henry Manne had sought to re-assert the efficiency of the exclusively shareholder-oriented corporation by positing the existence of a 'market for corporate control', which operated in the interests not only of shareholders but of society as a whole. Inefficient managers, it was argued, even if not directly and immediately responsible to, and subject to displacement by, shareholders, could be removed by their acceptance of take-over bids induced by poor performance and consequent reductions in stock value.²¹ The market for corporate control was thus supposed to reduce the risk, identified by Berle and Means, that managers might satisfice or engage in various forms of non-profit maximising behaviour. According to its advocates, by compelling them to profit maximise it also ensures that resources are allocated efficiently.²² Although ridiculed by Berle²³, Manne's views became an important part of the consequentialist efficiency-based justifications for shareholder primacy which came to the fore in the 1970s and 1980s and which still prevail today: the goal of the corporation is and should be to maximise profits for shareholders as this ensures wealth maximisation and aggregate social welfare. In this respect, Jensen and Meckling²⁴ led the way. In 1976, they reduced the corporation to just

a legal fiction which serves as a focus for [the] complex process in which the conflicting objectives of individuals ... are brought into equilibrium within a framework of contractual [relationships].²⁵

²⁰ See chapter 1 of the thesis. See also Paddy Ireland, 'Defending the Rentier: Corporate Theory and the Reprivatization of the Public Company' in John Parkinson, Andrew Gamble and Gavin Kelly (eds), *The Political Economy of the Company* (Hart Publishing, Oxford 2000).

²¹ E S Herman, *Corporate Control, Corporate Power* (Cambridge University Press, Cambridge 1981) 10.

²² C Bradley, 'Corporate Control: Market and Rules' in S Wheeler (ed), *A Reader on the Law of the Business Enterprise* (OUP, Oxford 1994) 181.

²³ See A Berle, 'Modern Functions of the Corporate System' (1962) 62 *Columbia Law Review* 433.

²⁴ As already mentioned in chapter 1, the approach can be traced back to Coase but it was fully developed in the late 1970s and 1980s.

²⁵ M Jensen and W Meckling, 'Theory of the Firm: Managerial Behaviour, Agency Costs and Ownership Structure' (1976) 3 *Journal of Financial Economics* 305 reprinted in Louis Putterman and Randall S Kroszner (eds), *The Economic Nature of the Firm: A Reader* (Cambridge University Press, Cambridge 1996) 321.

Other prominent contractual theorists, including Fama²⁶ and Easterbrook and Fischel, followed suit.²⁷ Contractual theories of the corporation rapidly supplanted managerialist theories and the maximisation of shareholder value came to be seen by many as the most appropriate and socially beneficial corporate goal. By the early 1980s, the fate of transformative CSR had been sealed. The political tide had turned, particularly in the United States and the United Kingdom following the elections of Reagan and Thatcher. As Wells says, '[c]orporate social responsibility would not disappear ... the ambitious agendas of its proponents would no longer appear realistic in the 1980s'.²⁸ Indeed, the very idea of CSR was now vehemently attacked by many legal scholars and economists. Just as Manne²⁹ and Rostow³⁰ had argued in the 1950s and 60s that CSR made little economic sense, threatening, they claimed, to distort the price mechanism and so make corporations less efficient, while saddling them with a role they were ill-equipped to perform³¹, so more and more commentators now argued that CSR was a potential threat to efficiency. Milton Friedman repeated his 1960s assertion that the social responsibility of business is to increase its profits.³² Indeed, as we shall see, even the regulatory model of CSR³³ – in which responsibilities are externally imposed on profit-maximising corporations by the state – was undermined as neo-liberal ideas came to dominate policy-making with their emphasis on minimal government intervention in the economy.³⁴

²⁶ See Eugene Fama, 'Agency Problems and the Theory of the Firm' (1980) 88 *Journal of Political Economy* 288.

²⁷ See F H Easterbrook and D R Fischel, *The Economic Structure of Corporate Law* (Harvard University Press, London 1991). For an in-depth discussion of these theories, see chapter 1 of the thesis.

²⁸ Wells (n 6) 125.

²⁹ See Henry G Manne, 'The "Higher Criticism" of the Modern Corporation' (1962) 62(3) *Columbia Law Review* 399.

³⁰ Eugene V Rostow, 'To Whom and for What Ends Is Corporate Management Responsible?' in E S Mason (ed), *The Corporation in Modern Society* (Athenaeum, New York 1973, originally published by Harvard University Press).

³¹ Wells (n 6) 123.

³² See Milton Friedman, 'The Social Responsibility of Business is to Increase Its Profits' *New York Times Magazine* (New York 13 September 1970) 32-33. See Chapters 1 and 6 for a thorough discussion of Friedman's views.

³³ See later sections of this chapter.

³⁴ For discussions on the policies of the Reagan and Thatcher administrations and their effects, see, amongst others, J Tobin and M Weidenbaum (eds), *Two Revolutions in Economic Policy: the first economic reports of Presidents Kennedy and Reagan* (MIT Press, Cambridge 1988); P Riddell, *The Thatcher Decade: Britain in the 1980s*, (Basil Blackwell, Cambridge 1989); R A Grasso, 'Globalisation of Capital Markets' (1998) 21 *Fordham International Law Journal* 393, 392-393; R Salomon, *The Transformation of the World Economy* (2nd edn Macmillan, London 1999) 12-50, 184-195.

The efficiency arguments for shareholder primacy, and especially those based upon the market for corporate control gradually became common sense as managers were placed under increasing pressure to keep share prices up for fear of being replaced by those more attentive to shareholders' needs. This, it increasingly came to be believed, especially in Anglo-American jurisdictions, was socially beneficial. Indeed, many came to believe and to argue that Anglo-American capitalism, with its highly developed capital markets; frequent recourse to hostile take-overs and shareholder value oriented corporations was economically superior to other models and much better able to generate growth.³⁵ The strong performance of the US economy in the second half of the 1990s, when productivity rose faster than in other countries, lent support to these claims.³⁶ The US and the UK seemed to be enjoying successes not enjoyed by continental European economies (especially Germany) and Japan.³⁷

As for developing countries, they were encouraged by development agencies such as the World Bank, the International Monetary Fund (IMF) and the UN to embrace neo-liberal policies to develop their economies: liberalisation, deregulation, shareholder-oriented corporate governance, a reduced role for the state, and a correspondingly greater role for the private sector. In the late 1990s the OECD developed its *Principles on Corporate Governance*³⁸, based on the shareholder-oriented, stock-market-based Anglo-American model, and began vigorously to promote them around the world.³⁹ The result was an enormous increase in foreign direct investment (FDI) to these countries. The growing freedom of movement of capital also led, however, to ever more share-price sensitive corporate managements and ever more strongly shareholder-oriented corporations, and enabled Multinational Enterprises (MNEs) to

³⁵ See Henry Hansmann and Reinier Kraakman, 'The End of History for Corporate Law' (2001) 89 *Georgetown Law Journal* 439.

³⁶ Sir Geoffrey Owen, 'Introductory Paper' (2002) 21st Century Trust Conference on 'Corporate social responsibility: Rethinking the role of corporations in a globalising world', Madingley Hall, Cambridge, 3-11 October 2002 <<http://www.21stcenturytrust.org/owen.htm>> accessed 16 August 2008.

³⁷ See Michel Albert and Rauf Gonenc, 'The Future of Rhenish Capitalism' 67(3) *The Political Quarterly* 184.

³⁸ Initially adopted in 1999 and revised in 2004. *OECD Principles of Corporate Governance* (OECD, Paris 2004). For full text see <<http://www.oecd.org/dataoecd/32/18/31557724.pdf>> accessed 8 July 2009.

³⁹ By means of Roundtables organised in different parts of the world. See chapter 1.

exploit regulatory differences between states by (re) locating (or threatening to relocate) their production facilities in countries with more favourable regimes.⁴⁰

It was, paradoxically, in this neo-liberal climate of ruthless pursuit of profit maximisation and corporate emphasis on the shareholder interest, that CSR came back on to the agenda and contemporary ideas about CSR began to emerge. In recent years, a strong lobby (led by NGOs and civil society activists⁴¹) has exerted increasing pressure on businesses to take into account their 'social responsibility'. The next section examines in a little more detail the context in which contemporary CSR became popular again.⁴²

The Rise of Contemporary Ameliorative CSR: From State Regulation to Self-Regulation

Although as early as the 1900s, companies such as Ford and Carnegie, in the United States, and Lever Brothers and Cadbury, in the United Kingdom, had taken measures to improve their workers' living conditions, and attempted to contribute to the communities in which they operate⁴³, most companies, most of the time, concentrated on their primary purpose of making profits.⁴⁴ The social sphere was incidental to their activities – that was the sphere of government, not of private enterprise. The state was seen as the agency which had to come up with the rules and regulations necessary to constrain corporate excesses: regulation was seen more as something to be imposed on corporations from the *outside* rather than as something coming from *within*. The nature of the relationship between business and the state was therefore widely seen as potentially conflictual, if not confrontational.

One of the main problems with this approach in the modern era was that whilst developed countries were well placed to regulate corporate activities, this was not the

⁴⁰ See Rhys Jenkins, 'Globalization, Corporate Social Responsibility and poverty' (2005) 81 *International Affairs* 525, 527.

⁴¹ See below.

⁴² It must be noted here, as indicated in the introduction, that the 'new' CSR is different from the earlier idea of the SRC, that is, transformative CSR.

⁴³ See the introduction to the thesis on the distinction between the responsibilities of *businessmen* and *business*.

⁴⁴ UNRISD, *Visible Hands: Taking Responsibility for Social Development* (UNRISD, Geneva 2000) 77.

case in developing countries where the state was usually in a much weaker position to engage in coercive legal regulation of powerful corporations. From the 1970s, MNEs operating in developing countries were subjected to growing criticism⁴⁵, and there were thus many efforts to develop international standards for corporate behaviour, emanating mainly from NGOs and UN agencies.⁴⁶ Governments in developing countries also became more assertive in international economic negotiations in the aftermath of the Organisation of Petroleum Exporting Countries' (OPEC) oil price rises and demanded a New International Economic Order (NIEO).⁴⁷

In fact, the 1970s saw the widespread incidence of nationalistic reactions to MNEs, particularly in developing countries. Former colonies of certain Western nations, having gained independence in the few decades before, felt that they were now economically dependent on these enterprises whose home countries were frequently the same powers they had 'freed' themselves from. In an attempt to increase their national sovereignty over investment controlled outside their territory, less developed countries (LDCs) began to exert pressure in the UN for the implementation of a code of conduct designed to regulate relationships between MNEs and host governments.⁴⁸ Consequently, a 'Group of Eminent Persons' was set up to examine the role of MNEs on development and international relations in 1973. The Group recommended the setting up of a UN Commission on Multinational Corporations and a UN Centre on Multinational Corporations to oversee and develop UN policy in this area.⁴⁹ These

⁴⁵ In the early 1970s, the ITT (International Telephone and Telegraph Corporation) scandal came to the fore: it was revealed that the US company had been involved in attempting to overthrow the democratically elected Popular Unity government led by Salvador Allende in Chile. See R Jenkins, 'Corporate Codes of Conduct: Self-Regulation in a Global Economy' (2001) UNRISD Technology, Business and Society Programme Paper No. 2 (UNRISD, Geneva) 2. See also J K Rowe, 'Corporate Social Responsibility as Business Strategy' (2005) Center for Global, International and Regional Studies. Reprint Series. Paper CGIRS-Reprint-2005-08, 5
<<http://repositories.cdlib.org/cgirs/reprint/CGIRS-Reprint-2005-08>> accessed 4 July 2009.

⁴⁶ It must be noted, however, that the first proposal of this kind came from the corporate sector itself – the International Chamber of Commerce (ICC)'s Guidelines for International Investment in 1972, *ICC Guidelines for International Investment* (ICC, Paris, 1972).

⁴⁷ Attempts to establish developing country unity took shape after the Bandung Conference in 1955 that led to the creation of the Non-Aligned Movement in 1961, and subsequently the Declaration for the Establishment of a NIEO which was adopted in 1974. See D Abrahams, *Regulating Corporations- A Resource Guide* (UNRISD, Geneva, 2004) 2.

⁴⁸ A Teichova, 'Multinationals in perspective' in A Teichova, M Levy-Leboyer and H Nussbaum (eds), *Multinational Enterprises in Historical Perspective* (Cambridge University Press, Cambridge 1986) 368.

⁴⁹ P T Muchlinski, *Multinational Enterprises and the Law* (1st edn OUP, Oxford) 6.

bodies were later renamed the UN Commission on Transnational Corporations (TNCs) and UN Centre on Transnational Corporations (UNCTC).

Furthermore, the Group

accepted that the global organisation, size and technological superiority of the MNE could threaten the sovereignty of the host state through the ability of the MNE to evade national regulation and taxation, to abuse its competitive power by distorting market conditions and to exploit the lack of technological know-how where the latter needed modern technology to ensure the growth of its economy.⁵⁰

The Commission launched negotiations on a UN Code of Conduct for TNCs in 1977. The Code was to establish, among other things, the standards for the conduct of TNCs from all countries to protect the interests of host countries, to strengthen their negotiating capacity and to ensure conformity of their operations with host countries' national development objectives. Substantial progress was made in evolving a Draft Code of Conduct on TNCs following protracted negotiations. However, the Draft Code was shelved in 1992 as a result of disagreement between capital-exporting and capital-importing countries on the minimum standard of treatment of MNEs by host states under customary international law.⁵¹

The OECD also adopted its *Declaration on International Investment and Multinational Enterprises* in 1976⁵², but this was voluntary and not legally binding. At the national level, some twenty-two developing countries passed legislation controlling MNE activities in the late 1960s and the 1970s.⁵³ Nationalisation of foreign corporations reached a peak in the first half of the 1970s.⁵⁴ As Jenkins notes:

A common perception that underlay these efforts at regulation was that the interests of TNCs and those of host countries in the South did not coincide.

⁵⁰ Muchlinski (n 49) 6.

⁵¹ Ilias Bantekas, 'Corporate Social Responsibility in International Law' (2004) 22 Boston University International Law Journal 309, 318.

⁵² This was revised in 2000. For full text, see OECD, *Guidelines for Multinational Enterprises* (OECD, Paris 2000) <<http://www.oecd.org/dataoecd/56/36/1922428.pdf>> accessed 14 July 2009.

⁵³ B Hepple, 'A Race to the Top? International Investment Guidelines and Corporate Codes of Conduct' (1999) 20 Comparative Labor Law and Policy Journal 347, 354.

⁵⁴ J Richter, *Holding Corporations Accountable: Corporate Conduct, International Codes, and Citizen Action* (Zed Books, London 2001) 20.

Although what was good for General Motors might have been good for the United States, it was not necessarily good for Brazil or Mexico.⁵⁵

State regulation thus came to be seen as the way forward: external regulation and coercion were the names of the game.

However, as already mentioned, from the 1980s onwards, amidst the 'neoliberal backlash'⁵⁶, emphasis was increasingly laid upon monetarist economic policies, the increased integration of international markets for goods and finance, the privatisation of state assets and, in developing countries, a shift to trade liberalisation and export promotion - what came to be known as the Washington Consensus.⁵⁷ Neo-liberal, market-based policies were thus advocated and state intervention - the external regulation of corporations - came to be frowned upon. The focus was on a 'retreat' or rolling back of the state to make way for the rationality of the market to operate without impediment. Obviously, some regulation would be inevitable and necessary (in relation to such things as health and safety, for instance) but the emphasis was on deregulation and privatisation. Consequently, in contrast to the 1970s, the attitude of developing states shifted emphasis dramatically towards *attracting*, rather than regulating MNEs and foreign investment: the regulation frenzy of the previous decade was now significantly tempered by the need to attract capital in order to try to grow and develop. Indeed, state regulation was seen as a potentially serious barrier to getting FDI. The result was a 'less is better' regulatory 'competition' between developing countries for FDI and capital. This has been referred to as a 'race to the

⁵⁵ Jenkins (n 45) 3.

⁵⁶ Norman Girvan, 'The Search for Policy Autonomy in the South: Universalism, Social Learning and the Role of Regionalism' (2005) Overarching Concerns Programme Paper No. 9 (UNRISD, Geneva) 2.

⁵⁷ John Williamson coined the term 'Washington Consensus' in 1989 to describe a set of ten specific economic policy prescriptions that he considered to constitute a 'standard' reform package promoted for developing countries in 'crisis' by the World Bank and the IMF, which are based in Washington DC. See J Williamson (ed), *Latin American Adjustment: How Much Has Happened?* (Institute for International Economics, Washington DC 1990). As Williamson himself notes, the term subsequently took on a 'populist meaning' as it was equated with neo-liberal policies. J Williamson, 'From Reform Agenda to Damaged Brand Name' (September 2003) 40(3) *Finance & Development* 10, 11. For a further discussion of what Williamson actually means by the term 'Washington Consensus' and what he sees as the distinction between this term and neo-liberal policies, see J Williamson, 'The strange history of the Washington consensus' (2004-2005) 27(2) *Journal of Post Keynesian Economics* 195. See further chapter 5 of the thesis.

bottom' in that 'excessive downward pressure' is exerted on global standards of protection of the environment and/or of workers' rights.⁵⁸

These developments were associated with the emergence of the concept of 'globalisation' in the 1990s, the idea of the world as a single market, without barriers, as opposed to a world divided up into separate markets.⁵⁹ Globalisation, according to Qureshi, a World Bank economist, is:

driven by a widespread push toward the liberalisation of trade and capital markets, increasing internationalisation of corporate production and distribution strategies, and technological change that is rapidly dismantling barriers to the international tradability of goods and services and the mobility of capital⁶⁰

The 1990s also saw the end of the Cold War, global economic liberalism, the economic conglomeration of Western Europe, the rapid advancement in technology, and the explosion of e-commerce changes. All of these, it is argued, contributed to shift power towards large global shareholder value-oriented MNEs.⁶¹ It is well documented that many MNEs are richer and more powerful than some states and regions.⁶² Chang and Ha note that:

[a]s the supranational corporation becomes an increasingly large factor in the world, questions arise as to how far it has a responsibility to maintain the framework of the society in which it operates and how far it should reflect society's priorities in addition to its own commercial priorities.⁶³

Hence, while the power of MNEs has been growing, in the developing world, there has been a correlated decline in the power of many states and a decline in their ability to regulate. With income and wealth inequalities growing, the 1990s thus saw MNEs being accused of all sorts of harmful practices in the developing world - exploitation

⁵⁸ C P Oman, *Policy Competition for Foreign Direct Investment: A study of competition among governments to attract FDI* (OECD, Paris 1999) 3.

⁵⁹ J Madeley, *Big Business, Poor Peoples: The Impact of Transnational Corporations on the World's Poor* (Zed Books, London 1999) 17.

⁶⁰ Z Qureshi, 'Globalization: new opportunities, tough challenges' (1996) 33(1) *Finance and Development* 30, 30.

⁶¹ K Mellahi and G Wood, *The Ethical Business, Challenges and Controversies* (Palgrave Macmillan, New York 2003) 22.

⁶² Citigroup's revenue exceeds the total output of India, Mitsubishi exceeds the gross domestic product (GDP) of South Korea, Microsoft is bigger than the Netherlands, GM is bigger than Turkey and the combined revenues of General Motors and Ford exceed the combined GDP for all of sub-Saharan Africa- see S J Chang and D Ha, 'Corporate Governance in the twenty-first century: new managerial concepts for supranational corporations' (2001) 19(2) *American Business Review* 32, 33.

⁶³ *Chang and Ha* (n 62) 33.

of labour⁶⁴, a lack of concern for the environment⁶⁵ and undue influence in local politics.⁶⁶ The result was a growing focus on the abuse of corporate power. For instance, for David Korten, the MNE had become an:

instrument of a market tyranny that is extending its reach across the planet like a cancer, colonising ever more of the planet's living spaces, destroying livelihoods, displacing people, rendering democratic institutions impotent, and feeding on life in an insatiable quest for money.⁶⁷

Even when the idea of shareholder value was at its peak in the 1990s, concerned voices could be heard in the developing world. The collapse of the stock market boom and the subsequent revelations of fraudulent practices in Enron and World Com⁶⁸ simply lent support to the claims of those who argued that shareholder value-oriented corporations needed to be kept in check. It is in this context that corporations seemed to have felt a growing need to legitimise their activities, if not indeed, their very *raison-d'être*. Certainly by the 1990s they seemed increasingly anxious to show that they were socially responsible and were jumping on to the CSR bandwagon.

This embrace of CSR was made considerably easier by the fact that the ideas about CSR which emerged during this period - contemporary CSR - were markedly less radical than the earlier idea of the SRC which was so popular until the 1970s. As argued before, this earlier version of the notion of CSR entailed not only a radical re-conceptualisation of the corporation, proposing the replacement of the idea of the corporation as a private enterprise, but also the abandonment of the principle of shareholder primacy. By contrast, the ideas about CSR which emerged in the 1980s and 90s did not seek to supplant the shareholder-oriented corporation as a private

⁶⁴ Nike Inc came under intense criticism in the 1990s about its 'sweatshop' labour practices in Southeast Asia, see, amongst others, Editorial, 'Keep the Heat on Sweatshops' *Chicago Sun-Times* (Chicago 25 July 25 1996) 41; L Ayoub, 'Nike Just Does It- And Why the United States Shouldn't: The United States International Obligations to Hold MNCs Accountable for their Labour Rights Violations Abroad' (1999) 11 DePaul Business Law Journal 395.

⁶⁵ The Bhopal incident being the most prominent example although that happened in 1984, see the discussion below.

⁶⁶ This was alleged in the case of Shell in Nigeria. See discussion below.

⁶⁷ D C Korten, *When Corporations Rule the World* (Earthscan, London 1995) 12.

⁶⁸ See L A Cunningham, 'Sharing Accounting's Burden: Business Lawyers in Enron's Dark Shadow' (2002) *Business Lawyer* 57 downloadable from <<http://ssrn.com/abstract=307978>> accessed 4 July 2009; L A Cunningham, 'The Sarbanes-Oxley Yawn: Heavy Rhetoric, Light Reform (and It Might Just Work)' (2003) 35 *Connecticut Law Review* 915; J N Gordon, 'What Enron means for the management and control of the modern business corporation: some initial reflections' (2002) 69 *University of Chicago Law Review* 1233.

enterprise. They operated very much within the prevailing status quo. Indeed, they were in many ways a mere adjunct to the ruthless reassertion of shareholder primacy.

Contemporary CSR is also, equally importantly, in essence *non-confrontational* in nature. It is essentially *consensual* in its approach, advocating *collaboration* between big business and governments, UN agencies and NGOs. In sharp contrast to earlier versions of CSR, which thought the different interest groups involved in and affected by corporate activities to be conflictual - underlining the need in many situations for external regulation - contemporary CSR emphasises the idea of partnership, implying the absence of irreconcilable conflicts of interest.⁶⁹ Moreover, contemporary CSR does not encourage states to enact and enforce legal regulations to keep companies in check, emphasising instead the desirability of corporate self-regulation. In short, it operates, for the most part, comfortably within the parameters set by the neo-liberal orthodoxy, with its advocacy of a limited role for the state and focus on the free market.

Corporate Environmentalism

The origins of contemporary ideas about CSR can be traced back to the so-called 'corporate environmentalism' movement which was kick-started by the United Nations Conference on Environment and Development (UNCED), also known as the Earth Summit, held in Rio de Janeiro, Brazil, in June 1992.⁷⁰ The aim of the event was to bring issues of environmental degradation and sustainable development⁷¹ to the attention of the public and the corporate world. It took place in the aftermath of Union Carbide's gas leak at Bhopal⁷² in 1984 and the Exxon Valdez oil spill⁷³ in

⁶⁹ See the section on partnerships below.

⁷⁰ The event took place from 3-14 June 1992.

⁷¹ The concept was first mentioned in the 1972 book, *The Limits to Growth* by D L Meadows and others, Universe Books, New York. The United Nations (UN) set up the World Commission on Environment and Development (also known as the Brundtland Commission) in 1983, which produced what is commonly known as the Brundtland Report, *Our Common Future* (OUP, Oxford 1987), in 1987. The report framed much of what would become the forty chapters of Agenda 21 and the 27 principles of the Rio Declaration on Environment and Development. It also defined 'sustainable development' as development which 'meets the needs of present generations without compromising the ability of future generations to meet their own needs'. As such, the concept involves far more than just environmental protection.

⁷² For a full review of the disaster, see <<http://www.bhopal.com>> accessed 4 July 2009. The initiative 'Responsible Care' was set up in its aftermath, see below.

Alaska in 1989, and it was an appeal to governments, business, international development agencies, and NGOs to work together to minimise the trade-off between economic growth and environmental protection.⁷⁴ There were five major results of the Earth Summit: (1) the Convention on Biological Diversity⁷⁵, (2) the Framework Convention on Climate Change (UNFCCC)⁷⁶, (3) the Rio Declaration on Environment and Development⁷⁷, (4) Agenda 21⁷⁸ and (5) the Statement of Principles for the Sustainable Management of Forests.⁷⁹ The last three were adopted by more than 178 governments at the Summit. Agenda 21 - the Summit's Programme of Action - contained about thirty provisions relating to the activities of MNEs.⁸⁰ Principle 30.3 explicitly states that 'Business and industry, including transnational corporations, should recognise environmental management as among the highest corporate priorities and as a key determinant to sustainable development'. The Rio Declaration urged the business community to support what is known as the 'precautionary principle'⁸¹, according to which it is valid to take action to protect the environment even in situations where scientific evidence regarding the cause and

⁷³ The organisation Ceres and the Valdez Principles (now known as the Ceres Principles) were established as a result of the disaster. See V A Zondorak, 'A New Face in Corporate Environmental Responsibility: The Valdez Principles' (1991) 18 Boston College Environmental Affairs Law Review 457. Ceres is a national network of investment funds, environmental organisations and other public-interest groups working to advance environmental stewardship on the part of businesses. For more information see <<http://www.ceres.org>> accessed 4 July 2009.

⁷⁴ P Utting, 'Business Responsibility for Sustainable Development' (2000) Geneva 2000 Occasional Paper No. 2 (UNRISD, Geneva) 6.

⁷⁵ For the text of the Convention see the website <<http://www.biodiv.org>> accessed 17 August 2008.

⁷⁶ For the text of the Convention see the website <<http://www.unfccc.int>> accessed 17 August 2008.

⁷⁷ For full text see <<http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>> accessed 17 August 2008.

⁷⁸ Agenda 21 is known as the 'blueprint' for sustainable development. Although not legally binding, it is an important document representing consensus of the world's governments. Its Chapters deal with all aspects of sustainable development including social and economic dimensions (combating poverty and promoting human health), conservation and resource management, major groups (e.g. women, indigenous people, business and unions), and means of implementation (e.g. aid, public awareness, education).

⁷⁹ For full text see <<http://www.un.org/documents/ga/conf151/aconf15126-3annex3.htm>> accessed 17 August 2008.

⁸⁰ Chapter 30 is entitled 'Strengthening the Role of Business and Industry', see <<http://www.unep.org/Documents/Default.asp?DocumentID=52&ArticleID=78>> accessed 17 August 2008. Agenda 21 Recommendations also suggest that MNEs and other industrial actors should 'report annually on their environmental record as well as on their use of energy and natural resources'. See further UNCTAD, *Self-Regulation of Environmental Management: An Analysis of Guidelines Set by World Industry Associations for their Member Firms* (UNCTAD, Geneva 1996).

⁸¹ Article 3 of the UNFCCC reads: 'Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures taking into account that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost.' See the Precautionary Principle Project website <<http://www.pprinciple.net>> accessed 17 August 2008.

effects of environmental degradation is inconclusive. Business leaders were also pressed to undertake initiatives to promote greater environmental responsibility and encourage the development and diffusion of environmentally friendly technologies.⁸²

The Secretary General to the Rio Summit, Maurice Strong, then made it a priority to recruit Stephan Schmidheiny, a Swiss industrialist, as coordinator of the business input. To this end, Schmidheiny put together a team of Chief Executive Officers (CEOs) from about 50 companies to form a fledgling Business Council for Sustainable Development (BCSD).⁸³ The Council's participation at Rio rested on two promises: to provide a voice for business, and to put that voice into writing. The result was the publication of *Changing course: A global business perspective on development and the environment*⁸⁴ in the lead-up to the Earth Summit. The book emphasised the importance of rethinking corporate strategy with regards to the use and management of natural resources, and proffered a solution in the form of 'eco-efficiency', a 'process of adding ever more value while steadily decreasing resource use, waste and pollution'.⁸⁵ It also offered thirty-eight case studies of best environmental practice, including chemical producers Dow, DuPont and Shell. The association played a prominent role in influencing the UNCED process. The International Chamber of Commerce (ICC), which, in 1991, had laid out sixteen environmental principles in the Business Charter for Sustainable Development⁸⁶, was also active at Rio, arguing that the business community had now fully embarked upon a sustainable development path.⁸⁷ From its inception, the corporate environmentalism movement put a lot of emphasis on the notions of voluntarism, self-regulation and, latterly, on the idea of 'partnership'. As will be shown later, these ideas went on to

⁸² K Annan, 'A Compact for the New Century', Address to the World Economic Forum (Davos 31 January 1999) <<http://www.un.org/News/Press/docs/1999/19990201.sgsm6881.html>> accessed 17 August 2008.

⁸³ It subsequently became the World Business Council on Sustainable Development (WBCSD), see below.

⁸⁴ BSCD, *Changing course: A global business perspective on development and the environment* (MIT Press, Cambridge, Massachusetts 1992). See also the WBCSD website <<http://www.wbcd.ch>> accessed 17 August 2008.

⁸⁵ S Schmidheiny and F Zorraquin, with the WBCSD, *Financing Change: The Financial Community, Eco-Efficiency, and Sustainable Development* (MIT Press, Cambridge, Massachusetts 1996) 5.

⁸⁶ 'Business Charter for Sustainable Development- Principles for Environmental Management'. The principles are intended to provide an environmental benchmark for enterprises that wish to improve their environmental performance, see

<http://www.iccwbo.org/home/environment_and_energy/charter.asp> accessed 20 October 2004.

⁸⁷ See S Schmidheiny, R Chase and L DeSimone, *Signals of Change: Business Progress Towards Sustainable Development* (WBCSD, Geneva 1997).

shape and permeate contemporary theories about CSR. In effect, then, the characteristics of corporate environmentalism prefigure those of the more 'general' CSR movement.

II. The Nature of Contemporary CSR

The Rise of Voluntarism

After the Earth Summit in 1992⁸⁸, business associations laying down explicit environmental objectives (so-called 'green business networks'⁸⁹) were formed, thus accelerating the process of promoting improved standards of corporate environmental management.⁹⁰ Some of these business associations consolidated themselves in the latter half of the 1990s. For instance, in 1995, the BCSD merged with the World Industry Council for the Environment (WICE)- a brainchild of the ICC- to form the World Business Council for Sustainable Development (WBCSD), further consolidating the business associations⁹¹ developed to 'protect the environment' whilst pursuing traditional economic goals, namely profit-making.

The 1990s also saw the promotion of a number of environmental initiatives by industry associations and institutions as well as individual companies. The defining characteristic of these initiatives was their voluntary and self-regulatory nature. Business was encouraged to engage in corporate self-regulation or to cooperate with

⁸⁸ The Commission on Sustainable Development (CSD) was created in December 1992 to ensure effective follow-up of UNCED, to monitor and report on the implementation of the agreements at the local, national, regional and international levels. It was agreed that a five-year review of the Earth Summit progress would be made in 1997 by the United Nations General Assembly meeting in special session. The full implementation of Agenda 21, the Programme for Further Implementation of Agenda 21 and the Commitments to the Rio principles, were strongly reaffirmed at the World Summit on Sustainable Development (WSSD) held in Johannesburg, South Africa from 26 August to 4 September 2002.

⁸⁹ For a list of some of these networks, see the EnviroLink Network website <<http://www.envirolink.org>> accessed 17 August 2008. See also the Global Development Research Center website on sustainable business <<http://www.gdrc.org/sustbiz/index.html>> accessed 17 August 2008.

⁹⁰ --'In search of environmental excellence' (1994) IV (4) *Tomorrow* cited in Utting (n 74) 6.

⁹¹ See M Hansen, 'Environmental Regulation of Transnational Corporations: Needs and Prospects' in P Utting (ed), *The Greening of Business in Developing Countries: Rhetoric, Reality and Prospects* (Zed Books, London 2002).

government in negotiating and implementing mutually agreed standards.⁹² A variety of codes of conduct established by international and national associations emerged. Prominent examples include the 'Responsible Care'⁹³ initiatives of national chemical organisations that commit member companies to continually improve aspects related to health, safety and environment⁹⁴, and the Keidanren⁹⁵ Global Environment Charter⁹⁶, set up in 1991, which urges business enterprises in Japan to work towards healthy human, ecological and economic development.⁹⁷

Different kinds of voluntary standards also sprouted and came to be adopted by the business community. For instance, in 1991, the UN Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting (ISAR) established the first ISAR guide on environmental reporting. One of the most significant recommendations has been the ISAR's Position Paper on 'Accounting and Financial Reporting for Environmental Costs and Liabilities' that was published in 1998 and revised in 2000.⁹⁸ Following on from this, in 2004, UNCTAD released a set of new guidelines on corporate environmental accounting in the form of a manual.⁹⁹ Moreover, in 1993, the European Union's Eco- Management and Audit Scheme (EMAS) was launched to promote good management by manufacturers. It is said to be a 'management tool for companies and other organisations to evaluate, report and

⁹² Utting (n 74) 7.

⁹³ Since its inception in Canada in 1987 after the Bhopal disaster, Responsible Care has spread across 45 countries. Each country has implemented their strategy by focusing on their main chemical management problem. Importantly, Responsible Care collects data from companies regarding their performance and implementation methods. Companies are re-verified every three years and a National Advisory Committee has been created to increase information sharing and dialogue. See <<http://www.responsiblecare.org>> accessed 17 August 2008. See further D Spar and D Yoffe, 'Multinational Enterprises and the Prospects for Justice' (1999) 52(2) *Journal of International Affairs* 557, 576.

⁹⁴ See International Labour Organisation (ILO), *Voluntary Initiatives Affecting Training and Education on Safety, Health and Environment in the Chemical Industries* (ILO, Geneva 1999) <<http://www.ilo.org/public/english/dialogue/sector/techmeet/tmci99/tmcirep.htm>> accessed 17 August 2008.

⁹⁵ The Nippon Keidanren (Japanese Business Federation) sees itself as a 'comprehensive economic organisation'. See <<http://www.keidanren.or.jp/english/profile/pro001.html>> accessed 11 August 2008.

⁹⁶ See <<http://www.keidanren.or.jp/english/speech/spe001/s01001/s01b.html>> accessed 17 August 2008.

⁹⁷ UNCTAD, *Self-Regulation of Environmental Management: An Analysis of Guidelines Set by World Industry Associations for their Member Firms* (UNCTAD, Geneva 1996) 148.

⁹⁸ See <http://ecolu-info.unige.ch/recherche/supprem/content/unctad/reference_material/CAET-UNCTAD-MANUAL.pdf> accessed 17 August 2008.

⁹⁹ UNCTAD, *A Manual for the Preparers and Users of Eco-Efficiency Indicators* (UNCTAD, Geneva 2004). See

<http://www.unctad.org/en/docs//iteipc20037_en.pdf> accessed 17 August 2008.

improve their environmental performance'.¹⁰⁰ Furthermore, the North American Free Trade Agreement (NAFTA)'s Commission for Environmental Cooperation oversees environmental affairs in Canada, the United States and Mexico.¹⁰¹ Additionally, the Central American Council for Sustainable Development, established by the region's presidents in 1989, actively promotes sustainable development planning and projects in seven countries, affecting sectors such as forestry and tourism where business has a strong interest.¹⁰²

As for the International Organisation for Standardisation (ISO), which is the international association of national standard-setting bodies (which may be governmental, quasi-governmental or private industry organisations¹⁰³), it agreed on a set of generic standards for corporate environmental management systems, known as the 'ISO 14000 Series'.¹⁰⁴ The specific standard, ISO 14001, 'specifies the requirements for an Environmental Management System (EMS) that may be objectively audited for self-declaration or third-party certification/registration purposes'.¹⁰⁵ ISO 14001 prescribes that a company establishes an environmental policy that identifies all potential environmental effects arising out of its operations, and implements procedures designed to minimise these effects within the bounds of what can reasonably be achieved¹⁰⁶ at an acceptable economic cost.¹⁰⁷ The ISO 14000 series has gained international recognition as a benchmark and basis for certification

¹⁰⁰ See the EMAS website <http://europa.eu.int/comm/environment/emas/about/summary_en.htm> accessed 17 August 2008. In July 2008 the European Commission proposed to revise EMAS to increase the participation of companies and reduce the administrative burden and costs, particularly for small and medium sized enterprises (SMEs). See

<http://ec.europa.eu/environment/emas/pdf/com_2008_402_draft.pdf> accessed 21 August 2008.

¹⁰¹ See David L Markell and John H Knox (eds), *Greening NAFTA: The North American Commission for Environmental Cooperation* (Stanford University Press, Stanford 2003).

¹⁰² Utting (n 74) 7.

¹⁰³ R Krut and H Gleckman, *ISO 14001: A Missed Opportunity for Sustainable Global Industrial Development* (Earthscan, London 1998) 7.

¹⁰⁴ ISO, *ISO 14000: Meet the Whole Family!* (ISO, Geneva 1998). See the ISO website for more information <<http://www.iso.org>> accessed 17 August 2008.

¹⁰⁵ Certification is defined as an evaluation system intended to provide proof of a company or product's environmental or social performance. Questions arise concerning the degree of independence of the verifier and the rigour of the standards and indicators used to measure performance. See Utting (n 74) 4.

¹⁰⁶ What is 'reasonably achievable' depends on the conditions in which a company operates and the type of industry and activities in which it is involved. See A S Morris, *ISO 14000 Environmental Management Standards, Engineering and Financial Aspects* (John Wiley & Sons Ltd, London 2004) 2.

¹⁰⁷ Morris (n 106) 2.

to facilitate international trade.¹⁰⁸ Up to the end of December 2007, at least 154 572 ISO 14001 certificates had been issued in 148 countries and economies.¹⁰⁹

The Emergence of the idea ‘Partnership’

However, corporate self-regulatory initiatives came to be seen by many as ad hoc and piecemeal¹¹⁰, and they were subjected to growing criticism as it was felt that they lacked independent monitoring and verification.¹¹¹ The result was that voluntary and self-regulatory initiatives came to be supplemented by ‘partnerships’ or ‘multistakeholder initiatives’ (MSIs) as they are sometimes referred to.¹¹² These are said to create new opportunities for NGOs, multilateral and other organisations to engage directly with companies, and allow them to have some influence over the companies’ activities. These ‘partnerships’ rest on the premise that no fundamental conflicts exist between the different actors affected by corporate activities, and that they can do so on the basis of mutual trust and for a common purpose. This idea is taken up again below.

Many commentators and NGOs were sceptical of a return to state-based regulatory approaches or to those involving international regulation. This was partly because they were at odds with dominant neo-liberal ideas but also partly because in many developing countries the capacity of state institutions to implement legislation was (and still is) thought to be severely limited. Indeed, state capacity often declined as neo-liberal policy proposals - which put pressure on governments to reduce spending and to de-regulate - were adopted. Paradoxically, the implementation of neo-liberal policies also often had the unintended consequence of fuelling corruption, something

¹⁰⁸ See *UNCTAD (1996)* (n.96).

¹⁰⁹ ISO, ‘The ISO Survey – 2007 shows ISO management systems standards implemented in 175 countries’ ISO Press Release (11 November 2008)

<<http://www.iso.org/iso/pressrelease.htm?refid=Ref1178>> accessed 4 July 2009.

¹¹⁰ *Utting* (n 74) 12.

¹¹¹ See M Kemp, ‘Corporate Social Responsibility in Indonesia: Quixotic Dream or Confident Expectation?’ (2001) Technology, Business and Society Programme Paper No.6 (UNRISD, Geneva) and UNRISD, *Promoting Socially Responsible Business in Developing Countries: The Potential and Limits of Voluntary Initiatives. Report of the UNRISD Workshop Geneva, 23-24 October 2000* (UNRISD, Geneva 2001).

¹¹² They are commonly and interchangeably referred to as public-private partnerships or multi-stakeholder initiatives.

which added to the scepticism about the capacities of states.¹¹³ The result was that NGOs and multilateral organisations increasingly came round to the view that it would be better to endorse voluntary ‘partnership’ approaches in relation to environmental issues. Political parties and governments also started supporting these approaches – mindful of not upsetting business interests and inflows of FDI through talk of stronger regulatory approaches.¹¹⁴ The UN set the tone for a more conciliatory approach after the Earth Summit by closing its Centre on Transnational Corporations.¹¹⁵ Instead, it started encouraging partnerships with business, and agencies like UNCTAD promoted developing countries’ access to FDI. In fact, in his speech to the Chamber of Commerce of the United States in 1999, the then UN Secretary- General referred to a fundamental shift: ‘Confrontation has taken a back seat to co-operation. Polemics have given way to partnerships’.¹¹⁶

What exactly was meant by this? For the UN, a partnership is:

a voluntary and collaborative agreement between one or more partners of the UN system and non-state actors, in which all participants agree to work together to achieve a common purpose of undertaking a specific task and to share risks, responsibilities, resources, competencies and benefits.¹¹⁷

This takes into account the established definition of a partnership which involves the concept of shared responsibilities, profits and losses, and evokes notions of mutual trust, agreed common purposes, cooperation and voluntary commitment rather than coercion. Partners are seen to pull together to ‘get things done’ for the common good. In the context of business and the public sector, partnership is the device that brings together actors, which, historically, appeared to have fundamental conflicting and

¹¹³ P Utting, ‘Regulating Business via Multistakeholder Initiatives: A Preliminary Assessment’ in UN Non-Governmental Liaison Service (NGLS) and UNRISD, *Voluntary Approaches to Corporate Responsibility: Readings and a Resource Guide* (NGLS and UNRISD, Geneva 2002) 73 <<http://www.unsystem.org/ngls/Section%20II.pdf>> accessed 14 September 2008.

¹¹⁴ Utting (n 113) 74.

¹¹⁵ In a 1993 restructuring of the UN’s economic and social agencies, the Centre on Transnational Corporations was transferred to a Division within UNCTAD.

¹¹⁶ Address by Kofi Annan to the Chamber of Commerce of the United States of America, Washington DC, 8 June 1999 cited in A Zammitt, *Development at Risk: Rethinking UN-Business Partnership* (The South Centre and UNRISD, Geneva 2003) 31.

¹¹⁷ J Nelson, *Building Partnerships. Co-operation between the United Nations system and the Private Sector. Report commissioned by the United Nations Global Compact Office* (United Nations, New York 2002) 46.

irreconcilable interests¹¹⁸, to create a level playing-field whereby all differences are reconciled and interests are balanced so as a 'win-win' situation is said to emerge.¹¹⁹

The Political Dimension

Partnerships have also been justified on political grounds. According to Kell and Ruggie, two disequilibria emerged in the late twentieth century, namely, the disconnection between the economic sphere and broader frameworks of shared values and practices, and the imbalances in international governance structures. For them, partnerships were potentially the means with which to correct these disequilibria:

there *has* been a significant expansion of global economic rule-making ... aimed largely at creating the institutional bases for the functioning of global markets ...these expressions of rule-making have *not* been matched by comparable efforts on behalf of other global concerns, such as environment, human rights or poverty....¹²⁰ (emphasis in original)

The political dimension of partnerships has thus been linked to the political ideology known as the 'Third Way'. The Third Way appears to have emerged as a consequence of what was viewed as the failure of both 'New Right', Reagan/Thatcher conservatism and the more socialistic, socially democratic and welfarist tradition of Europe. More than an alternative, it is a compromise between the two. The Third Way purports to seek to create an effective balance between the state, markets and civil society. It thus lays strong emphasis on the importance of an 'enabling' rather than 'bureaucratic' government¹²¹: the relationship between public and private sector is thus altered. In this climate, corporations are encouraged to be dynamic and

¹¹⁸ See earlier discussion on the differences between the SRC and contemporary CSR.

¹¹⁹ It must be noted that the 'win-win' notion had been criticised for not only marginalising the role of governmental regulation and civil society pressure as key drivers of change, but also exaggerating the proposition that environmental management reform is necessarily good for profits. *Utting* (n 74) 5. See further chapter 4 on the business case for CSR.

¹²⁰ G Kell and J G Ruggie, 'Global Markets and Social Legitimacy: The Case of the Global Compact' (1999) International Conference 'Governing the Public Domain Beyond the Era of the Washington Consensus? Redrawing the Line between the State and the Market', York University, Toronto, 4-6 November 1999, 1.

¹²¹ Central policy elements in Third Way thinking are: the restructuring of the state and government to make them more democratic and accountable; reform of welfare systems to align better with the risks that people face today; an emphasis on job creation together with labour market reform; a commitment to fiscal discipline; investment in public services in conjunction with reform; investment in human capital as crucial to success in the knowledge economy; balancing the rights and responsibilities of citizens; and a multilateral approach to globalisation and international relations – see A Giddens, 'The world has not heard the last of the Third Way' *Financial Times* (London 11 July 2003) 19.

innovative, but also have to value their work-force and invest in it, and to engage in partnerships with other sectors to provide services and benefits for all that the state working alone cannot.¹²² Therefore, various suppliers providing a range of choice for consumers, public-private partnerships (PPPs) and a maximum of local autonomy are advocated to achieve improvements in, for example, schools and hospitals that serve their community. The key concepts of 'community', 'responsibility' and 'partnership' are what the corporate sector has to strive for so that there can be a collaborative move towards the regeneration of civil society.

In return for the above, the state promises to provide support through non-intervention in a regulatory sense, except as is necessary to foster competitiveness and to facilitate the operation of free markets.¹²³ As a result, partnerships are seen to be part of what O'Brien calls 'complex multilateralism',¹²⁴ a system of governance which involves not only formal state-based institutions but also the private sector and civil society. Nelson and Zadek, for instance, argue that:

traditional power hierarchies are being replaced by a more complex, multi-relational balance of power, where citizens and companies are playing an active role in shaping socio-economic change and addressing problems that were previously the sole responsibility of government.¹²⁵

'Green' Partnerships

In a review of green business in 1998, Frankel noted that for forward-thinking businesses, 'partnership... quickly established itself as the strategy of choice'.¹²⁶ Thus, in 1996, the World Wildlife Fund (WWF)-International launched a partnership with Unilever Corporation, the world's largest buyer of frozen fish, to create economic incentives within the seafood industry for 'sustainable fishing' throughout

¹²² Sally Wheeler, *Corporations and the Third Way* (Hart Publishing, Oxford 2002) 36-37.

¹²³ Wheeler (n 122) 36.

¹²⁴ R O'Brien, 'Complex Multilateralism: The Global Economic Institutions and Global Social Movements Nexus', paper presented at conference on 'Non-State Actors and Authority in the Global System', University of Warwick, 1 November 1997 cited in P Utting, 'UN-Business Partnerships: Whose Agenda Counts?' (2000) Seminar on 'Partnerships for Development or Privatisation of the Multilateral System?' 8 December 2000, 3

<[http://www.unrisd.org/unrisd/website/document.nsf/d2a23ad2d50cb2a280256eb300385855/a687857bd5e36114c1256c3600434b5f/\\$FILE/utting.pdf](http://www.unrisd.org/unrisd/website/document.nsf/d2a23ad2d50cb2a280256eb300385855/a687857bd5e36114c1256c3600434b5f/$FILE/utting.pdf)> accessed 18 August 2008.

¹²⁵ J Nelson and S Zadek, *Partnership Alchemy: New Social Partnerships in Europe* (The Copenhagen Centre, Copenhagen, 2000) cited in Utting (n 124) 3-4.

¹²⁶ C Frankel, 'One Foot in the future' (1999) IX (1) Tomorrow Magazine 11-12.

the world. As a result, the Marine Stewardship Council (MSC) was set up in 1997.¹²⁷ In addition, the Fairtrade Foundation¹²⁸ - a coalition of international development, consumer and fair trade organisations - has launched a project to work with British companies to develop codes of practice to guide relationships with their Southern suppliers.¹²⁹ In 1998, British Petroleum (BP) allied itself with the Environmental Defence Fund whilst General Motors did so with the World Resources Institute.¹³⁰ A number of Fortune 500 companies are also supporting the Pew Center on Global Climate Change.¹³¹

Moreover, the Johannesburg World Summit for Sustainable Development (WSSD), held in 2002, was celebrated by many as the occasion on which the PPP approach triumphed as a way of getting things done.¹³² Over seven hundred businesses were present and 'for some of the companies ... this could almost be the second gold rush'.¹³³ Over two hundred and forty partnerships were announced in the fields of, amongst others, water and energy, and the event played a key role in establishing the idea that global PPPs or multistakeholder partnerships¹³⁴ are the way forward.¹³⁵ Recent partnerships in the environment field can be found on the website of the UN Division for Sustainable Development.¹³⁶ The idea of partnerships is looked at in

¹²⁷ The MSC began to operate as an independent organisation in 1999. It has developed a certification system that aims to assess and promote the sustainability of marine fisheries. As a result, consumers can buy seafood products that have been assessed against the MSC standard, namely the MSC Principles and Criteria for Sustainable Fishing. These principles have been based on the Code of Conduct for Responsible Fisheries that was developed by the Food and Agriculture Organisation (FAO) and adopted in 1995. As of August 2008, there were 31 certified fisheries. See <<http://www.msc.org/track-a-fishery/certified>> accessed 17 August 2008.

¹²⁸ The concept of 'fair trade' itself has been identified as and associated with a global social movement which seeks to offer producers in developing countries fair prices for their goods. See Kleber B Ghimire, 'Contemporary Social Global Movements, Emergent Proposals, Connectivity and Development Implications' (2005) UNRISD Civil Society and Social Movements, Programme Paper No. 19 (UNRISD, Geneva) 8-9.

¹²⁹ For a list of the wholesale suppliers of Fairtrade certified products, see <http://www.fairtrade.org.uk/products/wholesaler_suppliers.aspx> accessed 17 August 2008. An example of how Fairtrade products are being used is shown by Marks and Spencer, which has switched all the coffee used in its 198 'Café Revives' to Fairtrade certified coffee as of September 2002.

¹³⁰ Utting (n 74) 8.

¹³¹ See the website <<http://www.pewclimate.org>> accessed 18 August 2008.

¹³² See Zammit (n 116) 55-56. See also the website of the WSSD <<http://www.un.org/events/wssd>> accessed 18 August 2008.

¹³³ Barry James, 'Partnerships stressed at the Summit: Many companies find an opportunity' *International Herald Tribune* (Paris 2 September 2002) cited in Zammit (n 116) 55.

¹³⁴ These are also referred to as Type-2 partnerships in UN parlance.

¹³⁵ See the Earth Summit 2002 website <<http://www.earthsummit2002.org>> with links to the 'Partnership Paper' and 'Capacity Building for Partnerships' accessed 18 August 2008.

¹³⁶ See <<http://www.un.org/esa/sustdev/partnerships/partnerships.htm>> accessed 18 August 2008.

further detail in the next chapter in the context of the corporate accountability movement.

Contemporary CSR: From Conflict to Partnership

The ideas of voluntarism, self-regulation and partnership, which emerged in the environmental context, soon began to spread elsewhere, eventually becoming the cornerstones of the more 'general' contemporary CSR movement. During the latter half of the 1990s, the issue of more general 'social' responsibility rather than mere 'environmental' responsibility became one of the focuses of the public sector and big business. It is in this context that the idea of CSR in its contemporary form began to crystallise.

As noted above, the Earth Summit seems to have signified the beginning of the new contemporary wave of CSR by prompting the emergence of 'corporate environmentalism'. It was when its key features began to spread elsewhere that contemporary CSR began to take firmer shape. A change of philosophy and tactics took place: there was a shift from confrontation to cooperation, and from cooperation to partnership. NGOs, multilateral and other organisations started encouraging companies to participate in schemes that set social and environmental standards, monitor compliance, promote social and environmental reporting and auditing, certify good practice, and encourage stakeholder dialogue and 'social learning'.¹³⁷ As already explained, the approach of these organisations stressed the possibilities for changing business policy and practice through constructive engagement rather than confrontation.¹³⁸ Governments were also seen to be encouraging 'partnerships': for example, in 1997, the US Government set up the multistakeholder Apparel Industry Partnership.¹³⁹ Moreover, the UK Government appointed a Minister for Corporate Social Responsibility, in March 2000, whose mandate centres primarily on promoting

¹³⁷ Utting (n 113) 61.

¹³⁸ See D F Murphy and J Bendell, 'Partners in Time? Business, NGOs and Sustainable Development' (1999) UNRISD Discussion Paper No. 109 (UNRISD, Geneva).

¹³⁹ For the summary of the Agreement see

<<http://www-old.itcilo.org/actrav/actravenglish/telearn/global/ilo/guide/apparell.htm>> accessed 18 August 2008.

voluntary approaches, arguing that CSR must be a 'business-led agenda'.¹⁴⁰ The UN has been at the forefront of these initiatives. The ex-Secretary-General's 1997 address to the World Economic Forum (WEF), for example, emphasised the role of the private sector and the fact that UN programmes, funds and specialised agencies:

... [needed to work] with Member States, as never before, to foster policies that encourage further growth of the private sector and the free market. ... Strengthening the partnership between the United Nations and the private sector will be one of the priorities ...¹⁴¹

Annan's January 1998 speech to the WEF also clearly shows the UN's commitment towards partnerships with business:

... A fundamental shift has occurred. The United Nations once dealt only with governments. By now we know that peace and prosperity cannot be achieved without **partnerships involving governments, international organizations, the business community and civil society**. In today's world, we depend on each other. The business of the United Nations involves the businesses of the world.¹⁴² (emphasis added)

The position taken by the UN in relation to the business community has been said to be a strategy aimed at diminishing the anti-UN sentiments of an influential part of the US political establishment, including important sectors of business.¹⁴³ As Zammitt explains:

conservative foundations and think-tanks, hostile to the UN's 'development role' and its efforts to develop codes of conduct for transnationals, worked vigorously in the 1980s to foster opposition to the UN, to the point that 'the

¹⁴⁰ Stephen Timms, the Minister in 2002, cautioned that the dead hand of Government would only stifle innovation, believing that it must be business recognising the benefits for themselves that will drive the necessary change in corporate culture- see Ella Joseph, 'We can't just leave it to business to be good' *The Observer* (London 1st December 2002)

<<http://www.guardian.co.uk/politics/2002/dec/01/thinktanks>> accessed 18 August 2008. For current information on the UK government CSR policies, see <<http://www.csr.gov.uk/>> accessed 18 August 2008.

¹⁴¹ UN, 'Secretary-General, in Address to World Economic Forum, Stresses Strengthened Partnership between United Nations, Private Sector' UN Press Release SG/SM/6153 (31 January 1997) <<http://www.un.org/News/Press/docs/1997/19970131.sgsm6153.html>> accessed 18 August 2008.

¹⁴² UN, 'Unite Power of Markets with Authority of Universal Values' UN Press Release SG/SM/6448 (30 January 1998) <<http://www.unhchr.ch/hurricane/hurricane.nsf/0/2C716C42373EC4F0C125662E00352F58?opendocument>> accessed 18 August 2008.

¹⁴³ See E Paine, 'The Road to the Global Compact: Corporate Power and the Battle over Global Public Policy at the United Nations', Global Policy Forum, New York, October 2000 <<http://www.globalpolicy.org/reform/papers/2000/road.htm>> accessed 21 August 2008.

UN' became a prominent issue in US domestic policies and was widely portrayed as statist, anti-market, costly and inefficient.¹⁴⁴

The shift towards collaboration and partnership seems, therefore, to have served the purposes of both the UN and big business.

It is argued that participation in partnerships is advantageous to corporations, improving their efficiency, profitability and competitive edge: the pursuance of what is known as the 'triple bottom line' (TBL) - that is, profitability combined with environmental and social goals - creates a more stable business environment.¹⁴⁵ Moreover, corporations hope that by engaging in partnerships they will reduce the pressure on governments to engage in the direct regulation of business or to use trade sanctions, enforced by the World Trade Organisation (WTO), to underpin labour and environmental rights.¹⁴⁶ This approach has been encouraged. The then Secretary-General of the UN, for example, seemed to imply at the 1999 WEF in Davos that the UN would support the idea of a trade and investment regime largely free of social and environmental clauses, and in return, called on businesses to take voluntary initiatives to uphold human rights, and labour and environmental standards.¹⁴⁷ As for NGOs and the UN agencies, being all too aware of the political difficulties of promoting corporate responsibility through a stronger regulatory approach¹⁴⁸, partnerships have a pragmatic appeal. Even the most determined activist can grow weary of issuing condemnations from outside corporate fortresses; better, perhaps, to engage directly and have some influence over day-to-day activities.¹⁴⁹ Hence, because of its 'feel good' overtones, partnerships have nowadays become the preferred way of encouraging business to act responsibly.

¹⁴⁴ *Zammit* (n 116) 42.

¹⁴⁵ For a critical analysis of the term see W Norman and C MacDonald, 'Getting to the Bottom of "Triple Bottom Line"' (2004) 14(2) *Business Ethics Quarterly* 243. The authors argue that '[b]y committing themselves to the principles of the TBL it sounds like companies are making a *more* concrete, verifiable commitment to CSR and sustainability. And no doubt many are. But it also allows them to make almost no commitment whatsoever (emphasis in original).' *Norman and MacDonald* 256.

¹⁴⁶ E V K Fitzgerald, 'Regulating International Firms' (2001) *Technology, Business and Society Programme Paper No. 5* (UNRISD, Geneva) 13.

¹⁴⁷ See UN, 'Secretary-General proposes Global Compact on human rights, labour, environment, in address to World Economic Forum in Davos' UN Press Release SG/SM/6881 (1 February 1999) <<http://www.un.org/News/Press/docs/1999/19990201.sgsm6881.html>> accessed 18 August 2008.

¹⁴⁸ As seen by the demise of the Centre on Transnational Corporations and the abandonment of efforts to draft legally binding codes of conduct by the UN. See discussion above.

¹⁴⁹ *UNRISD* (n 44) 87.

The facets of Contemporary CSR

Contemporary CSR, like the environmental initiatives which preceded it, is thus *voluntary* and *self-regulatory* in nature, and is based upon mechanisms such as codes of conduct, standards, social reporting, support for community projects and philanthropy. It stresses the strategic and economic benefits to corporations (and their shareholders) of embracing CSR: by engaging proactively with the CSR agenda, business, it is argued, would be in the driving seat to ensure that change took place on terms favourable to its interests; hence the so-called ‘win-win’ arguments suggesting that CSR makes good business sense by boosting a company’s competitive advantage, creating new markets and, in some instances, even reducing costs.¹⁵⁰ This has been referred to as the ‘business case’ for CSR, and is looked at in more detail in the following chapter.

One of the first ‘proper’ corporate ‘social’ initiatives came from the Business Association for the World Social Summit (BUSCO), which presented a statement of principles, and a sixteen-point action programme in which companies were called upon to implement ‘to intensify their contribution to social progress’¹⁵¹, at the World Summit for Social Development (WSSD) in Copenhagen¹⁵² in 1995. The WBCSD also diversified its activities by engaging more directly with issues of CSR¹⁵³ instead of just environmental matters.¹⁵⁴

The culmination of the wider dimension of contemporary CSR was probably the launch of the UN Global Compact¹⁵⁵ by Kofi Annan in 1999, a ‘voluntary corporate citizenship initiative’¹⁵⁶, which works with five UN agencies – the ILO, the United Nations Development Programme (UNDP), the United Nations Environment Programme (UNEP), the United Nations Industrial Development Organisation

¹⁵⁰ Utting (n 113) 68.

¹⁵¹ BUSCO, *Contribution of Corporations to Social Development* (BUSCO, Paris 1995) cited in Utting, (n 74) 7. See also for the statement by the then President of BUSCO

<<http://www.un.org/documents/ga/conf166/ngo/950310062935.htm>> accessed 18 August 2008.

¹⁵² See website of the WSSD <<http://www.un.org/esa/socdev/wssd/>> accessed 18 August 2008.

¹⁵³ See P Watts and Lord Holme, *Corporate Social Responsibility: Meeting Changing Expectations* (WBCSD, Geneva 1999).

¹⁵⁴ See the previous section on corporate environmentalism.

¹⁵⁵ For a history of its early evolution, see G Kell and D Levin, ‘The Global Compact Network: An Historic Experiment in Learning and Action’ (2003) 108(2) *Business and Society Review* 151.

¹⁵⁶ See its website <<http://www.unglobalcompact.org/AboutTheGC/index.html>> accessed 18 August 2008.

(UNIDO) and the UN Office of the High Commissioner for Human Rights (OHCHR). The purpose of the Global Compact (GC) is to encourage companies to embrace ten¹⁵⁷ principles of corporate social responsibility relating to observance of human rights, the establishment and upholding of labour standards, the protection of the environment and the upholding of anti-corruption practices. These principles are deemed to be the most relevant at the corporate level as well as at the level of global rule-making.¹⁵⁸ The essence of the conceptual and political framework for the GC is that adoption of the ten principles is deemed to be a direct means of promoting sustainable development, by virtue of 'embedding liberalism in social norms'.¹⁵⁹ The GC is the most explicit UN initiative that addresses CSR. To date, the GC has received considerable acknowledgment from industry, industry groups and some members of civil society. It is one of the few CSR initiatives that extends to the international, regional, national and local level¹⁶⁰, although it has also attracted considerable criticism when it comes to membership, implementation and impact in developing countries.¹⁶¹

The Labour Dimension

The many facets of contemporary self-regulatory CSR thus combine initiatives relating to such things as labour, human rights, the environment and anti-corruption

¹⁵⁷ It started off with nine principles but as of June 2004, a tenth principle on anti-corruption was adopted. This decision reflects the United Nations Convention against Corruption that was adopted in October 2003. For the Principles see <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html> accessed 18 August 2008.

¹⁵⁸ G Kell and J G Ruggie, 'Global markets and social legitimacy: The case for the "Global Compact"' (1999) 8(3) *Transnational Corporations* 101. It must be noted that the Compact has adopted a 'learning approach' to induce corporate change, as opposed to a regulatory approach. See, for instance, J G Ruggie, 'The Theory and Practice of Learning Networks: Corporate Social Responsibility and the Global Compact' (2002) 5 *Journal of Corporate Citizenship* 27.

¹⁵⁹ Zammit (n 116) 71. See further J G Ruggie, 'Taking Embedded Liberalism Global: The Corporate Connection' in D Held and M Koenig-Archibugi (eds), *Taming Globalization: Frontiers of Governance* (Polity, Cambridge 2003) <http://www.cid.harvard.edu/events/papers/LSE-final.pdf> accessed 18 August 2008.

¹⁶⁰ Zammit (n 116) 71.

¹⁶¹ Zammit (n 116) 76-77. One of the most vehement critics of the GC is the informal network of organisations and people known as the 'Global Compact Critics'. See their blog <http://globalcompactcritics.blogspot.com/> accessed 5 July 2009. For a more optimistic view in relation to developing countries in Sub-Saharan Africa, see L Rieth and others, 'The UN Global Compact in Sub-Saharan Africa: Decentralisation and Effectiveness' (2007) 28 *Journal of Corporate Citizenship* 99.

issues. In this section, I focus briefly on the labour dimension to further illustrate the ambit and key features of contemporary CSR.

Codes of Conduct

Labour issues figured prominently as the new CSR began to emerge. The 1990s was the decade where numerous stories concerning sweatshop abuses and labour violations surfaced.¹⁶² This gave rise to a plethora of industry and individual company codes of conduct focussing on labour issues.¹⁶³ These tend to be associated with the garment, footwear, sporting goods, toy and retail sectors.

For instance, in 1995, international industry bodies such as the World Federation of the Sporting Goods Industry (WFSGI) and the International Council of Toy Industries (ICTI) adopted codes of conduct dealing with working conditions and child labour.¹⁶⁴ The 2000 revised edition of the WFSGI Model Code of Conduct includes a guideline on collective bargaining and reiterates the need for third party monitoring. It also includes a provision concerning physical, sexual, psychological and verbal abuse in the workplace.¹⁶⁵ The ICTI devised the 'Code of Business Practice'¹⁶⁶ setting out a range of guidelines for toy industry factories. The Code is divided into three sections: labour, workplace issues and compliance. Within these sections human, labour, health and safety and environmental rights are outlined for toy factories to adopt and follow. Significantly, the Code was developed to influence local and national government to ensure that there are adequate wage, factory, health and safety laws.

In similar vein, the International Union of Food, Agriculture, Hotels, Restaurants, Catering, Tobacco and Allied Workers' Association (IUF) drafted the first code of conduct for the tea sector in 1995.¹⁶⁷ This fourteen-point plan asks for the fundamental human rights relating to the core ILO conventions to be adhered to by the tea industry. And in 1997 the American Apparel Manufacturers Association

¹⁶² See chapter 1 of the thesis.

¹⁶³ *Abrahams* (n 47) 6.

¹⁶⁴ See A Wild, *A Review of Corporate Citizenship and Social Initiatives: Social Citizenship – What's Going on...and Why?* (Enterprise and Cooperative Development Department, ILO, Geneva 1998).

¹⁶⁵ See <<http://www.wfsgi.org/articles/71>> accessed 18 August 2008.

¹⁶⁶ See <<http://www.toy-icti.org/mission/bizpractice.htm>> accessed 18 August 2008.

¹⁶⁷ See <<http://www1.umn.edu/humanrts/links/teacode.html>> accessed 18 August 2008.

developed the Worldwide Responsible Apparel Production (WRAP) Principles.¹⁶⁸ The WRAP Production Principles dictate that garments and footwear should be produced under lawful, humane and ethical conditions. Twelve WRAP Production Principles need to be addressed by manufacturers in order to obtain certification, under the WRAP Certification Programme. Certification takes a three-pronged approach: self-assessment, independent monitoring and final review and follow-up.¹⁶⁹ The North American Agreement on Labour Cooperation (NAALC), a side agreement of the North American Free Trade Agreement (NAFTA), also came into force in 1994.¹⁷⁰ Under the NAALC, the US, Canadian and Mexican governments agree to enforce their own labour laws and promote eleven worker rights principles.¹⁷¹

Furthermore, the Ethical Trading Initiative (ETI) was set up in the UK in 1998. The ETI is an alliance of companies, NGOs and trade union organisations. Its aim is to promote and improve the implementation of corporate codes of conduct which cover supply chain working conditions, and its ultimate goal is to ensure that the working conditions of workers producing for the UK market meet or exceed international labour standards.¹⁷² The ETI has a Base Code, which can act as a template for companies as it provides a generic standard for company performance. The ETI believes that the labour standards incorporated in the Base Code constitute a minimum requirement for any corporate code of labour practice. When they join ETI, the corporate members commit to implementing its Base Code in their supply chains and reporting annually on their progress in doing so.¹⁷³

¹⁶⁸ See <<http://www.wrapapparel.org/>> accessed 18 August 2008.

¹⁶⁹ For a list of WRAP-certified factories, see

<<http://www.wrapapparel.org/modules.php?name=Content&pa=showpage&pid=44>> accessed 18 August 2008. For a critical appraisal of WRAP, see J Bendell, 'In whose name? The accountability of corporate social responsibility' (2005) 15(3) *Development in Practice* 362, 364-365.

¹⁷⁰ See <<http://www.naalc.org>> accessed 18 August 2008.

¹⁷¹ Provisions for sanctions, however, are limited. NAALC establishes a Commission that includes a cabinet-level Ministerial Council and a permanent secretariat. National Administrative Offices (NAOs) in the Labour Ministry in each country serve as focal points, provide information, and co-ordinate educational, research and technical assistance activities. They are also involved in complaints procedures, vetting the validity of complaints, looking into complaints that are accepted for review, and writing a report. A NAO can recommend cabinet-level consultations to consider a case but these have usually resulted in further hearings, consultations and research and educational activities. See <www.ilo.org/public/english/employment/gems/eeo/nafta/clc.htm> accessed 18 August 2008.

¹⁷² See website <<http://www.ethicaltrade.org/>> accessed 27 August 2008.

¹⁷³ For the full text of the Base Code, see <<http://www.ethicaltrade.org/Z/lib/base/index.shtml>> accessed 27 August 2008.

Enforceability

For a code of conduct to be meaningful it must, of course, have clear mechanisms of implementation and compliance. Yet the International Organisation of Employers estimates that eighty percent of codes are really simply statements about general business ethics, lacking mechanisms for implementation and compliance.¹⁷⁴ In addition, in practice, implementation can only be guaranteed where there is an element of independent monitoring of codes of conduct.¹⁷⁵ But out of 246 codes reviewed by the OECD in 2000, only 26 had external monitoring mechanisms in place.¹⁷⁶ This raises suspicions as to the effective implementation, if any, of such codes of conduct.

It would be wrong, however, to dismiss entirely the beneficial effects of codes of conduct. For instance, concrete improvements have been reported in Nike's factories in Vietnam, including the reduction of hazardous chemicals and improvements in ventilation and safety conditions.¹⁷⁷ In Honduras, the Kimi garment factory reinstated sacked workers, and they were allowed to organise a union.¹⁷⁸ These show that codes of conduct can and do sometimes provide levers which can be used to alter corporate behaviour. Moreover, because of codes, MNEs increasingly accept the notion of 'extended responsibility' for the activities of their affiliates and some suppliers.¹⁷⁹ And by focussing attention on *how* goods are produced - as opposed to *what* is produced - codes have the potential to broaden consumer interest and mobilisation beyond questions of price and quality to the social and environmental implications of their choices¹⁸⁰, possibly creating an impact on consumer sales and thus on a company's bottom line.

¹⁷⁴ ILO, *Overview of Global Developments and Office Activities Concerning Codes of Conduct, Social Labelling and other Private Sector Initiatives Addressing Labour Issues*. Working Party on the Social Dimensions of the Liberalisation of International Trade, GB.273/WP/SDL/1 (rev1) (ILO, Geneva 1998) 7.

¹⁷⁵ Jenkins (n 45) 25.

¹⁷⁶ OECD, *Codes of Corporate Conduct- An expanded review of their contents*, OECD Working Party of the Trade Committee, TD/TC/WP (99) 56/FINAL (OECD 2001) Table 6, 10.

¹⁷⁷ D Grayson, 'Clearing the air' in Financial Times (FT), *Responsible Business: A Financial Times Guide* (FT, London 1999) 20.

¹⁷⁸ See B Jeffcott and L Yanz, 'Codes of Conduct, Government Regulation and Worker Organizing' (2000), Ethical Trading Action Group Discussion Paper No.1 cited in Jenkins (n 45) 28.

¹⁷⁹ Jenkins (n 45) 29. See also UNRISD, 'Corporate Social Responsibility and Business Regulation' (2004) Programme on Technology, Business and Society Research and Policy Brief 1 (UNRISD, Geneva).

¹⁸⁰ Jenkins (n 45) 29.

In addition, the recent case of *Kasky v Nike Inc.* in the United States¹⁸¹ suggests that where a corporation represents that it is meeting a certain standard of conduct when in fact it is not, the consequences might be more than a PR disaster; there might be legal penalties.¹⁸² In 1997, Nike was accused of paying low wages and maintaining dangerous working conditions in its Asian factories, and was faced with consumer boycotts. While denying the charges, the company moved swiftly to protect its public image, joining with other companies to draw up a code of conduct and severing relations with a number of contractors.¹⁸³ Nike also retained former UN ambassador Andrew Young and his firm, Goodworks International, to review its newly rewritten Code of Conduct.¹⁸⁴ Written at the request of Nike chairman Phil Knight, Young's report concluded that 'no systematic abuses of workers were uncovered'; yet it failed to address the more significant issues of wage and living standards¹⁸⁵, prompting widespread criticism from human rights groups with Medea Benjamin, director of Global Exchange exclaiming: 'If it (Young's report) weren't so attractive from a PR point of view, I'd say it was a big joke. The methodology is totally flawed'.¹⁸⁶ Not to be deterred, Nike launched a campaign that included newspaper advertisements, letters to editors and correspondence with college and university presidents. The company's aim was to demonstrate that it had taken steps to improve conditions for overseas workers, and to reassure customers that it deserved continued trust and loyalty.

¹⁸¹ *Marc Kasky v Nike Inc.* 45 P 3d 243 (Cal. 2002).

¹⁸² T Spencer, 'Talking about Social Responsibility: Liability for Misleading and Deceptive Statements in Corporate Codes of Conduct' (2003) 29 Monash University Law Review 297, 298.

¹⁸³ *UNRISD* (n 44) 81. Nike signed the then President Clinton's 'No Sweat Shops' promise, becoming a member of the President's task force known as the Apparel Industry Partnership (see above), voluntarily agreeing to an industry-wide agreement known as the Workplace Code of Conduct- see Bob Herbert, 'Mr Young Gets it Wrong' *New York Times* (New York 27 June 1997) <<http://query.nytimes.com/gst/fullpage.html?res=9B0DEFD81231F934A15755C0A961958260>> accessed 19 August 2008. See also R P Toftoy, 'Now Playing: Corporate Codes of Conduct in the Global Theater, Is Nike Just Doing It?' (1998) 15 Arizona Journal of International and Comparative Law 905.

¹⁸⁴ See -- 'Human Rights Leader to Evaluate Nike's Global Code of Conduct' *Canada Newswire* (Beaverton, OR February 24 1997).

¹⁸⁵ See Tim Shorrock, 'Report on Nike Mostly Positive', *Journal of Commerce* (June 25 1997) <<http://www.saigon.com/~nike/news/joc4.htm>> accessed 19 August 2008. The Young Report can be accessed at <<http://www.calbaptist.edu/dskubik/young.htm>> accessed 19 August 2008. Young visited twelve factories in Vietnam, Indonesia and China.

¹⁸⁶ J Make, 'Critics: Young Report Just Doesn't Do It', *Business Journal* (Portland, June 27 1997) 1 cited in *Toftoy* (n 183) 925.

In 1998, Marc Kasky brought an action against Nike, alleging that the company had engaged in negligent and intentional or reckless misrepresentation, unfair and unlawful business practices and false advertising in contravention of sections 17200 and 17500 of the Californian 'Business and Professions Code'.¹⁸⁷ The case rose through the courts until it reached the California Supreme Court in spring 2002. The result was a 4-3 split decision in favour of Kasky, which Nike then appealed to the US Supreme Court.¹⁸⁸ The case was set to go to trial, but in September 2003, Marc Kasky and Nike announced a settlement stipulating that Nike would pay \$1.5 million to the Washington DC-based Fair Labor Association (FLA), a non-profit organisation that promotes adherence to international labour standards and works to improve working conditions worldwide.¹⁸⁹ In its press release announcing the settlement, Nike announced that it had decided 'not to issue its corporate responsibility report externally for its fiscal year 2002 and will continue to limit its participation in public events and media engagement in California'.¹⁹⁰

Since the case settled, the California Supreme Court's decision will for the time being stand, and its sweeping definition of commercial speech¹⁹¹ now applies to all speech by corporations that reaches California. According to Sophia Muirhead of The Conference Board¹⁹², the potential fallout could include an increase in false advertising suits and a negative impact on corporate social reporting and transparency.¹⁹³ As the scope of public issues on which companies are expected to

¹⁸⁷ *Spencer* (n 182) 305.

¹⁸⁸ See <<http://www.sustainability.com/insight/issue-brief.asp?id=61>> accessed 5 July 2009.

¹⁸⁹ See website <<http://www.fairlabor.org/>> accessed 19 August 2008.

¹⁹⁰ For the full text of the press release see

<http://www.nike.com/nikebiz/news/pressrelease_print.jhtml?year=2003&month=09&letter=f> accessed 5 September 2008.

¹⁹¹ The case turned on the distinction between 'political' speech and 'commercial' speech. Under US constitutional law, political speech, or speech on public issues, enjoys special protection and freedoms. Commercial speech, on the other hand, is not subject to the same protection. Unlike political speech it can be regulated by government, making it subject, for example, to truth in advertising laws. The US Supreme Court was asked to decide whether Nike's statements indeed constituted commercial speech, or political speech entitled to First Amendment protection. It was widely expected that the Court would produce a landmark decision which would clarify the free speech rights of corporations. In a surprising development, the Supreme Court handed down a one-sentence ruling stating that their decision to review the case had been 'improvidently granted'. Basically, the Court changed its mind about hearing the case and side-stepped making a judgement on the free speech issue. See website at note 188.

¹⁹² A not-for profit organisation, founded in 1916, bringing together business leaders to find solutions to common problems, and objectively examine major issues having an impact on business and society, see the website <<http://www.conference-board.org/aboutus/history.cfm>> accessed 19 August 2008.

¹⁹³ See S A Muirhead, *Corporate Communications Trends. Ruling in Nike Case May Lead to Increased Corporate Self-Censorship* (The Conference Board, 2004).

engage broadens, the case gave Nike a powerful incentive to pull back and remain silent. In fact, the company did not release a CSR report for the three years following the case but when it resumed reporting in 2005¹⁹⁴, it made it more transparent, publishing for the first time a list of more than 700 suppliers around the world, thus facilitating assessment by NGOs and others.¹⁹⁵ Philip Knight, Nike's chairman and ex-CEO explained, 'We've been fairly quiet for the past three years in Corporate Responsibility because of the Kasky lawsuit. So we're using this report to play a little catch-up and draw a more complete picture.'¹⁹⁶ Since then, Nike has become an advocate of more transparent CSR, putting pressure on industry more generally to follow its example. It would appear that the lawsuit therefore had a positive impact on Nike in terms of motivating it to raise not only its own standards but also those of its competitors so as not to be left at a competitive disadvantage.¹⁹⁷

Partnerships and their Dangers

Furthermore, in recent years multilateral organisations have become much more active in multistakeholder initiatives associated with CSR. For instance, the World Bank created the Global Alliance for Workers and Communities, working with companies such as Nike and the Gap in improving workplace conditions throughout their supply chains.¹⁹⁸ A number of NGOs have also started working with corporations: the Rainforest Alliance, the conservation group, works with companies such as Chiquita, the US banana giant that has been heavily criticised for its poor record on the environment and labour rights, to alter their business practices.¹⁹⁹ According to Stephen Tindale, the executive director of Greenpeace:

¹⁹⁴ On its activities in 2004. The Nike *Corporate Responsibility Report for 2004* was published on 2 July 2005: Nike, *Corporate Responsibility Report 2004* (Nike, 2005) For the full report see <http://www.nike.com/nikebiz/gc/r/fy04/docs/FY04_Nike_CR_report_full.pdf> accessed 21 August 2008.

¹⁹⁵ Doreen McBarnet, 'Corporate social responsibility beyond law, through law, for law: the new corporate accountability' in D McBarnet, A Voiculescu and T Campbell (eds), *The New Corporate Accountability: Corporate Social Responsibility and the Law* (Cambridge University Press, Cambridge 2008) 41.

¹⁹⁶ Nike (n 194) 2.

¹⁹⁷ McBarnet (n 195) 41.

¹⁹⁸ Utting (n 113) 74.

¹⁹⁹ Sarah Murray, 'Partnerships: Campaigners use peace as a weapon' *Financial Times* (London 5 May 2005) <<http://thepartneringinitiative.org/mainpages/about/media/documents/FTimes1.pdf>> accessed 19 August 2008.

[NGOs] need companies, because companies are in a position to deliver the solutions. And when they engage, they can move faster and be more dynamic and creative than government can. With the right company, it enables you to get things done that you could never possibly do on your own.²⁰⁰ (emphasis added)

However, entering into partnerships sometimes poses certain problems for non-corporate members. One of the most familiar is that of co-optation as activists find that they have been absorbed into the corporate machine. In the words of one activist, 'having had to work so closely with chief executive officers of corporations, I am beginning to sound like one. At some point a new generation of NGOs is going to have to come along to check on people like me'.²⁰¹ As for international organisations, such as UN agencies, they sometimes find that they have been paired off with an unsuitable company. For instance, the United Nations High Commissioner for Refugees has come under fire for some of its relationships within the Business Humanitarian Forum.²⁰²

There is also a risk that corporations will gain excessive influence over existing regulatory bodies – the problem of so-called 'regulatory capture'²⁰³, the distortion of the priorities and practices of these bodies. Many governments often find that most of the experts in a particular field have corporate links of one kind or another, and on the international level, there is concern that some standard-setting bodies - such as the ISO and the WTO - are unduly influenced by big business.²⁰⁴

Certification and Reporting Systems and their Limitations

As mentioned above, for CSR initiatives to be meaningful, they need to be verifiable. As a result, a number of *voluntary* guidelines and reporting initiatives and international standards have flourished over the years. The Global Reporting Initiative

²⁰⁰ Cited in *Murray* (n 199).

²⁰¹ *UNRISD* (n 44) 87.

²⁰² *UNRISD* (n 44) 87. Also see excerpt of a letter signed by NGOs such as Third World Network and Earth Rights International in *UNRISD* (n 44) 88. CorpWatch even set up a campaign called 'Alliance for a Corporate Free UN'. See <<http://www.corpwatch.org/article.php?list=type&type=101>> accessed 19 August 2008.

²⁰³ Or 'institutional capture'. See *UNRISD* (n 44) 88.

²⁰⁴ See *UNRISD* (n 44) 88.

(GRI)²⁰⁵, for example, was launched in 1997 as a joint initiative of the US NGO Coalition for Environmentally Responsible Economies and the UN Environment Programme. Its stated mission is to make 'reporting on economic, environmental and social performance as routine as financial reporting.'²⁰⁶ The G3, the so-called 'Third Generation' of the GRI's Sustainability Reporting Guidelines, were launched in 2006. The importance of the GRI Guidelines is highlighted by the fact that the UN Global Compact has entered into an agreement of collaboration with it, under which corporate submissions that meet the GRI Guidelines will be accepted under the relevant Compact reporting procedures.²⁰⁷

In 1998, big business participated in the drafting of 'Social Accountability (SA) 8000', an international standard originally developed by the Council on Economic Priorities Accreditation Agency (CEPAA), and currently defined by Social Accountability International (SAI).²⁰⁸ Based on several ILO and UN standards related to labour conditions and human rights, the aim of SA 8000 is to improve the living and working conditions of business stakeholders in both developing and developed countries.²⁰⁹ SA 8000 covers the following areas of accountability: child labour, forced labour, workplace safety and health, the right to organise, discrimination, workplace discipline, working hours, wages and factory management. By December 2008, 1874 factories and facilities had obtained SA 8000 certification, representing 67 industries and 66 countries.²¹⁰

Another standard, the AccountAbility 1000 (AA 1000) Framework²¹¹, was also established by the Institute of Social and Ethical Accountability in November 1999. AA1000 provides guidance on how an organisation can improve its accountability and establish effective stakeholder engagement. Through training and dialogue, companies are encouraged to define goals and targets, measure progress made against

²⁰⁵ See website <<http://www.globalreporting.org/Home>> accessed 17 August 2008.

²⁰⁶ See website above (n 205).

²⁰⁷ UN Global Compact, *Guide to the Global Compact: A Practical Understanding of the Vision and Nine Principles* (UN, Geneva 2002) 9 cited in *Bantekas* (n 51) 318.

²⁰⁸ See the Social Accountability International website <<http://www.sa-intl.org>> accessed 19 August 2008.

²⁰⁹ See *Wild* (n 164).

²¹⁰ See the Social Accountability Accreditation Services website <<http://www.saasaccreditation.org/certifacilitieslist.htm>> accessed 5 July 2009.

²¹¹ See <<http://www.accountability.org.uk>> accessed 19 August 2008.

these targets, audit and report on performance, and develop feedback mechanisms. To complement the Global Reporting Initiative's Guidelines, the AA1000 Assurance Standard was designed in March 2003. Furthermore, in 2007 the world's largest retailers agreed, for the first time, on a unified set of workplace standards aimed at eliminating problems such as child labour and unpaid wages in their vast global supply chains. Wal-Mart, Tesco, Carrefour and Metro have been working with Migros, the largest Swiss retailer to develop a draft code of standards called the Global Social Compliance Programme. Heading the initiative is the International Committee of Food Retail Chains (CIES)²¹², an international association of food retailers and suppliers.²¹³ An ISO standard on social responsibility is also currently being developed under Swedish and Brazilian stewardship though it is not expected to be ready for release until 2010.²¹⁴

Certification systems seem to suffer, however, from the same limitations as codes of conducts.²¹⁵ In developing countries in particular, their implementation mechanisms need to be strengthened and monitored. For instance, in examining the SA 8000, Bendell explains how the external auditors visiting the factories seeking certification have very little time to carry out their audits, which means that the nature of the audit is significantly altered. It also 'means that auditors seek to reduce the potential complexity that could be faced during an audit, in order to automate the process.'²¹⁶ Bendell also describes how although the SAI emphasises that SA 8000 is global in application and can be audited by accredited companies like SGS²¹⁷, anywhere in the world, in reality much auditing is conducted by staff from offices in the UK or US with limited knowledge of the local culture and politics, and encumbered by serious language barriers. As a result, their audit is usually not very 'sensitive to local

²¹² See <<http://www.ciesnet.com/>> accessed 19 August 2008.

²¹³ --, 'Big retailers unify to fight labour abuses' *Financial Times* (London 10 January 2007) <http://news.moneycentral.msn.com/printarticle.aspx?feed=FT&date=20070110&id=6333418> accessed 19 January 2007.

²¹⁴ See website

<<http://isotc.iso.org/livelink/livelink/fetch/2000/2122/830949/3934883/3935096/home.html?nodeid=4451259&vernum=0>> accessed 17 August 2008.

²¹⁵ See above. See also UNRISD, *Promoting Socially Responsible Business in Developing Countries: The Potential and Limits of Voluntary Initiatives. Report of the UNRISD workshop Geneva, 23-24 October 2000* (UNRISD, Geneva 2001).

²¹⁶ Bendell (n 169) 366.

²¹⁷ See its website <<http://www.sgs.com/>> accessed 19 August 2008.

realities.’²¹⁸ It has, moreover, been argued that because the system is voluntary, it allows companies to avoid engagement. With campaigns being easier to mount against high-profile companies in consumer goods industries, other companies and other issues can be neglected simply because they are less visible targets.²¹⁹ In short, there is a significant element of randomness about the system.²²⁰

It is also argued that the mere fact that a company participates in these initiatives does not necessarily mean that CSR practices have been internalised throughout the corporate structure or that participation signifies a major change in corporate social performance. According to Utting, in reality ‘CSR practices often remain limited to specific ad hoc interventions.’²²¹ This is apparent in relation to the GRI, where by August 2005, 707 companies claimed to be using one or more of the reporting guidelines but only 68 were actually using them more systematically.²²²

III. The Corporate Embrace of Contemporary Self-Regulatory CSR

The voluntary nature of contemporary CSR, with its emphasis on corporate self-regulation, has rendered it congenial and unthreatening to corporations, their managers and shareholders. Indeed, in recent years corporations seem to have embraced contemporary self-regulatory CSR with ever more open arms.

²¹⁸ *Bendell* (n 169) 366-367. For a more detailed discussion of the limitations of SA 8000, see *Bendell* (n 169) 365-368.

²¹⁹ In terms of corporate branding, Klein argues that even if civil groups were helping to change corporate practice, this would be limited only to those with high-profile brands, or suppliers with high-profile brands. Civil group campaigning is ‘powerless in the face of corporations that opt out of the branding game’. See Naomi Klein, *No Logo* (Flamingo, London 2000) 424.

²²⁰ Malcolm Keay, ‘Towards Global Corporate Social Responsibility’ (2002) Sustainable Development Programme Briefing Paper No. 3 (The Royal Institute of International Affairs, London) 7.

²²¹ P Utting, ‘Rethinking Business Regulation: From Self-Regulation to Social Control’ (2005) Technology, Business and Society Programme Paper No. 15 (UNRISD, Geneva) 4.

²²² These are the most up-to-date figures. See *Utting* (n 221) 4.

Corporate Branding and Reputation

One of the reasons for this, as many have pointed out, is that the 'new' CSR has a minimal impact on actual corporate practices while having a potentially very positive impact on corporate reputation and image. It has become a key element in corporate strategy to fend off criticism and project an image of fairness and solidarity in a world where inequality and social injustice are rife.²²³

As mentioned earlier, following the crisis in Nigeria and the Brent Spar debacle, the public had lost faith in Royal Dutch/Shell to the extent that everything it said was regarded with mistrust. To change this, the public had to be convinced that Shell cared about more than profits. This led Shell to try to demonstrate that it took the well-being of society seriously, by opening up dialogue with the various civil society groups.²²⁴ It rewrote its business principles to incorporate human rights issues²²⁵, and according to Pendleton, 'in so doing launched the business world into a new era of ethical guideline-setting and corporate soul-searching.'²²⁶ A 'Social Accountability Team' was installed in 1997 and tasked with supporting the internal and external stakeholder dialogue by publishing an annual social report.²²⁷ Besides the publication of reports, Shell runs a global advertising campaign to communicate to the public what it is doing in the face of the dilemmas it and society face; the campaign is also designed to stimulate the debate on Shell's approach and to include as many stakeholders in the dialogue as possible.²²⁸

However, there is evidence that this has primarily been a public relations (PR) exercise. In 2004, the development agency, Christian Aid reported that its investigations in Nigeria had revealed that the company was still failing to deal with frequent spillages of oil, and runs 'community development' projects that are

²²³ Utting (n 124) 6.

²²⁴ M Kaptein and J Wempe, *The Balanced Company: A Theory of Corporate Integrity* (OUP, Oxford 2002) 11.

²²⁵ P Frankental and F House, *Human Rights: Is it Any of Your Business?* (International Business Leaders Forum and Amnesty International, London 2000) 94.

²²⁶ A Pendleton, 'The real face of corporate social responsibility' (2004) 14(3) *Consumer Policy Review* 77, 78.

²²⁷ Kaptein and Wempe (n 224) 296.

²²⁸ Kaptein and Wempe (n 224) 297-298.

frequently ineffective and poorly managed, and sometimes even widen the divide in communities living around the oilfields.²²⁹

Whilst there are exceptions, it would appear that corporate rhetoric is not always reflected in the corporate reality. Although companies are still concerned with the potential damage of public campaigns directed against them and with their impact on consumers and shareholders, ultimately, they remain driven by the imperative to secure ever-greater value for shareholders and this is not always compatible with socially responsible behaviour.²³⁰ As one business executive told a reporter from the magazine *Marketing Week*, 'the idea that making a profit can be reconciled with being ethical is nonsense'.²³¹

It is clearly arguable, therefore, that for the most part, companies have jumped on to the CSR bandwagon simply to shore up their brand image.²³² According to Clay Timon, chairman of Landor Associates, the world's largest and oldest branding firm, 'corporations, as brands ... have ... soul[s]' and this enables them to 'create intellectual and emotional bond[s]' with the groups they depend upon such as consumers, employees, shareholders, and regulators.²³³ Timon points to Landor's brand drivers for BP²³⁴ - 'progressive, performance, green, innovative' - as evidence of how corporate environmental and social responsibility are emerging today as key branding themes.²³⁵ In fact, a whole new CSR industry has emerged with PR

²²⁹ Pendleton (n 226) 77. For the full Christian Aid report see <<http://212.2.6.41/indepth/0401csr/index.htm>> accessed 20 August 2008. For a criticism of the report, see William Baue, 'Critics Challenge Christian Aid Report as Biased, Cynical, and Inaccurate' *SocialFunds.com* (27 February 2004)

<<http://www.socialfunds.com/news/article.cgi?sfArticleId=1353>> accessed 19 August 2008.

²³⁰ Pendleton (n 226) 79.

²³¹ D Benady, 'The Light Fantasy' *Marketing Week* (London 12 February 2004) 21.

²³² See Klein (n 219) for a discussion of branding and its implication on society. In this context, it must be noted that companies that put a lot of emphasis on their brands are targeted precisely because of them and criticised in what Klein calls the 'brand boomerang'. See Klein (n 219) 345.

²³³ C Timon, cited in J Bakan, *The Corporation: The Pathological Pursuit of Profit and Power* (Constable, London, 2004) 26.

²³⁴ See the BP website's section on brands

<<http://www.bp.com/multipleimagesection.do?categoryId=9&contentId=7012411>> accessed 20 August 2008. In an advertisement in July 2000, BP asks, 'Is it possible to drive a car and still have a clean environment. Can solar power become mainstream? Can business go further and be a force for good. We think so', promoting the company's new 'green' image rather than particular products. See 'BP goes green' *BBC News Website* (24 July 2000) <<http://news.bbc.co.uk/1/hi/business/849475.stm>> accessed 20 August 2008. The company also then unveiled the now famous 'Beyond Petroleum' slogan.

²³⁵ Bakan (n 233) 26.

consultants, social auditors, firms providing verification or ‘assurance’ for companies’ social and environmental reports and ‘ethical’ investment analysts all vying for business. Nowadays, as Bakan explains, pious social responsibility themes vie with sex for top billing in corporate advertising, whether on television or in the pages of glossy magazines and newspapers.²³⁶ The message these advertisements are putting across is simple and clear: companies care about the environment and communities, not just the soulless pursuit of profit; they are part of the solution to the world’s ills, not the cause; they are the allies of governments and NGOs, not enemies.²³⁷

The Power of PR

Although this ever-growing focus on the social responsibility of business is to be welcomed, Christian Aid has found that there is an important distinction between this burgeoning industry and the delivery of tangible benefits to communities in developing countries, whose lives are still, in too many cases damaged by the activities of certain MNEs.²³⁸ Put bluntly, adopting corporate codes of conduct is a very effective way of deflecting criticism and projecting an image of a caring company when in reality business carries on as usual.²³⁹ It is a way of pre-empting external pressure, a strategy explicitly advocated by some of the ‘CSR gurus’ to deal with criticism from watchdogs. For instance, Roinick, writing in the US textile industry magazine *Bobbin*, recommends that:

Although following these steps (the adoption of codes of conduct) will not guarantee that you will not be bitten by the watchdog, they should ensure that any bites you get will be ‘nips’ as opposed to gashes that require rabies shots.²⁴⁰

There are, then, good reasons for thinking that some - maybe much - corporate self-regulation is best seen as little more a PR or window-dressing exercise – as a ‘PR fig-leaf’ or ‘greenwash’²⁴¹, that is, ‘disinformation disseminated by an organisation so as

²³⁶ Bakan (n 233) 32.

²³⁷ Bakan (n 233) 32.

²³⁸ Pendleton (n 226) 79.

²³⁹ Utting (n 113) 70.

²⁴⁰ A Clean Clothes Campaign, *Independent Monitoring* (Clean Clothes Campaign 1999) cited in Jenkins (n 45) 8-9.

²⁴¹ See J Greer and K Bruno, *Greenwash: The Reality behind Corporate Environmentalism* (Apex Press, New York 1997).

to present an environmentally responsible image'.²⁴² Or, in some instances, as a 'bluewash'- a term used to describe companies using their association with the UN to project a good image, while changing little by way of corporate policies and practices.²⁴³ In fact, 'greenwash awards' have been issued to companies such as BP, Shell, Monsanto, Ford, Home Depot, Exxon and others²⁴⁴ by the non-profit research and advocacy group CorpWatch.²⁴⁵ Friends of the Earth's annual 'Xpose' spoof awards ceremony celebrates this type of 'confusion between rhetoric and reality' by including an award for the 'best omission from a CSR report'.²⁴⁶ The last Xpose awards were in 2004 when the prize went to British Aerospace (BAE) Systems, which omitted 'to mention it made weapons that kill people'.²⁴⁷

'Enlightened self-interest'

Ultimately, companies engaging in CSR activities publicise it to enhance their public image both locally and internationally. They are acting out of self-interest, albeit 'enlightened self-interest'.²⁴⁸ According to Milton Friedman, a fierce anti-CSR advocate, CSR *can* be acceptable when it is *insincere*. It is, he says, like 'putting a good-looking girl in front of an automobile to sell an automobile. That's not in order to promote pulchritude. That's in order to sell cars'.²⁴⁹ In other words, it is perfectly sensible and legitimate for the director of a company to claim that it is socially and environmentally responsible in order to maximise shareholder returns, as a means to

²⁴² The Concise Oxford English Dictionary (OUP, Oxford 2002).

²⁴³ Utting (n 124) 8. See also K Bruno and J Karliner, *Tangled Up in Blue: Corporate Partnerships at the United Nations* (Transnational Resource and Action Center (TRAC), San Francisco 2000) <<http://s3.amazonaws.com/corpwatch.org/downloads/tangled.pdf>> accessed 9 September 2008.

²⁴⁴ Utting (n 113) 70.

²⁴⁵ See website <<http://www.corpwatch.org/article.php?list=type&type=102>> accessed 20 August 2008.

²⁴⁶ See Friends of the Earth (FoE), 'The Xpose Awards for Green Spin Go To...' FoE Press Release (13 September 2004)

<http://www.foe.co.uk/resource/press_releases/the_xpose_awards_for_green_08092004.html> accessed 20 August 2008.

²⁴⁷ See Lucy Siegle, 'Faking it' *The Observer* (London 31 October 2004)

<<http://observer.guardian.co.uk/print/0,3858,5049792-110648,00.html>> accessed 20 June 2008.

²⁴⁸ De Tocqueville came up with the notion of enlightened self-interest by explaining that Americans voluntarily join together in associations to further the interests of the group and, thereby, to serve their own interests. See Alexis de Tocqueville, *Democracy in America* (H Mansfield and D Winthrop trans and eds edn University of Chicago Press, Chicago 2000, Originally published 1835 and 1840). See David Henderson for the opposite view, that is, CSR is 'misguided virtue'. D Henderson, *Misguided Virtue: False notions of Corporate Social Responsibility* (The Institute of Economic Affairs, London 2001). Henderson's views are discussed in more detail in the next chapter.

²⁴⁹ Bakan (n 233) Interview with Milton Friedman, 34.

an end. According to Friedman, when CSR results in some pecuniary²⁵⁰ or beneficial publicity for the company, it:

may be an appropriate activity in pursuit of the corporation's own interest; moreover, given all the nonsense that's talked in public about social responsibility, it may well be in the self-interest of a corporation to profess to be socially responsible, whether it is or not in any meaningful sense.²⁵¹

He acknowledges that this purely strategic view of CSR reduces its lofty ideals to 'hypocritical window-dressing'.²⁵² But as Bakan explains, hypocrisy is virtuous when it serves the bottom line; moral virtue is immoral when it does not.²⁵³

Avoiding government interference and the emergence of 'Soft Law'

For corporations, one of the main benefits of entering into these voluntary initiatives for corporations is the staving off of mandatory state regulation. There is a danger, therefore, that these initiatives will become a replacement for more stringent legal regulation. Companies in certain sectors usually claim that since they have adopted these voluntary approaches, government has no need to legislate in their particular industry. A recent report published by Christian Aid, Friends of the Earth (FoE) and Action on Smoking and Health (ASH)²⁵⁴, shows how the world's second largest tobacco company, British American Tobacco (BAT), tried to use codes of conduct, self-regulatory bodies, public reporting and coordinated corporate giving programmes as tactics to pre-empt higher taxes, tobacco advertising bans and restrictions on smoking in public places. According to ASH Director Deborah Annott, 'Tobacco firms like BAT hide behind glossy reports and boast of Corporate Social

²⁵⁰ According to research from Business in the Community's cause-related marketing campaign in 2003-2004, 48% of consumers showed an actual change in behaviour, saying that they switched brands, increased usage or tried or enquired about new products, and 7 out of 10 consumers who had participated in a Cause Related Marketing programme reported a positive impact on their behaviour or perceptions – see Business in the Community, *Brand Benefits: How Cause Related Marketing impacts on brand equity, consumer behaviour and the bottom line* (Business in the Community, London 2004) 6 <<http://www.bitc.org.uk/document.rm?id=4457>> accessed 20 August 2008.

²⁵¹ W Johnson, 'Freedom and Philanthropy: An Interview with Milton Friedman' (1989) 71 *Business and Society Review* 11, 15.

²⁵² Bakan (n 233) 34.

²⁵³ Bakan (n 233) 34.

²⁵⁴ ASH, Christian Aid and FoE, *BAT in its Own Words* (ASH, Christian Aid and FoE, London 2005) <<http://www.foe.co.uk/resource/reports/bat2005.pdf>> accessed 20 August 2008.

Responsibility. But this report shows the cynicism and deceit behind the public face'.²⁵⁵

With the growing use of voluntary initiatives as a means of avoiding state-led regulation, there has been a corresponding growth in the emergence of what is known as 'soft law' - that is, rules without legal force.²⁵⁶ According to Zammit:

For many of the protagonists [of CSR], these arrangements are considered the optimal rather than second-best policy solution as they embody the newly fashionable notions of dialogue, responsibility, voluntary interaction, and co-operation between community and corporate interests.²⁵⁷

The soft law approach is seen as offering many advantages: timely action when governments are stalemated; bottom-up initiatives that bring additional legitimacy, expertise, and other resources for making and enforcing new norms and standards; and an effective means for direct civil society participation in global governance. In the words of Kirton and Trebilcock, '[t]hese benefits are particularly important at a time when the demands of intensifying globalisation may outstrip the capacity of even the most powerful, but now often deficit-ridden, national governments to respond.'²⁵⁸

On the other hand, soft law instruments offer little more than moral force in that the major method for enforcing them is the shame of non-adherence.²⁵⁹ From this perspective, it is arguable that soft law leaves those who are being regulated with plenty of leeway to edit the rules by displaying their compliance with a portion of the rules or to interpret the rules to fit their own situation and expectations. Moreover, companies can choose to emphasise those aspects of their practices that are in line with the soft law instruments, while downplaying or ignoring those aspects that

²⁵⁵ See Friends of the Earth (FoE), 'British American Tobacco shows truth behind greenwash' FoE Press Release (28th April 2005) <http://www.foe.co.uk/resource/press_releases/british_american_tobacco_r_27042005.html> accessed 20 August 2008.

²⁵⁶ Zammit (n 116) 40. For a comprehensive discussion on the soft law dimension of CSR, see J K Kirton and M J Trebilcock, *Hard Choices, Soft Law: Voluntary Standards in Global Trade, Environment and Social Governance* (Ashgate, Aldershot 2004).

²⁵⁷ Zammit (n 116) 40.

²⁵⁸ J K Kirton and M J Trebilcock, 'Introduction: Hard Choices and Soft Law in Sustainable Global Governance' in J K Kirton and M J Trebilcock, *Hard Choices, Soft Law: Voluntary Standards in Global Trade, Environment and Social Governance* (Ashgate, Aldershot 2004) 5.

²⁵⁹ P Muchlinski, 'Human rights, social responsibility and the regulation of international business: The development of international standards by intergovernmental organisations' (2003) 3 *Non-State Actors and International Law* 123, 128.

deviate from them. In other words, they can edit their CSR reports in order to exaggerate their degree of compliance and make it appear that they are adhering to the principles they espouse.²⁶⁰ These limitations do not, however, mean that these mechanisms are, in the words of Muchlinski, 'doomed to complete ineffectiveness'.²⁶¹ Indeed, at the international level, soft law can 'harden' and become part of customary international law 'if a consensus develops that the principle in question should be viewed as an obligatory standard by subsequent practice.'²⁶² In this respect, Utting has recently argued that soft law can be seen as a way of 'ratcheting up' voluntary CSR initiatives in the international law arena.²⁶³ This point will be further elaborated upon in the next chapter as well as Part Three of the thesis when the distinction will be made between what commentators have called 'corporate accountability' and corporate responsibility.

IV. Models of CSR

Having examined the place of CSR in different models of the corporation²⁶⁴ and looked at the key defining features of contemporary ideas about CSR and the reasons for its widespread embrace by corporations, I now want to try to clarify the different models of CSR which have been proposed in the last eighty or so years.

The first model, described in chapter two, is the radical, *transformative* model of CSR. Associated with the idea of the 'socially responsible corporation' (SRC), this model is based on a conception of the corporation as a social institution rather than a private enterprise and envisages CSR as coming from *within* the corporation. It gained considerable ground and popularity in the period after the Second World War. Its key

²⁶⁰ K Sahlin-Andersson, 'Corporate social responsibility: a trend and a movement, but of what and for what?' (2006) 6(5) *Corporate Governance* 595, 597.

²⁶¹ Muchlinski (n 259) 128.

²⁶² Muchlinski (n 259) 128. (footnote omitted)

²⁶³ See P Utting 'Social and Environmental Liabilities of Transnational Corporations: New Directions, Opportunities and Constraints' in P Utting and J Clapp (eds), *Corporate Accountability and Sustainable Development* (OUP India, New Delhi 2008).

²⁶⁴ See Part 1 of the thesis.

element was the proposition that interests other than those of shareholders - those of what we now call 'stakeholders' - should be taken into account by managers when running the company; that it was no longer appropriate to see corporations as purely private enterprises to be run solely in shareholders' interests. Shareholder primacy was to be abandoned. Within this model of the corporation, CSR was, so to speak, intrinsic to the corporation, altering its main goal of profit-maximisation.

The second model is the contemporary, *ameliorative* CSR model. In sharp contrast to transformative CSR, ameliorative CSR does not seek to unsettle the idea of the corporation as a private, exclusively shareholder- and profit-oriented enterprise. The objective of this version of CSR is the much more modest one of trying to ensure that the maximisation of shareholder value is not pursued by corporations without their having *some* regard to the impact of their activities on society at large. In other words, ameliorative CSR merely seeks to *induce* more socially responsible behaviour from corporations. As my analysis shows, however, it is possible to further distinguish two variants of this less radical, ameliorative version of CSR: what I shall call the 'regulatory' model and the 'self-regulatory' model.

Contemporary CSR models: External Regulation versus Voluntary Corporate Self-Regulation



Figure 1. Ameliorative CSR and the Private Shareholder-Oriented Model of the Corporation

The 'regulatory' model has a long history and dates back to when companies were seen as private enterprises that, quite legitimately, focused on making money for shareholders rather than any other wider 'social issues'. Social responsibility was seen as a matter for the public authorities; it was the arena of government and not of private corporate enterprises- that had to put the interests of their shareholders first. It was recognised that, sometimes, these private interests would inevitably come into conflict with the interests of employees, consumers and the wider public; that the exclusive pursuit of shareholder interest could easily lead corporations to act in a manner which caused social harm. It was acknowledged and accepted, therefore, that corporations had, as a result, to be reined in; that they had to be legally regulated so that their harmful tendencies, brought about by the ruthless pursuance of shareholder value, could be mitigated. Making corporations comply with their social responsibilities was, thus, seen as a matter of *external coercive regulation*. It was the job of the state to formulate rules and regulations to constrain corporate excesses. From this perspective, social responsibility was something which was imposed on corporations from the *outside* - an 'externality' imposed by legal regulation - rather than something which came from *within*, arising out of the company's internal culture and practices. The nature of the relationship between business and the state was therefore potentially conflictual, if not confrontational. This regulatory model of CSR has not, of course, been abandoned, even today when so much emphasis is placed on self-regulation. States still set minimum labour standards and minimal standards of behaviour in relation to the environment with which corporations are mandated to comply. Indeed, as we have seen, contractual theorists of the corporation such as Easterbrook and Fischel and Hansmann and Kraakman, staunch defenders of the shareholder-oriented model, see external regulation as the key mechanism for ensuring that corporations behave in a socially responsible way. So too do the OECD *Principles of Corporate Governance*.²⁶⁵ The idea is that CSR has little or no place in the private shareholder-value conception of the corporation and that *limited* external regulation is, therefore, the appropriate mechanism through which to influence corporate behaviour. This regulation, of course, is embodied in areas /bodies of law other than company/corporate law.

²⁶⁵ See chapter 1.

The self-regulatory model, which has emerged in recent years²⁶⁶, also embraces the shareholder-oriented model of the corporation. In fact, advocates of CSR commonly endorse the claim that shareholder-oriented companies operate in the social interest by maximising wealth, and they should not be unduly constrained in their pursuit of shareholder value. In contrast to the earlier 'regulatory' model of CSR, however, rather than attempting to control and restrain these shareholder-oriented corporations by means of coercive state regulation, the 'new' self-regulatory model of CSR is based upon notions of cooperation, voluntarism, collaboration, minimal state involvement, and partnership. It works on the premise that inclusion is better than confrontation. As a consequence, it places far less emphasis on external coercive regulation by the state, emphasising instead 'softer instruments' such as voluntary codes of conduct created by the companies themselves. This model is, therefore, in certain respects a corporate construct and, indeed, has even been referred to as a corporate strategy.²⁶⁷

As we have noted, the self-regulatory model of ameliorative CSR is not only compatible with the ESV model of the corporation, but, arguably, its natural ally. This is so because the ESV model makes the case for shareholder-oriented stakeholding: the goal of the corporation is to maximise shareholder value in the long-term, thus enabling corporate managers to take into account a number of different interests. As a result, a crucial link is made between maximising (long-term) shareholder returns and profits with stakeholding and CSR. The idea of ESV thus lays the ground for a business case for both some degree of stakeholding and for CSR.

²⁶⁶ See the section on corporate environmentalism above.

²⁶⁷ In this respect, Rowe has referred to codes as 'organized responses ... to the threat that public regulation (both domestic and international) poses to business's collective self-interest.' See Rowe (n 45) 4. Jonker and Marberg have also noted that 'It appears as if [business has] found that the best strategy to deal with CSR is to get involved in determining its scope and definition, thereby defeating the call for regulation (footnote omitted).' See Jan Jonker and Angela Marberg, 'Corporate Social Responsibility Quo Vadis?: A Critical Inquiry into a Discursive Struggle' (2007) 27 *Journal of Corporate Citizenship* 107, 108.

Concluding Remarks

The present chapter has sought to explore the nature of the contemporary ameliorative CSR movement. It traced its origins to the 'corporate environmentalism' movement, and then went on to examine the defining features of contemporary ideas about CSR, focusing in particular on its emphasis on voluntarism, self-regulation and partnerships. It was argued that it is precisely because of these features that the corporate embrace of CSR has been so widespread. There are good reasons for thinking that the acceptance of ameliorative CSR by corporations is part of a concerted attempt on their part to secure global acceptance of an essentially free market, laissez-faire ideology: 'the business of business is business'. Corporations seem to have realised that CSR is an 'economic' component which has to be taken into account whilst ruthlessly pursuing profits. Companies have to be seen to be 'doing good', as being socially responsible: the proliferation of glossy 'CSR reports' which, for the most part, lack real substance²⁶⁸, is testament to this. Contemporary CSR, therefore, might most accurately be seen as an adjunct to the strong commitment to shareholder primacy and minimal business regulation which has emerged in recent decades. It is part and parcel of a very *conservative* conception of the corporation as an essentially *profit-maximising, shareholder-oriented, private enterprise*.

The chapter also identified two models of contemporary ameliorative CSR: the 'regulatory' model and the 'self-regulatory' model. The regulatory model is premised upon the notion of state-led (or external) regulation. It is, however, the self-regulatory model that is currently in vogue, and which animates contemporary ideas about CSR. In keeping with the neo-liberal market-based model of economic and social development, with its emphasis on freedom of movement for capital and limited state intervention in and regulation of economic affairs, self-regulatory CSR promotes not the legal regulation of corporations by the state but *self-regulation* by corporations themselves. Indeed, its emphasis on voluntarism and self-regulation is one of its defining characteristics. Legal or political interventions *by the state* to get

²⁶⁸ Peter Walker of the *Ethical Corporation*, has referred to it as 'just more butter for the parsnips'- see P Walker, 'Comment: Buttering Parsnips', *Ethical Corporation* (London, 5 October 2004) <<http://www.ethicalcorporation.com/content.asp?ContentID=2881>> accessed 19 August 2008. This is not to say that they all lack substance.

corporations to address the interests of non-shareholding groups, Colin Crouch has argued, 'stand outside the CSR frame, the CSR literature being almost exclusively concerned with the actions of firms'.²⁶⁹

Both of these models of CSR are markedly different from the earlier transformative conception of CSR. However, what unites the regulatory ameliorative CSR model and the transformative CSR model is that they both recognise that the conflicts of interest between corporate shareholders and others are not always reconcilable. These conflicts are downplayed, and at times simply denied, by many exponents of contemporary self-regulatory CSR, with its emphasis on 'partnership'. We thus return to the claim that the maximisation of shareholder value is good for society as a whole, and business, states and civil society should all get together in the pursuance of CSR on a voluntary basis.

From a broader perspective, it is clearly arguable that the conservatism of contemporary CSR fits very much with the prevailing neo-liberal orthodoxies, and the support for minimal states and unfettered market forces. Such is the nature of contemporary self-regulatory CSR, it is not only politically palatable but appealing to policy-makers, NGOs and companies alike. It is comfortably consistent with the neo-liberal view of corporate governance with its focus on the shareholder-oriented conception of the corporation. Paradoxically, however, it is, arguably, *not* consistent with the shareholder-oriented model of the corporation as formulated by its contemporary supporters – such as Easterbrook and Fischel – for whom CSR is something which has to be imposed on corporations from the outside by means of external state regulation.

²⁶⁹ Colin Crouch, 'Modelling the Firm in its Market and Organizational Environment: Methodologies for Studying Corporate Social Responsibility' (2006) 27(10) *Organization Studies* 1533, 1548.

Chapter Four

Literature Review

‘For centuries legal, political, social, and economic commentators have debated corporate social responsibility *ad nauseam*.’¹

Introduction

The previous chapter focused on the nature of contemporary CSR, characterising it as ameliorative rather than transformative in nature. It was argued that its emphasis on self-regulation, partnership and voluntarism means that it operates very much within the prevailing neo-liberal consensus with its focus on a fiercely shareholder-oriented, stock-market based model of the corporation, the free market and limited state.² As noted in the introduction to this thesis, the rise of contemporary CSR has in recent years seen the literature on CSR mushroom. In investigating this literature and the arguments which have been made for and against CSR in its contemporary form, this chapter will inevitably have to be selective and will focus on some of the work that has been most influential.

The chapter comprises three sections. The first examines the attacks levelled at ideas about CSR, both in its earlier more radical and transformative form (of the ‘socially responsible corporation’ (SRC)) and in its contemporary, more conservative, ameliorative form. It argues that although the criticisms levelled at these different versions of CSR differ in form, at heart the main contention made against it is that ‘the only responsibility of business ... is the maximization of profits.’³ In this context, it is argued that critics of CSR, therefore, tend to subscribe not only to the traditional

¹ Henry N Butler and Fred S McChesney, ‘Why They Give at the Office: Shareholder Welfare and Corporate Philanthropy in the Contractual Theory of the Corporation’ (1999) 84 *Cornell Law Review* 1195, 1195 (footnote omitted).

² This is further elaborated upon in the context of developing countries in the next part of the thesis.

³ Milton Friedman, ‘The Social Responsibility of Business is to Increase Its Profits’ *New York Times Magazine* (New York 13 September 1970) 32-33.

Anglo-American shareholder-oriented conception of the corporation but also to a neo-liberal view of the world.

The second section moves on to examine the contemporary pro-CSR literature. Nowadays, it argues, the case made for CSR is usually framed in terms of its potential contribution to shareholder value: it is a 'business case'. The key technique used in trying to establish a business case for CSR is a shifting of focus from the short- to the long-term pursuit of shareholder value. It is argued, in other words, that company managers should look to maximise profits for shareholders in the long-term rather than on a short-term basis. The proponents of CSR thus join hands with contemporary stakeholders who seek to get corporate managers to take greater account of the interests of non-shareholding groups in their decision-making. In short, there are clear resemblances between the business case made for CSR and the case made for 'shareholder-oriented stakeholding'. As argued earlier, the latter finds its clearest expression in the Enlightened Shareholder Value (ESV) model of the corporation, which has emerged in recent years, and which focuses on the creation of *long-term* shareholder value (by taking account of stakeholder interests).

The third section of the chapter considers a newly emerging stream in the pro-CSR literature, which challenges, to some degree, the neo-liberal premises upon which contemporary CSR has hitherto been based. This stream seeks to highlight what it calls corporate 'accountability' rather than corporate 'responsibility'. The literature on 'corporate accountability', as it has come to be called, divides into two strains: the first examines the 'hardening' of the voluntary initiatives associated with contemporary self-regulatory CSR by the creative use of existing 'private' and public, legal and extra-legal mechanisms, whilst the second is more 'radical', calling for significantly greater state regulation to implement CSR initiatives, especially in a development context. The corporate accountability movement is thus beginning to mount a challenge to the prevailing neo-liberal consensus about the free market and the limited role of the state, and also (albeit to a lesser degree) to the shareholder-oriented conception of the corporation.

I. Critics of Corporate Social Responsibility

The social responsibility of business is to increase its profits

The much cited Milton Friedman is a common starting-point for those critiquing CSR. In his landmark article published in the *New York Times Magazine* thirty-five years ago⁴, Friedman candidly proclaims that ‘the social responsibility of business is to increase its profits’. His argument is based on the premise that corporate managers are agents of the shareholders who employ them, and, as such, that their only duty is to further their (financial) interests, meaning maximise the returns they receive on their investments. Any action by a manager which does not aim to maximise profits amounts to a tax on that business (what Friedman calls ‘taxation without representation’), something which should be left to government alone. Moreover, Friedman argues, it is an exercise in futility for managers to engage in social considerations since they are not trained or skilled in such matters. What they are skilled at is running a business, with profit being the main motive. In short, Friedman is highly critical of any notion of CSR:

The doctrine of social responsibility ... is fundamentally subversive ... there is one and only one social responsibility of business- to use its resources and engage in activities designed to increase its profits so long as it engages in open and free competition without deception and fraud.⁵

Two points need to be made here to better understand Friedman’s criticisms of CSR. Firstly, Friedman was principally concerned in this article with ‘corporate philanthropy’ or giving. However, as we have seen, CSR goes beyond corporate philanthropy - which is mainly concerned with charitable donations of one kind or another and as such does not usually (or necessarily) have an impact upon the everyday activities or practices of a business (on how they make money). In other words, corporate philanthropy does not necessarily have implications for business activities and practices as a whole (for how profits are made). Arguably, therefore, unlike corporate giving, CSR in its proper sense goes to the heart of business and

⁴ Friedman (n 3).

⁵ Friedman (n 3).

corporate practices.⁶ For Friedman, corporate giving is ‘spend[ing] someone else’s [that is, shareholders’] money for a general social interest’⁷ when the owners of the corporation have not agreed for their money to be spent in such a way. What right have managers arbitrarily to decide that this money should be given to social causes? Elaine Sternberg, another staunch defender of the traditional view of the nature of ownership and of business⁸ and a CSR critic, is of the opinion that:

[u]sing business resources for non-business purposes is tantamount to *theft*: an unjustified appropriation of the owners’ property. Managers who employ business funds for anything else than the legitimate business objective are simply embezzling: in using other people’s money for their own purposes, they are depriving owners of their property as surely as if they had dipped their hands into the till.⁹ (emphasis in original)

In similar vein, in a recent (negative) survey of CSR¹⁰, Clive Crook of *The Economist*, describes corporate philanthropy as ‘a dubious transaction’¹¹ and likens a company who engages in it to Robin Hood:

[h]e might have been a good corporate citizen, but he was still a bandit- and less of one, arguably, than the vicariously charitable CEO, who is spending money taken not from strangers but from people who have placed him in a position of trust to safeguard their property.¹² (emphasis added)

The second point to be made in relation to Friedman’s argument is that in the two decades preceding his article, the more radical idea of the SRC had gained currency in Anglo-American discourse. Indeed, as we have seen, the alleged emergence of socially responsible corporations had led some to argue that the nature of capitalism itself had changed. The popularity of this more radical *transformative* conception of CSR¹³ was reflected in Friedman’s article. As a liberal economist, Friedman saw it as

⁶ See discussion in the introduction to the thesis.

⁷ Friedman (n 3).

⁸ A Gamble, ‘Book Review of Elaine Sternberg, “Just Business: Business Ethics in Action, 2nd Edition, Oxford: OUP, 2000”’ (2002) 10(1) Corporate Governance 58, 58.

⁹ Elaine Sternberg, *Just Business: Business Ethics in Action* (2nd edn OUP, Oxford 2000) 41.

¹⁰ Clive Crook, ‘The Good Company: A survey of corporate social responsibility’ *The Economist*, (London 22 January 2005).

¹¹ —, ‘The union of concerned executives’ *The Economist* (London 22 January 2005) 8.

¹² *The Economist* (n 11) 8. The article goes on to distinguish corporate philanthropy from ‘true’ philanthropy where the money being given away comes out of someone’s private personal wealth, such as the Bill and Melinda Gates Foundation, and where the givers take care to ensure the money is spent wisely.

¹³ See the introduction and chapter 2 of the thesis.

‘pure and unadulterated socialism’¹⁴, and in declaring his unabashed faith in free market capitalism, he sought to re-assert the traditional, conservative shareholder-oriented view of the corporation.

In fact, similar arguments to those propounded by Friedman had already been forwarded in the 1950s by Theodore Levitt, ‘one of the first and most severe voices of criticism of the corporate responsibility to be heard in business circles’.¹⁵ In an article in the *Harvard Business Review*¹⁶, Levitt considered (transformative) CSR to be dangerous as he believed that the corporation would turn into:

a twentieth-century equivalent of the medieval Church ... invest[ing] itself with all-embracing duties, obligations, and finally powers- ministering to the whole man and molding him into and society in the image of the corporation’s narrow ambitions and its essentially unsocial needs.¹⁷

For Levitt, the SRC would thus herald the beginning of a fascist regime, ‘a monolithic society in which the essentially narrow ethos of the business corporation is malignantly extended over everyone and everything.’¹⁸ In a free market economy, the functions and responsibilities of business and governments are separate and had to be kept separate. The ‘function of business’, he argued, ‘is to produce sustained high-level profits’¹⁹ and, through that, to ensure the material welfare of society. Government’s job was to take care of general welfare. If the line was blurred, Levitt argued, the final victor would be the Leviathan that is ‘the professional corporate business bureaucrat operating at a more engrossing and exalted level than the

¹⁴ John K Galbraith was one of the most powerful voices at the time to challenge the economics of free market capitalism: for him, the regulatory constraints of the law, and the political process in the public sector, rather than the invisible hand of the market, assure the greatest good for society, and create a check on corporate power and incursions into social policy- see J K Galbraith, *The Affluent Society* (40th anniversary edn Mariner Books/Houghton Mifflin Company, New York 1998, originally published in 1958) and *The New Industrial State* (2nd edn Penguin Books, Middlesex 1972, originally published in 1967). Friedman’s arguments seemed to be very much in response to Galbraith’s views.

¹⁵ H D Marshall (ed), *Business and government: The problem of power* (DC Heath and Company, Lexington, Massachusetts 1970) 20 cited in I Kristoffersen, P Gerrans and M Clark-Murphy, ‘The Corporate Social Responsibility and the Theory of the Firm’ (2005) School of Accounting, Finance and Economics & FIMARC Working Paper 0505, 8

<<http://www.business.ecu.edu.au/schools/afe/wps/papers/pdfs/wp0505ik.pdf>> accessed 23 August 2008.

¹⁶ T Levitt, ‘The Dangers of Social Responsibility’ (1958) 36(5) *Harvard Business Review* 41.

¹⁷ Levitt (n 16) 44.

¹⁸ Levitt (n 16) 46.

¹⁹ Levitt (n 16) 44.

architects of capitalism ever dreamed possible'.²⁰ In fact, he suggested, if that happened capitalism would 'become only a shadow - the torpid remains of the creative dynamism which [it] was and might have been'.²¹ Unlike certain proponents of the SRC who saw the latter as a powerful social institution whose managers could only be made more accountable if they were compelled to take account of the interests of the company's non-shareholding stakeholders, Levitt argued that any attempt to deflect managers from the pursuit of shareholder value would render the corporation even more powerful than it was and even harder to control.

Critics of *Contemporary* CSR

In the decades that followed, 'transformative' conceptions of CSR were replaced by less radical, more 'ameliorative' ones.²² Contemporary ideas about CSR generally accept that corporations should pursue above all else the goal of shareholder value; they also broadly accept key neo-liberal policy tenets, hence the emphasis on cooperation, voluntarism, collaboration, minimal state involvement, and partnership.²³ Interestingly, confronted with this 'new form' of CSR, Friedman changed tack. In an interview in 2004 with Joel Bakan, Friedman reiterated his belief that the only social responsibility of corporations is to make as much money as possible for their shareholders, but conceded that CSR can be tolerated when it is *insincere*. The corporate manager who treats social and environmental values as means to maximise shareholders' wealth - not as ends in themselves - commits no wrong.²⁴ He also clearly acknowledged that this purely strategic view of CSR is 'hypocritical window dressing'.²⁵ In Friedman's highly cynical view, corporations nowadays feel bound to give the impression that they are being socially responsible when in fact they are only doing that which is necessary to maintain their legitimacy. Friedman cheerfully argued that this kind of CSR lacks real substance and is unlikely to have any significant impact on the way business is conducted. As far as he was concerned, it is precisely its insincerity and fraudulent character which makes it acceptable and

²⁰ Levitt (n 16) 47.

²¹ Levitt (n 16) 46.

²² For a more in-depth discussion of these issues, see earlier chapter.

²³ The emergence of the contemporary form of CSR is dealt with in more detail in the previous chapter.

²⁴ Interview with Milton Friedman in Joel Bakan, *The Corporation: The Pathological Pursuit of Profit and Power* (Free Press, New York 2004) 34-35.

²⁵ Bakan (n 24) 34-35.

unobjectionable. Building on this idea that ‘CSR does not go very deep’²⁶, Clive Crook of *The Economist* argues that for this very reason it should be abandoned, even though he concedes that CSR has won ‘the battle of ideas’.²⁷ For Crook, capitalism works to serve the public good²⁸, and therefore it is better ‘that CSR be undertaken as a cosmetic exercise than as serious surgery to fix what doesn’t need fixing’ as otherwise it ‘may encroach on corporate decision-making in ways that seriously reduce welfare.’²⁹

However, not all critics of contemporary CSR see it as lacking substance. The work of David Henderson, one of the most important and influential critics of the contemporary CSR movement, illustrates this strand of thought. Henderson has influentially argued that CSR is simply ‘misguided virtue’, claiming that the fad for it is actually doing real harm, and as such, must be opposed. Henderson has written two books on the subject of CSR: *Misguided Virtue*³⁰ and *The Role of Business in the Modern World*.³¹ In the former, which has become a quasi-bible for many in the anti-CSR movement³², he offers reasons ‘for thinking [that the idea of CSR] rests on a mistaken view of issues and events, and that its general adoption [by businesses] would reduce welfare and undermine the market economy’.³³ Like Friedman, Henderson sees shareholders as owners of the corporation and argues that managers should act in their interests and their interests alone: since shareholders are presumed to want to maximise their financial gains, it follows that maximising profits should be the goal of the corporation. Another CSR critic, William Niskanen, a former Ford economist and now chairman of the Cato Institute³⁴, adds that he ‘would not personally invest in any business that sacrifices the interests of its shareholders for

²⁶ Crook (n 10) 4.

²⁷ Crook (n 10) 3.

²⁸ This idea is discussed in more detail below.

²⁹ Crook (n 10) 4.

³⁰ D Henderson, *Misguided Virtue: False Notions of Corporate Social Responsibility* (The Institute of Economic Affairs, London 2001).

³¹ D Henderson, *The Role of Business in the Modern World: Progress, Pressures, and Prospects for the Market Economy* (The Institute of Economic Affairs, London 2004).

³² Henderson is cited by most anti-CSR commentators as well as pro-CSR ones.

³³ Henderson (n 30) 27.

³⁴ The Cato Institute is an influential libertarian, non-profit public policy research foundation headquartered in Washington DC, US. The Institute's stated mission is ‘to broaden the parameters of public policy debate to allow consideration of the traditional American principles of limited government, individual liberty, free markets, and peace’ by seeking greater involvement of the ‘lay public in questions of public policy and the role of government’. See its website <<http://www.cato.org/>> accessed 23 August 2008.

some other objective [because] any dilution of the objectives of a business is likely to lead to behaviour that does not serve any group very well'.³⁵ In his view, the corporate managers' 'first duty is to serve the people who are paying their salaries, so long as they stay within the law and the canons of ordinary decency.'³⁶

Just as Friedman had earlier suggested that ethics could play a (limited) role in business³⁷, Henderson contends that 'this common traditionalist approach does not at all rule out the exercise of independent moral judgements by those involved in business activities'.³⁸ This does not, however, 'invalidate the general case for treating profitability, and the interests of shareholders, as the primary concern and objective of privately owned businesses'.³⁹ Sternberg labels these *ethical constraints* on managers pursuing the profit-maximisation goal as 'distributive justice' and 'ordinary decency':

[d]istributive justice exists when organisational rewards are distributed on the basis of contributions made to organisational goals. Ordinary decency is not 'niceness'... it consists of honesty, fairness, the absence of physical violence and coercion, and the presumption of legality.⁴⁰

The Economist explains how these two labels work in practice. 'Ordinary decency' dictates that companies 'that lie and cheat cannot expect to stay in business very long, even if their actions are allowed by law. Dishonest companies will be unable to borrow, to obtain working capital, or to form stable business relationships with suppliers and customers'.⁴¹ 'Distributive justice' demands that, for example, pay be linked to performance and promotion to merit. According to all these commentators, these are the only matters of business ethics with which corporate managers should comply. This is why Henderson has a problem with the *contemporary* conception of CSR which, to him, 'marks a new departure':

³⁵ William A Niskanen cited in Randall Frost, 'Backgrounders- Corporate Social Responsibility and Globalization: A Reassessment' <www.aworldconnected.org/articles.php/524.html> accessed 18 October 2005.

³⁶ --, 'Curse of the ethical executive' *The Economist* (London 15 November 2001) 70.

³⁷ '[The manager] has direct responsibility to his employers. This responsibility is to conduct the business in accordance with their desires, which generally will be to make as much money as possible while conforming to their basic rules of the society, both those embodied in law and those embodied in ethical custom'. See *Friedman* (n 3).

³⁸ *Henderson* (n 30) 22.

³⁹ *Henderson* (n 30) 23.

⁴⁰ *Sternberg* (n 9) 7.

⁴¹ --, 'The ethics of business' *The Economist* (London 22 January 2005) 16-17.

It establishes the wellbeing (sic) of ‘society’, rather than profitability and the interests of its owners, as the primary concern of a business; it incorporates ideas that are partly novel on how this objective is to be viewed and interpreted; it points towards specific organisational goals, and with them measures of performance, which are not defined with reference to profitability; and it links the pursuit of these wider goals to more elaborate operating procedures and forms of corporate governance in which, among other consequences, the status of owners would be effectively downgraded. What is more, it offers a pattern, a model, for all businesses to follow.⁴² (emphasis added)

Henderson is greatly concerned by what he sees as ‘an outside interference with efficient resource allocation’.⁴³ He identifies contemporary self-regulatory CSR with NGOs that are ‘typically hostile to capitalism and the market economy’, and which put undue pressure on businesses.⁴⁴ He therefore sees CSR as part of an essentially anti-capitalist ideology, ‘a salvationist illusion’.⁴⁵ The salvationist illusion is ‘an apocalyptic pessimism about the planet’s environmental prospects and the outlook for global poverty’⁴⁶ for which the remedy is ‘morality in the boardroom’.⁴⁷ But he believes this pessimism to be unfounded, citing authors such as the late Julian Simon⁴⁸ who argue that ‘past and present widely accepted visions of environmental deterioration and disaster, as also of a generally worsening human condition have little or no basis in fact’.⁴⁹ In similar vein, *The Economist* is adamant that:

Natural resources are not running out, if you measure effective supply in relation to demand ... In 1970, global reserves of copper were estimated at 280m tonnes; during the next 30 years about 270m tonnes were consumed. Where did estimated reserves of copper stand at the turn of the century? Not at 10m tonnes, but at 340m ... Copper, therefore, is unlikely ever to run out – and if it did, in some very distant future, it would be unlikely by then to matter.⁵⁰

⁴² Henderson (n 30) 56- 57.

⁴³ R Sparkes, ‘A Pragmatic Approach to Corporate Social Responsibility’ Paper given to the School of Management, The London School of Economics, 19 May 2003, 2

<<http://cep.lse.ac.uk/seminarpapers/19-05-03-SPA.pdf>> accessed 23 August 2008.

⁴⁴ Sparkes (n 43) 2.

⁴⁵ The doctrine of ‘global salvationism’ is said to comprise ‘both a critique of the market-oriented economic systems of today and a programme of global reform which typically includes, as a leading element, the general adoption of CSR by businesses’ – see Henderson (n 30) 26. In his 2004 book, Henderson elaborates on the doctrine, calling it ‘new millennium collectivism’. See Henderson (n 31) 24-25.

⁴⁶ *The Economist* (n 36).

⁴⁷ *The Economist* (n 36).

⁴⁸ See J L Simon (ed), *The State of Humanity* (Blackwell, Oxford 1995) and J L Simon, *The Ultimate Resource 2* (Princeton University Press, Princeton, New Jersey 1996). See also R Bailey (ed), *Earth Report 2000: Revisiting the True State of the Planet* (McGraw Hill, New York 2000).

⁴⁹ Henderson (n 30) 86.

⁵⁰ --, ‘Profit and the public good’ *The Economist* (London 22 January 2005) 15. The article also gives examples of other minerals and energy levels: Reserves of bauxite in 1970 were 5.3 billion tonnes; the

According to Henderson, this ‘generalised alarmism’ also deflects from some important facts about how capitalism, with the ‘combination of privatisation and external liberalisation, has not increased the economic power of businesses in general and Multinational Enterprises (MNEs) in particular, but *reduced* it (emphasis in original)’.⁵¹ He argues, for example, that old-style state monopolies have disappeared, leaving firms to command less power as they are constrained by competition, and that the ‘freeing of international trade and capital flows has widened the scope for new products and new entrants in national markets’, making it harder for established businesses to exert more market power.⁵² MNEs are, therefore, far from being the behemoths many commentators believe them to be.⁵³ The assumption that if states are losing power, then some other agencies must be acquiring it, is unfounded in Henderson’s view, as it simply serves to ‘obscure the frequent cases where a diminution or limiting of power, whether exercised by governments or large business enterprises, goes with, and makes possible, an extension of economic freedom’.⁵⁴ In this context, another influential opponent of contemporary CSR, Martin Wolf of *The Financial Times*, has gone even further than Henderson, arguing that governments, far from being ‘impotent before modern, multinational businesses’, in fact ‘remain potent local monopolists of coercion’.⁵⁵

Henderson emphatically rejects the business case for CSR. From an economic viewpoint, he argues:

embracing CSR would inevitably have consequences that would raise the costs of doing business, could well reduce revenues, and might also cause companies to sponsor low-yielding investments which they would otherwise have turned down.⁵⁶

amount consumed between 1970 and 2000 was around 3 billion tonnes; reserves by the end of the century stood at 25 billion tonnes; oil reserves in 1970: 580 billion barrels; oil consumed between 1970 and the turn of the century: 690 billion barrels; oil reserves in 2000: 1,050 billion barrels.

⁵¹ Henderson (n 30) 101.

⁵² Henderson (n 30) 102.

⁵³ See, amongst others, D Korten, *When Corporations Rule the World* (Kumarian, London 1995) and Noreena Hertz, *The Silent Takeover: Global Capitalism and the Death of Democracy* (Heinemann, London 2001).

⁵⁴ Henderson (n 30) 103.

⁵⁵ M Wolf, *Corporate Social Responsibility* (New Zealand Business Roundtable, Institute of Directors in New Zealand Inc, December 2004) 13

<http://www.nzbr.org.nz/documents/publications/publications-2004/corporate_responsibility.pdf>

accessed 23 August 2008.

⁵⁶ Henderson (n 30) 58.

In short, the business case for CSR⁵⁷ simply does not stand up to scrutiny. In his view, instead of boosting profitability, exercises such as ‘stakeholder engagement’ and ‘implementing the triple bottom line’ would be very costly to companies, forcing them to adopt ‘wider goals, more elaborate internal procedures and new forms of outside consultation and involvement’⁵⁸. Wolf agrees:

to the extent that companies accept excessively costly operating practices, they are likely to be less competitive and less profitable, and so make a smaller contribution to the economy ... if the costs are not justified by the gains, then the result will not be an improvement in overall social welfare but a reduction in it.⁵⁹

Unsurprisingly, Henderson is also very uneasy about the role of unelected NGOs in shaping public opinion, in particular the way they actively promote an agenda which combines a mixture of ‘green’ and anti-business thought. NGOs and activist groups claim to represent what has been labelled as ‘civil society’, Henderson argues, but civil society:

properly defined, goes much farther than the NGOs (and businesses too): it comprises all the myriad activities, relationships, agencies and organised groups that fall between individuals and families on the one hand and the apparatus of the state on the other.⁶⁰

As such, advocates of CSR have added to ‘a blend of do-it-yourself economics and invented economic history’, a measure of ‘instant political science’, and in doing so:

they have used arguments which are not well founded, and gone out of their way to strengthen the position of organisations which are hostile to business and which, in the case of some at any rate of the NGOs, may represent a threat to order and due process in political life.⁶¹

⁵⁷ Discussed in more detail in the second section of this chapter. Ann Zammit comments that the robustness of the business case depends on the extent to which it is backed up by empirical evidence that stands up to rigorous analysis. Surveying some of the evidence in 2002, she concludes that it ‘is still early days in this respect, and while some of the evidence goes beyond the anecdotal much of it still lacks methodological rigour’. See A Zammit, *Development at Risk: Rethinking UN-Business Partnership* (The South Centre and UNRISD, Geneva 2003) 135. Seven years down the line, evidence is still lacking and conflicting.

⁵⁸ Henderson (n 30) 108.

⁵⁹ Wolf (n 55) 12.

⁶⁰ Henderson (n 30) 122.

⁶¹ Henderson (n 30) 127.

In short, Henderson believes that NGOs have no democratic legitimacy to decide what the public interest should be; that should be left to governments.

Having portrayed the contemporary CSR movement as a product of an NGO-led campaign, Henderson feels able to characterise it as part of the wider anti-globalisation, anti-capitalist movement⁶², which is, in his view, founded on flimsy and ill-defined grounds. There are, he argues, no objective or clear definitions or criteria of measurement of success when one operates with a notion of 'sustainable development' (which, he says, is what contemporary CSR chiefly involves pursuing), and its accompanying ideas of environmental protection and social equity⁶³ as these could be taken to mean anything and be evaluated in any number of arbitrary ways. Indeed, Henderson comes clearly out against corporations adopting global standards on social and environmental performance as '[i]n a profoundly non-uniform world, uniform standards are a bad idea, especially for the poorest countries, which may be unable to support them economically'.⁶⁴ Global environmental and social standards do not address local differences between countries and can in fact interfere with the development of poorer countries.⁶⁵ In similar vein, McMahon of the Fraser Institute⁶⁶ asserts that:

there are doubtless tens or even hundreds of thousands of people now worldwide who would be working and lifting themselves out of poverty were it not for the antiglobalists. Their activities have forced all too many people to remain in dire poverty when opportunity could have been possible.⁶⁷

⁶² This has been criticised by Sparkes who sees a difference between the efforts by NGOs to impose social and environmental constraints on business and CSR: He argues that although 'anti-globalisation activists will try and make use of any opportunity to push their own agenda ... this does not mean that CSR can be identified with anti-globalisation, as corporate social responsibility includes a wide range of agents and motives'- see *Sparkes* (n 43) 3.

⁶³ Richard M Ebeling, 'Book Review: Misguided Virtue: False Notions of Corporate Social Responsibility' (January 2003) *Freedom Daily* <<http://www.fff.org/freedom/fd0301h.asp>> accessed 31 August 2008.

⁶⁴ *Henderson* (n 30) 116-119. It has been said that this argument is made by exporters from developing countries but hardly ever comes from the people working in the plantations and factories making those exports: 'Can we really tell them that freedom from sexual harassment, the right to join a trade union or to work in a safe and healthy environment are luxuries their country is not 'developed' enough to afford?' See J Bendell, *Lifeworth October-December 2001 Review of Corporate Responsibility*, (Lifeworth, 2001) <http://www.jembendell.com/lw2001/lg_4.html> accessed 23 August 2008.

⁶⁵ Wolf has argued that, for instance, CSR advocates might recommend that MNEs should not employ children in very poor, developing countries but that the alternatives for such children might be school in the best case scenario and prostitution and starvation in the worst case. See *Wolf* (n 55) 12.

⁶⁶ The Fraser Institute is a Canadian libertarian think-tank whose mandate is to advocate for competitive markets to better provide for the economic and social well-being of all Canadians. See website <<http://www.fraserinstitute.org/>> accessed 23 August 2008.

⁶⁷ Fred McMahon cited in *Frost* (n 35).

Henderson uses South Africa⁶⁸ to illustrate where the ‘insistence on cross-border uniformity may involve heavy costs which bear chiefly on ordinary people’.⁶⁹ The problem appears to be one of ethnocentricity on the part of activists in developed countries, making demands that affect people in very different cultures. According to Daniel Griswold, the associate director of the Cato Institute⁷⁰ and another staunch opponent of CSR:

There’s a real disconnect between the diagnosis of the social activist in developed countries and the diagnosis from people who actually live in poor countries. They want access to rich country markets. They see that as their number one objective.⁷¹

From this perspective, contemporary self-regulatory CSR can act as a positive impediment to economic development in less-developed countries. Once again, at the heart of Henderson’s critique of CSR is the belief that unequivocally shareholder-oriented corporations and a free market economy are the best routes to economic growth and development. Corporations should be allowed to do what they do best, that is, maximise shareholder value. This will, in turn, benefit society as a whole by maximising aggregate wealth:

For a business enterprise, whether private or public, to concern itself directly and predominantly with profits is not to show undue regard for owners as distinct from ‘stakeholders’ in general, to slight other worthy objectives, or to allow greed to govern its actions. **It means focusing on the most obvious measure of the value to society of what that enterprise is doing.** The idea that a firm’s true or main contribution to ‘society’ has arisen from other aspects of its motives and conduct, not directly related to the profitability of what it does, derives from a basic misunderstanding.⁷² (emphasis added)

This claim recurs again and again in anti-CSR writings. Thus another opponent of CSR, Griswold, contends that:

corporations have certain strengths and that is providing goods and services that satisfy customers... [T]hat is their greatest social contribution. When corporations increase competition in an economy and provide not only goods

⁶⁸ Henderson (n 30) 114 citing *The Economist*, 29 July 2000.

⁶⁹ Henderson (n 30) 112.

⁷⁰ See note 34 above.

⁷¹ D T Griswold cited in *Frost* (n 35).

⁷² Henderson (n 30) 158.

and services but employment and other economic opportunities, they are making a tremendous contribution to the social welfare of that country.⁷³

In fact, in his most recent book, *The Role of Business in the Modern World*⁷⁴ Henderson gives this idea greater prominence than ever. Looking at economic performance over the last half century⁷⁵, Henderson argues that there is:

clear evidence of rapid, sustained and increasingly widespread improvements in material welfare, and there is good reason to think that profit-oriented 'capitalist' business enterprises, operating within the framework of competitive market economies, have played, and are continuing to play, a large part in making such achievements possible.⁷⁶

Henderson observes that many countries that were poor in the late 1950s are now quite rich. Indeed, some of them - Singapore, for example - have become even richer than some Western countries in per capita terms. The explanation for the continued poverty in many other developing countries, he suggests, is to be found in their failure to adopt a free market economy and the essential infrastructure to go with it: the rule of law, property rights and honest and credible institutions.⁷⁷ Hence, global inequality and global poverty are not the fault of capitalism or globalisation. On the contrary, without capitalism and free markets, we would not have become wealthier. The poor remain poor not because of free market capitalism but because of its absence.⁷⁸ Corporations play a crucial role in this process of development and growth. Companies, he argues, 'act as agents of economic progress'⁷⁹ in a free market economy, and the 'primary direct impulse to economic progress comes from **profit-related activities and initiatives** (emphasis added).'⁸⁰ As profits are 'a prima facie indicator ... of the good that a business is doing for people in general'⁸¹, they are the best overall measure of the value which a company offers, not only to its customers,

⁷³ Griswold (n 71).

⁷⁴ Henderson (n 31).

⁷⁵ Henderson uses a 2003 study by Angus Maddison, 'The World Economy: Historical Statistics', OECD Development Centre, Paris to support his claims- see Chapter 2 in Henderson (n 31).

⁷⁶ Henderson (n 31) 60.

⁷⁷ Henderson (n 31) 60.

⁷⁸ Henderson (n 31) 60.

⁷⁹ Henderson (n 31) 28. For Henderson, 'the role of business enterprises as vehicles of economic progress is linked, now as in the past, with 'capitalism', private ownership and profit-directed activity', Henderson (n 31) 59.

⁸⁰ Henderson (n 31) 50.

⁸¹ Henderson (n 31) 106.

but to society as a whole. Thus, according to David Hogberg, the GreenWatch Executive Director of the Capital Research Centre in the US⁸², profits are:

the only sincere and accurate reflection of how a corporation meets the needs of society. Making a profit has all sorts of responsible outcomes - creating jobs, creating products and services that enhance our well-being, creating investment opportunities which create more wealth and more jobs and so on.⁸³

From this perspective, the proponents of CSR who wish to give capitalism a human face⁸⁴ are actually propounding something which will reduce welfare. Wolf explains that:

... behind the pressure to adopt social responsibility lies hostility to the profit motive itself. What is needed, critics argue, is to put "people before profits". The truth is the opposite. **It is by seeking out opportunities for profit that business contributes to economic and social development.** Competitive businesses are forced to seek new markets and employ previously under-used resources. In so doing they benefit their customers, their employees and the countries in which they operate.⁸⁵ (emphasis added)

'Delivering to the bottom line' is not to be separated from, and contrasted with, contributing to the wellbeing of people in general.⁸⁶

Henderson does not deny that the so-called 'externalities' generated by corporations (the costs associated with their activities that they do not themselves bear)⁸⁷ need to be addressed but he argues that, ultimately, they are the responsibility of government and should be addressed by general regulations that would apply to all businesses. This, of course, echoes the arguments made by contractual theorists of the corporation⁸⁸, such as Easterbrook and Fischel⁸⁹ who subscribe to the view that

⁸² The Capital Research Center analyses organisations that promote the growth of government and identifies viable private alternatives to government regulatory and entitlement programs. See <http://www.capitalresearch.org/about/> accessed 23 August 2008.

⁸³ Cited in Ivy Sellers, 'Corporate Social Responsibility: Another Cover for the Leftist Political Agenda' *Human Events Online* (8th November 2005) <<http://www.humanevents.com/article.php?id=10145>> accessed 23 August 2008.

⁸⁴ Henderson (n 31) 27.

⁸⁵ Wolf (n 55) 10.

⁸⁶ Henderson (n 30) 157.

⁸⁷ Henderson (n 31) 108-110.

⁸⁸ For a detailed analysis of the theory, see chapter 1 of the thesis.

⁸⁹ See F H Easterbrook and D R Fischel, *The Economic Structure of Corporate Law* (Harvard University Press, London 1991).

efficiency demands that corporations play to their strengths - maximising wealth⁹⁰ - and argue that a price tag should be attached to any externalities (if necessary by the state); corporations could then take these added costs into account without being deflected from the goal of maximising shareholder value. Hence, pollution and redundancies, for instance, are simply the 'costs of doing business', 'externalities', which can and should be regulated by government. CSR is thus something which is imposed from without, rather than something which is artificially created from within by trying to change the nature of the corporation.⁹¹ Unsurprisingly, the opponents of CSR tend to believe that such regulation should be minimal, as the 'more closely an economy is regulated, the greater the risk that the primary role of business will be less effectively performed because both opportunities and competitive pressures [would] have been curtailed.'⁹²

For Henderson, then, contemporary CSR is highly dangerous, threatening to reduce competition and economic freedom, and to undermine the rational functioning of the market economy. In this sense, he is a Friedmanite, advocating the social value of profit, and placing it firmly above social accountability, convinced that the operation of the unhindered market, by maximising aggregate social welfare, will benefit us all.⁹³ However, none of this prevents him from claiming that he believes that 'businesses should act responsibly, and should be seen to do so'.⁹⁴ It is just that, as far as he is concerned, responsible behaviour cannot be equated with contemporary CSR, which 'despite its general and growing support, is deeply flawed'.⁹⁵ Wolf concurs: 'Companies cannot save the planet by voluntary action. They should not pretend they can. Making it richer is quite good enough'.⁹⁶

Where Henderson departs from Friedman is in not seeing contemporary CSR as mere window-dressing. On the contrary, he is concerned that the business world is

⁹⁰ *Easterbrook and Fischel* (n 89) 38.

⁹¹ This point has already been discussed in chapters 1 and 3 of the thesis.

⁹² *Henderson* (n 31) 110.

⁹³ Alice Mah, 'Uneasy Partnerships and Contradictions: Corporate Social and Environmental Responsibility', Paper presented to the 3rd Annual Global Studies Association Conference, Brandeis University, April 24th, 2004, 27

<<http://www.net4dem.org/mayglobal/Events/Conference%202004/papers/AliceMah.pdf>> accessed 23 August 2008.

⁹⁴ *Henderson* (n 30) 161.

⁹⁵ *Henderson* (n 30) 163.

⁹⁶ *Wolf* (n 55) 14.

embracing the fad too whole-heartedly, taking it too seriously, without showing sufficient resistance. Like Levitt before him, Henderson subscribes to the view that 'what people say, they ultimately come to believe if they say it enough and what they believe affects what they do.'⁹⁷ However, while Levitt thought CSR would transform the corporation into a behemoth, extending its wings into realms hitherto inaccessible to it, Henderson's premise is that corporations are not as powerful as commentators tend to think.⁹⁸ For him it is simply that CSR ignores the long-established primary role of business⁹⁹ and entails a waste of resources which makes society as a whole worse off.

What emerges from the anti-CSR literature is that whether one takes CSR seriously, as do commentators such as Henderson, or sees it as a fraud, as do Friedman and *The Economist*, the consensus is that the notion should be abandoned.

II. Proponents of CSR

The Business Case for CSR

If the anti-CSR literature is considerable, that in its favour is vast. One of the most noteworthy characteristics of most of this literature is that it operates on the premise that CSR should be voluntary in nature. Thus, Antonio Vives of the World Bank, defines CSR as:

the practices of the corporation that, as part of their corporate strategy, complementary and in support of the main business activities, explicitly seek to avoid damage and promote well-being of stakeholders (clients, suppliers, employees, financial resource providers, community, government and the environment) by complying with current rules and regulations and voluntarily going beyond these requirements.¹⁰⁰ (emphasis added)

⁹⁷ Levitt (n 16) 43.

⁹⁸ See notes 51-54 above.

⁹⁹ Henderson (n 31) 103.

¹⁰⁰ A Vives, 'The role of multilateral development institutions in fostering corporate social responsibility' (2004) 47 *Development* 45, 45.

This definition reinforces the point made in the previous chapter about ameliorative self-regulatory CSR: as Malcolm Keay, ex-Deputy Head of the Energy and Environment Programme at the Royal Institute of International Affairs, says, ‘formal regulation is not the mainstay of ... CSR’.¹⁰¹ The emphasis is rather on voluntary initiatives such as:

codes of conduct, measures to improve environmental management systems and occupational health and safety; company “triple bottom line” reporting on financial, social and environmental aspects; participation in certification and labelling schemes; dialogue with stakeholders and partnerships with NGOs and UN agencies; and increased support for community development projects and programmes.¹⁰²

In much of this literature, CSR is synonymous with corporate self-regulation; it is not associated with regulation by the state. Thus:

[t]he term ‘self-regulation’ can be used to describe a variety of attempts by corporations to establish rule-based constraints on behaviour **without the coercive intervention of states or other external actors.**¹⁰³ (emphasis added)

In his 1999 book, re-published in 2003, Michael Hopkins, a leading pro-CSR commentator, writes about contemporary CSR as a ‘planetary bargain’.¹⁰⁴ The book’s thesis is, he says:

that to reverse the negative tendencies of increasing poverty and inequality in the world, there is a need for a worldwide compact, or planetary bargain, between the private and public sectors. In this bargain, the public sector will help private organisms to operate with clear ground rules, and the private sector will pay more attention to longer social development issues than ever before.¹⁰⁵

¹⁰¹ Malcolm Keay, ‘Towards Global Corporate Social Responsibility’ (2002) Sustainable Development Programme Briefing Paper No. 3 (The Royal Institute of International Affairs, London) 3.

¹⁰² Peter Utting, ‘Corporate responsibility and the movement of business’ (2005) 15 *Development in Practice* 375, 375.

¹⁰³ David Graham and Ngaire Woods, ‘Making Corporate Self-Regulation Effective in Developing Countries’ (2006) 34 *World Development* 868, 869.

¹⁰⁴ The 1999 book was called *The Planetary Bargain- Corporate Social Responsibility comes of age* and the 2003 book is entitled *The Planetary Bargain- Corporate Social Responsibility Matters* (Earthscan Publications Ltd, London 1999, 2003). This review concentrates on the 2003 edition.

¹⁰⁵ Hopkins (n 104) xii.

Hopkins elaborates:

[t]he strategy to be adopted by **government and the private sector should not be one of confrontation** but -like the strategy required to solve the prisoner's dilemma; a well-known example from game theory- should be one of **compromise**. The best solution to the prisoner's dilemma was cooperation between the main actors involved. Lack of cooperation led to high penalties. The analogy is that should government or enterprises act alone, albeit seemingly in their own best interest, then this would jeopardise their overall position. The compromise for government and the private sector is to develop a **voluntary code of practice or social bargain** that both observe.¹⁰⁶ (emphasis added)

The underlying idea is that governance in the era of globalisation must be the responsibility of multiple actors¹⁰⁷; it must be what has been referred to as 'collaborative governance'.¹⁰⁸ As previously discussed, the emphasis is on the notion of 'partnership'.¹⁰⁹ Thus, for Fonteneau:

Corporate social responsibility consists in the companies themselves defining, unilaterally and voluntarily, social and environmental policies by means of alternative instruments that are neither collective agreements nor legislation, and offering, in pursuit of these aims, partnerships to multiple actors.¹¹⁰

Implicit in the definitions or descriptions of contemporary CSR found in the pro-CSR literature is the belief that while (quite legitimately) pursuing the goal of profit-maximisation, corporations must voluntarily take some account of the interests of a range of **stakeholders**. As we have seen, stakeholder theory – which was originally developed in management literature¹¹¹ – asserts that corporations should not simply

¹⁰⁶ Hopkins (n 104) 32.

¹⁰⁷ See generally J Richter, *Holding Corporations Accountable: Corporate Conduct, International Codes and Citizen Action* (Zed Books, London 2001).

¹⁰⁸ See Simon Zadek, 'The Logic of Collaborative Governance: Corporate Responsibility, Accountability and the Social Contract' (2005) The Corporate Social Responsibility Initiative, Working Paper Series, Paper No.3/August 2005 (Center for Business and Government, John F. Kennedy School of Government, Harvard University, Cambridge, MA). See also Jody Freeman, 'Collaborative governance in the administrative state' (1997) 45 *UCLA Law Review* 1.

¹⁰⁹ See chapter 3 of the thesis.

¹¹⁰ Gerard Fonteneau, 'Corporate Social Responsibility: Envisioning its Social Implications' (October 2003), 'The Living Wages North and South Initiative (TLWNSI)' Issue Essay (The Jus Semper Global Alliance, Living Wages of North and South) 3.

¹¹¹ See RE Freeman, *Strategic Management-A Stakeholder Approach* (Pitman, Boston 1984). In fact, the most widely used definition of 'a stakeholder' is that of Freeman: '[a] stakeholder in an organisation is ... any group or individual who can affect, or is affected by, the achievement of the organisation's objectives.' Freeman 46. See also R Edward Freeman and David L Reed, 'Stockholders and Stakeholders: A New Perspective on Corporate Governance' (1983) 25 *California Management Review* 88. For a summary of the expansion of stakeholder theory see Robert A Phillips, 'Stakeholder

be managed in the interests only of shareholders. Managers should, rather, take account of a whole range of groups, or stakeholders, all of which have a legitimate interest in its activities.¹¹² Proponents of contemporary CSR thus seek to embrace these ideas about stakeholding as well as the notion that shareholder-oriented corporations are desirable. Indeed, in much of the recent literature stakeholding and CSR become almost inseparable.¹¹³

Also striking is the extent to which the contemporary CSR literature focuses on the concept of 'enlightened self-interest' or 'enlightened value maximization'.¹¹⁴ Corporations are urged to engage in self-regulatory CSR on the grounds that it will help their bottom line. Thus, Ann Zammit argues that:

implementing responsible business practices and engaging in cross-sector partnerships are said to help companies improve the motivation, retention and development of employees; support strategic market positioning and market entry; increase operational efficiency and quality; promote better risk management and access to financing; encourage innovation and new ways of thinking; ensure compliance with changing regulatory requirements and evolving stakeholder expectations; and enable a more stable society and healthy economy.¹¹⁵

The virtues of engaging in self-regulatory CSR appear endless. Significantly, the claim is that CSR and profitability go hand-in-hand, exactly as is the case, some argue, with stakeholding. Indeed, many pro-CSR commentators are increasingly asserting that contrary to what some anti-CSR pundits suggest¹¹⁶, there is no real conflict between CSR and stakeholding on the one hand and seeking to maximise shareholder value on the other. In short, the case for CSR which dominates the

Theory and a Principle of Fairness' (1997) 7 *Business Ethics Quarterly* 51. See also -- 'Stakeholder Capitalism' *The Economist* (London 10 February 1996) 23.

¹¹² Dirk Matten, 'Why Do Companies Engage in Corporate Social Responsibility? Background, Reasons and Basic Concepts' 16 in Judith Hennigfeld, Manfred Pohl and Nick Tolhurst (eds), *The ICCA Handbook on Corporate Social Responsibility* (John Wiley & Sons Ltd, Chichester 2006) 16.

¹¹³ See for instance, A McWilliams & D Siegel 'Corporate social responsibility: A theory of the firm perspective' (2001) 26 *Academy of Management Journal* 117; G Moore 'Corporate social and financial performance: An investigation in the UK supermarket industry' (2001) 34 *Journal of Business Ethics* 299 and T Rowley and S Berman 'A new brand of corporate social performance' (2000) 39 *Business and Society* 397.

¹¹⁴ See Michael Jensen, 'Value maximization, stakeholder theory and the corporate objective function' (2002) 12 *Business Ethics Quarterly* 235.

¹¹⁵ Zammit (n 57) 133-134. It is to be noted that Zammit does not necessarily agree with the business case.

¹¹⁶ See the section on critics of CSR above.

contemporary literature is very much a 'business case'.¹¹⁷ As Vogel explains, '[v]irtually all contemporary writing on CSR emphasises its links to corporate profitability.'¹¹⁸ Thus in *The Sustainable Company*, Chris Laszlo writes that:

an integrated economic, social, and environmental approach leads to **more enduring shareholder value** ... It is a **long-term** strategy, uniquely relevant to the twenty-first century, in which responsible social change can become a source of innovation and profits rather than added cost .¹¹⁹ (emphasis added)

The key point to be made here is that at the heart of the business case for CSR is the notion of *long-term shareholder value*. The emphasis is on lengthening the time horizons for promoting the shareholder interest, something, it is claimed, which compels wider consideration by corporations of other stakeholders, including the community at large. In other words, the business case for CSR closely resembles the business case which has been made for (shareholder-oriented) stakeholding. It is important here to put this into context.

Enlightened Shareholder Value: The Convergence of CSR and Stakeholding

As indicated earlier, in Anglo-American law, the principle of shareholder primacy asserts that companies should be run for the exclusive benefit of the shareholders: in the words of one commentator, the rule that corporations exist solely to maximise shareholder return is 'the law of the land, universally accepted as a kind of divine, unchallengeable truth'¹²⁰, the guiding light in the executive suite. In the US, the principle was famously established by the decision in *Dodge v Ford Motor*

¹¹⁷ See amongst others C Holliday, S Schmidheiny and P Watts, *Walking the Talk- The Business Case for Sustainable Development* (Greenleaf, London 2002); R Willard, *The Sustainability Advantage. The Next Sustainability Wave* (New Society Publishers, Canada 2003), R Willard, *Teaching Business Sustainability: From Theory to Practice* (Greenleaf, London 2004).

¹¹⁸ David Vogel, *The Market for Virtue- The Potential and Limits of Corporate Social Responsibility* (Brookings Institution Press, Washington 2005) 19.

¹¹⁹ Chris Laszlo *The Sustainable Company: How to Create Lasting Value Through Social and Environmental Performance* (Island Press, Washington 2003) xxiii cited in Vogel (n 118) 20. Other examples abound in Vogel (n 118) see Chapter 2 generally. See also O Salzmann, A Ionescu-Somers and U Steger, 'The Business Case for Corporate Sustainability: Literature Review and Research Options' (2005) 23 *European Management Journal* 27 (looking at theoretical and empirical studies on the business case from a management perspective).

¹²⁰ Marjorie Kelly, 'Why all the Fuss About Stakeholders?' [1997] *Business Ethics* 5 <<http://www.pcdf.org/1997/kellystockholders.htm>> accessed 10 July 2009. See also more generally M Kelly, *The Divine Right of Capital: Dethroning the Corporate Aristocracy* (Berrett-Koehler, San Francisco 2001).

Company.¹²¹ Criticising Henry Ford's 'general purpose and plan to benefit mankind' by lowering prices and making cars available to the masses, the Michigan Supreme Court insisted that a 'business corporation is organised and carried on primarily for the profit of stockholders (emphasis added)' and that '[t]he powers of the directors are employed for that end.'¹²² Although management retained discretion over the 'choice of means to attain that end',¹²³ fiduciary principles required them to work for the benefit of shareholders rather than for employees or the larger community.¹²⁴

In the contemporary literature, very few supporters of CSR seek to deny that shareholder primacy has become the mainstay of modern corporate law. Their claim is, rather, that too ruthless a pursuit of shareholder value can lead to a short-termism which threatens the realisation of shareholder value in the longer term.¹²⁵ The work of Lawrence Mitchell, a leading American advocate of CSR, exemplifies this critique of short-termism. In his book, *Corporate Irresponsibility*¹²⁶, Mitchell argues that corporate law has acquired a framework of perverse incentives that rewards most those managers who are best at shifting risks and liabilities on the under-represented within the corporation (mainly employees) and in society at large. This is the result, he suggests, of entrenching a particular version of the 'shareholder value' norm, one associated with short-term share price maximisation, in corporate culture and practice.¹²⁷ Corporate activity thus becomes unduly shaped by markets¹²⁸, and in particular the so-called 'market for corporate control'.¹²⁹ Subject to constant market pressures, companies are judged primarily according to financial indicators (stock prices, earnings per share and so on). Board members receive incentives based on these performance indicators. Failure to 'meet the numbers' puts the company's share price at risk and, with that, so too its managers: if they do not perform satisfactorily, they are at risk of being ousted and replaced by a new management team capable of

¹²¹ *Dodge v Ford Motor Co.* 170 N.W. 668 (Mich. 1919).

¹²² *Dodge* (n 121) 684.

¹²³ *Dodge* (n 121) 684.

¹²⁴ Adam Winkler, 'Corporate Law or the Law of Business?: Stakeholders and Corporate Governance at the End of History' (2004) 67 *Law and Contemporary Problems* 109, 116.

¹²⁵ See chapter 2 of the thesis.

¹²⁶ Lawrence E Mitchell, *Corporate Irresponsibility: America's Newest Export* (Yale University Press, New Haven 2001).

¹²⁷ Simon Deakin, 'Squaring the Circle? Shareholder Value and Corporate Social Responsibility in the UK' (2002) 70 *George Washington Law Review* 976, 977.

¹²⁸ *Winkler* (n 124) 109.

¹²⁹ A more detailed discussion is found in chapter 1 of the thesis.

making the company more 'efficient'. If socially responsible behaviour does not feed into a company share price or its profits, what is the incentive for a company's leadership to pursue socially responsible policies?¹³⁰

Mitchell offers various solutions to this problem, including: eliminating stockholder voting for directors, allowing boards to be self-perpetuating, shifting voting for directors from an annual event to one every five years, lengthening the period of time between required reporting of financial data, and raising taxes on short-term stock ownership.¹³¹ He suggests that:

the key to unlocking long-term value in American corporations and to ensuring a governance and ownership structure that will provide for sustainable corporate productivity and profitability is to break the bonds that tie managers to stockholders and to create stockholders invested in the long term rather than as short-term speculators ... The basic idea ... is to let managers manage; trust them to run their corporations in responsible and accountable ways, taking into account the moral and social propriety of their behaviour as well as the profitability of their actions.¹³² (emphasis added)

Mitchell undoubtedly considers his proposals radical. 'Little if anything will change', he argues, 'until we attack the root causes of corporate irresponsibility; until we address the problems and not the symptoms.'¹³³ And they are radical in the sense that they seem to suggest that the market pressures on managers need to be weakened. However, at root, Mitchell makes a business case for CSR. He does not offer an alternative to the shareholder-oriented model of the corporation but contends, rather, that the pursuit of shareholder value should have longer time-horizons. Indeed, he has recently argued that a '[c]orporate management that looks to the best interests of the business over the long term will largely, if not completely, fulfil many of the goals of CSR.'¹³⁴

¹³⁰ Peter Frankental, 'Corporate Social Responsibility- a PR invention?' (2001) 6 *Corporate Communications: An International Journal* 18, 19.

¹³¹ See *Mitchell* (n 126) 112-164, detailing his reform agenda.

¹³² *Mitchell* (n 126) 185.

¹³³ L E Mitchell, 'Roles of Corporations and Corporate Officers' (2005) 99 *American Society International Law Proceedings* 265, 267.

¹³⁴ L E Mitchell, 'The board as a path toward 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, Cambridge 2008) 280.

Most contemporary proponents of CSR would broadly endorse this view. The business case which has been made for ameliorative CSR thus mirrors that made for shareholder-oriented stakeholding. Or to put it another way, the business case made for shareholder-oriented stakeholding by the UK's Company Law Review (CLR), with its notion of 'enlightened shareholder value' (ESV), could easily be reformulated into a business case for shareholder-oriented CSR. As Dubbink observes:

[most] advocates of CSR do not launch a frontal attack on the free market. At first glance, the free market, with all its typical characteristics of private ownership, competition and maximization of profit, is given the benefit of the doubt by thinkers on CSR. In principle, the market is looked upon as legitimate and desirable.¹³⁵

The Chairman of the BT Group in the UK agrees:

Most advocates of CSR accept, as I do, that unadorned capitalism can serve the public interest- and adorned capitalism, through companies with an appropriate and proportionate approach to CSR, can serve that interest better.¹³⁶

Indeed, the rise of contemporary ameliorative CSR has coincided with a strengthening of shareholder primacy. UK Company Law clearly places the interests of shareholders above those of other groups. The prevailing takeover regulations and corporate governance codes, as well as the laws relating to directors' fiduciary duties are all shareholder orientated.¹³⁷ The need to protect the shareholder interest dominated the various committees and commissions set up during the 1990s to review corporate governance: the Cadbury Report and accompanying Code of Best Practice¹³⁸ (recommending a strengthening of the 'outsider' director's position and a streamlining of directorial work by the use of board committees¹³⁹), the Hampel

¹³⁵ Wim Dubbink, 'The Fragile Structure of Free-Market Society- The Radical Implications of Corporate Social Responsibility' (2004) 14 *Business Ethics Quarterly* 23, 28.

¹³⁶ Letter to The Economist, *The Economist* (London February 5 2005) 14.

¹³⁷ See John Armour, Simon Deakin and Suzanne J Konzelmann, 'Shareholder Primacy and the Trajectory of UK Corporate Governance' (2003) 41(3) *British Journal of Industrial Relations* 531.

¹³⁸ Cadbury Committee, *Report of the Committee on the Financial Aspects of Corporate Governance* (Gee, London 1992).

¹³⁹ There was no compulsion for public companies to follow all these guidelines but listed companies have to report on their record of compliance or otherwise- see *Cadbury Report* (n 138) Recommendations 1-4.

Commission¹⁴⁰ (concluding that directors should focus *on shareholder satisfaction and all else is purely incidental*¹⁴¹), and the Turnbull committee¹⁴² (offering guidance on implementing the Combined Code of the Committee on Corporate Governance). Stakeholding and CSR issues do occasionally surface but usually as adjuncts to shareholder protection. Thus Turnbull recommended that companies take into account ‘environmental, reputation and business probity issues’ when considering internal controls. The report was endorsed by the London Stock Exchange (LSE), which wrote to the company secretaries of all the listed companies asking them to incorporate reputational issues into their risk management frameworks.¹⁴³

As we have seen, the UK CLR recommended the adoption of the ESV conception of the corporation.¹⁴⁴ The concept of the ESV is significant because it seeks to lengthen the time horizons of pursuing profits, thus encouraging managers to *consider* other stakeholders’ interests while maintaining their ultimate focus in shareholder value. Within the ESV model, as embodied in s 172 of the UK Companies Act (which contains a non-exhaustive list of matters which directors *have to have regard to* when performing the new duty of ‘promoting the success of the company’) some consideration of stakeholder interests is mandated. The new Act therefore makes it permissible to act in a way which might appear (at least in the short term) to be in the stakeholder rather than shareholder interest, so long as shareholders benefit in the longer-term. In the context of ESV, ‘enlightenment’ does not mean ‘enlightened’ in the sense of permanently sacrificing the shareholder interest in pursuit of some ethically higher goal; it means ‘enlightened’ in the sense of not risking long-term shareholder value for short-term shareholder gains. It is ‘enlightened’ as in ‘enlightened self-interest’. Just as pursuit of the longer-term interests of shareholders might persuade managers into taking account of the interests of other stakeholders, it might also, of course, persuade them to act in a socially responsible manner. In this

¹⁴⁰ It rejected the idea of multiple accountability on the basis that ‘accountability to many is accountability to none’- Hampel Committee, *Final Report of the Committee on Corporate Governance* (Gee, London 1997).

¹⁴¹ *Hampel Report* (n 140) paras 11.6-11.7.

¹⁴² Institute of Chartered Accountants Internal Control Working Party, *Corporate Guidance for Internal Control* (Institute of Chartered Accountants, London 1998).

¹⁴³ This will also be a condition for any company seeking future listing on the LSE- *Frankental* (n 130) 19.

¹⁴⁴ See chapter 2 of the thesis for more detail.

sense, the ESV model of the company and contemporary, ameliorative CSR might be thought to be natural allies. In the words of Kiarie,

ESV kills two birds with one stone since stakeholders get more consideration and shareholders maintain the profit maximisation goal and remain to hold directors accountable. It is immaterial that stakeholder interests are considered as a means to enhance shareholder value rather than as intrinsic in themselves. **What matters is that they are considered and that both shareholders and stakeholders are happy with the outcome.**¹⁴⁵ (emphasis added)

In embracing the business case for contemporary self-regulatory CSR, the majority of pro-CSR commentators are embracing, in effect, a shareholder value case. Far from challenging the foundations of the neo-liberal consensus, they operate firmly within its parameters, pointing to the benefits of engaging in (shareholder-oriented) CSR. Theirs is a 'win-win' claim: CSR is good and good for the bottom-line.

III. Re-radicalising CSR: The Corporate Accountability Movement

From Corporate Responsibility to Corporate Accountability: The Critique of CSR

Although the literature emphasising the 'win-win' proposition of the contemporary CSR movement, with its voluntarism, corporate self-regulation and partnerships, continues to expand, in recent years, there has emerged, principally within the development context¹⁴⁶, a new strand of literature on CSR with a different emphasis. This literature has been associated with what has come to be called the 'corporate accountability' movement.¹⁴⁷

¹⁴⁵ Sarah Kiarie, 'At Crossroads: Shareholder Value, Stakeholder Value and Enlightened Shareholder Value: Which road should the United Kingdom take?' 17(11) ICCLR 329, 342.

¹⁴⁶ The development angle is further developed in Part Three of the thesis, which looks at CSR and development.

¹⁴⁷ For an interesting account of intellectual activism and movements see J Bendell, 'Barricades and Boardrooms- A Contemporary History of the Corporate Accountability Movement' (2004) UNRISD Technology, Business and Society Programme Paper No. 13 (UNRISD, Geneva) 19.

The origins of CSR, I have suggested, are to be found in the growing power of increasingly shareholder value-oriented corporations - particularly multinationals - especially within the developing world. In the mid- 1990s, for example, David Korten, in his now famous book *When Corporations Rule the World*¹⁴⁸, argued that 'the corporate interest rather than the human interest defines the policy agendas of states and international bodies.'¹⁴⁹ Others have since echoed this theme, for example George Monbiot in *Captive State: The Corporate Takeover of Britain*¹⁵⁰ and Noreena Hertz in *The Silent Takeover: Global Capitalism and the Death of Democracy*.¹⁵¹ In a neo-liberal context in which there was a growing consensus about the importance of extending and deregulating markets and limiting the role of the state, NGOs saw contemporary self-regulatory CSR - with its core features of corporate self-regulation and voluntary initiatives - as a 'politically' palatable strategy to make corporations 'socially responsible'. At the same time, I have argued, the idea of CSR was being embraced by more and more corporations for reasons of social and political legitimacy.¹⁵²

I have also argued that contemporary ameliorative CSR is essentially conservative in nature and suggested that its potential is therefore limited as a mechanism for achieving social and economic development.¹⁵³ It mirrors the case for shareholder-oriented stakeholding, and as such, does not challenge either shareholder primacy or the neo-liberal consensus about the free market and the limited role of the state. In the past decade, however, just as the critique of neo-liberal policy programmes and the so-called 'Washington Consensus' has gathered pace, so too has the critique of CSR.¹⁵⁴ This has been reflected in the recent emergence of a so-called 'corporate accountability' movement. This movement views the emphasis placed by contemporary CSR on voluntary corporate self-regulation as opposed to direct state regulation as fundamentally flawed.

¹⁴⁸ Korten (n 53).

¹⁴⁹ Korten (n 53) 54.

¹⁵⁰ George Monbiot, *Captive State: The Corporate Takeover of Britain* (Pan, London 2001).

¹⁵¹ Hertz (n 53).

¹⁵² See previous chapter on the corporate embrace.

¹⁵³ This will be explored in more detail in the next part of the thesis.

¹⁵⁴ See chapter 5 the thesis.

The origins of the corporate accountability movement can be traced back to the late 1990s by which time the limitations of voluntarism and corporate self-regulation were becoming ever more apparent. Some of the criticisms levelled at codes of conduct have already been examined in the previous chapter. They relate primarily to the difficulties of monitoring and enforcement, difficulties which are especially acute in developing countries. Given their limitations, Public-Private Partnerships (PPPs) or multi-stakeholder initiatives (MSIs)¹⁵⁵ have mushroomed in recent years. In fact, as we have seen, at the 2002 WSSD, partnerships were seen as the main way of advancing the CSR agenda. For Utting, MSIs 'involve a ratcheting-up of standards and a slight hardening of the soft voluntarism that characterised the early experience of CSR, which centred on corporate self-regulation.'¹⁵⁶ Yet in a preliminary assessment of fourteen of these initiatives in 2002, Utting comes to the conclusion that:

[d]espite the growth of multistakeholder schemes, the number of corporate sectors and companies remains relatively small. This ... reflects the difficulties of ... monitoring and verification procedures that are extremely complex and often costly. Not only is the range of data required quite broad ... but accessing and obtaining such information can be extremely difficult given the expertise required, the reluctance of both workers, and management to communicate openly and honestly on certain issues and the typically short timeframe of any monitoring exercise.¹⁵⁷

In 2006, assessing UN- Business partnerships (UN-BPs), Utting and Zammit further explain how '[t]he burgeoning UN literature on partnerships presents numerous "showcase" examples suggesting success, though little if any robust evidence is offered in support.'¹⁵⁸ They suggest, therefore, that to 'assess the feasibility, direct impacts, and short- and longer-term development implications of UN-BPs, appropriate instruments need to be developed.'¹⁵⁹

¹⁵⁵ See P Utting and A Zammit, 'Beyond Pragmatism- Appraising UN-Business Partnerships' (2006) UNRISD Markets, Business and Regulation Programme Paper No. 1 (UNRISD, Geneva).

¹⁵⁶ P Utting 'Rethinking Business Regulation- From Self-Regulation to Social Control' (2005) Technology, Business and Society Programme Paper No. 15 (UNRISD, Geneva) 3.

¹⁵⁷ P Utting, 'Regulating Business via Multistakeholder Initiatives: A Preliminary Assessment' in UN Non-Governmental Liaison Service (NGLS) and UNRISD, *Voluntary Approaches to Corporate Responsibility: Readings and a Resource Guide* (NGLS and UNRISD, Geneva 2002) 63

¹⁵⁸ <<http://www.unsystem.org/ngls/Section%20II.pdf>> accessed 14 September 2008. For a list of the selected initiatives see 75-80.

¹⁵⁹ Utting and Zammit (n 155) 20.

¹⁵⁹ Utting and Zammit (n 155) 21.

Apart from codes of conducts and partnerships, voluntary intergovernmental instruments are also seen as being part of the self-regulatory CSR apparatus. These include the OECD *Guidelines for Multinational Enterprises*¹⁶⁰ and the UN Global Compact.¹⁶¹ A number of commentators have criticised these precisely because of their voluntary nature and lack of supportive sanctions.¹⁶² They rely on 'moral power' rather than legal sanction. Indeed, as Muchlinski notes in respect of the OECD Guidelines:

[a]lthough ... non-binding, they do represent a consensus on what constitutes good corporate behaviour in an increasingly global economy. Furthermore, they are clear that home countries of MNEs have a moral duty to ensure that the standards contained in the Guidelines are maintained world-wide.¹⁶³ (emphasis added)

However, despite these good intentions, contemporary CSR continued to be criticised. In a recent review of the above-mentioned initiatives, Kerkow and others explain how NGOs and trade unions were becoming increasingly sceptical of voluntarist initiatives because of their:

experience with the day-to-day practice of many companies. All too often, a considerable gap has become apparent between the rhetorical commitments to environmental and social action made by companies and the real impact of their activities on people and the environment.¹⁶⁴

¹⁶⁰ OECD, *Guidelines for Multinational Enterprises (Revised in 2000)* (OECD, Paris 2000) <<http://www.oecd.org/dataoecd/56/36/1922428.pdf>> accessed 8 July 2009.

¹⁶¹ The Global Compact is discussed in the previous chapter.

¹⁶² See Duncan McLaren, 'The OECD's revised Guidelines for multinational enterprises: a step towards corporate accountability?' (2002) Friends of the Earth, London <http://www.foe.co.uk/resource/briefings/oecd_guidelines_multinational.html> accessed 14 September 2008. It must be noted that the OECD Guidelines contain an implementation procedure that is binding on governments but *not* corporations. They also contain provisions for dealing with disputes about their meaning and for lodging complaints although the decisions are not technically binding and therefore not enforceable; the identity of the companies against which complaints have been made are also not made public. For a detailed analysis of the strengths and limitations of the Guidelines see International Council on Human Rights Policy (ICHR), *Beyond Voluntarism: Human Rights and the Developing Legal Obligations of Companies* (ICHR, Geneva 2002) 64-68, 101-102. See also the criticisms relating to The Global Compact in the previous chapter.

¹⁶³ P Muchlinski, 'Corporations in International Litigation: Problems of Jurisdiction and the United Kingdom Asbestos Cases' (2001) 50 *International and Comparative Law Quarterly* 1, 24.

¹⁶⁴ Uwe Kerkow, Jens Martens and Tobias Schmitt, 'The Limits of Voluntarism- Corporate self-regulation, multistakeholder initiatives and the role of civil society' (World Economy, Ecology & Development Association, Bonn, 2003) 24.

In short, more and more activists were becoming sceptical about the effectiveness of CSR and coming to see its self-regulatory voluntarism as an inherent weakness. It was in this context that the notion of 'corporate accountability' began to gain ground.

The Corporate Accountability Movement

By the late 1990s, Broad and Cavanagh thought it possible to identify the key characteristics of the corporate accountability movement as it was emerging from a number of corporate-related campaigns. These campaigns were, variously, seeking to 'fundamentally change the corporation or get rid of corporations completely'; seeking to 'change the rules that govern corporate behaviour'; and seeking to 'reform abusive practices of individual corporations'.¹⁶⁵ However, Jem Bendell, who has written extensively on NGOs and 'civil (society) regulation'¹⁶⁶, argues that the 'suggestion that those who were seeking to reform certain corporate practices shared something with those who were working to abolish or regulate corporate power more generally [is] questionable', for 'not all [the] campaigns aimed to challenge corporations as a whole.'¹⁶⁷ What was already becoming clear, however, was that the defining characteristic of the emerging movement – something upon which most commentators now agree – was that in sharp contrast to the ameliorative self-regulatory CSR movement, it emphasised *legal and mandatory rules*. Thus, according to Bendell:

corporate accountability can be defined as the ability of those affected by a corporation to **regulate** the activities of that corporation, and the corporate accountability movement defined as those who work toward this outcome, knowingly or not, in specific circumstances or in general.¹⁶⁸ (emphasis added)

¹⁶⁵ R Broad and J Cavanagh, 'The Corporate Accountability Movement: Lessons and Opportunities' (1999) 23(2) Fletcher Forum of World Affairs 151, 152.

¹⁶⁶ See J Bendell and D Murphy, 'Towards civil regulation: NGOs and the politics of corporate environmentalism' in P Utting (ed), *The Greening of Business in Developing Countries: Rhetoric, Reality and Prospects* (Zed Books, London 2002). The term 'civil regulation' is used to define an arena of regulatory action separate from 'corporate self-regulation' and government and international regulation.

¹⁶⁷ Bendell (n 147) 19.

¹⁶⁸ Bendell (n 147) 21.

For Newell, 'the term implies both a measure of **answerability** (providing an account for actions undertaken) and **enforceability** (punishment or sanctions for poor performance or illegal conduct). (emphasis added)'¹⁶⁹

In fact, the backlash against CSR was seen most prominently at work at the WSSD in 2002 where specific proposals about a *binding* convention on corporate accountability were made by NGOs and trade unionists.¹⁷⁰ The convention was not adopted but the governments resolved to:

actively promote corporate responsibility and **accountability** ... through the full development and effective implementation of intergovernmental agreements and measures, international initiative and public-private partnerships [PPPs], and appropriate national regulations, and support continuous improvement in corporate practices in all countries.'¹⁷¹ (emphasis added)

Utting and Zammit note that at the WSSD, '[b]ig business lobbied forcefully against any such harder regulatory approaches, and PPPs emerged as a concrete alternative' thereby taking 'some of the wind out of the sails of a shift toward corporate accountability.'¹⁷²

It is not insignificant that whereas big business has embraced contemporary self-regulatory CSR¹⁷³, they have been wary of corporate accountability from the outset, recognising that it implicitly challenges the focus on voluntarism and self-regulation and threatens mandation and state regulation, and more, generally, that it questions the tenets of the prevailing neo-liberal consensus. Unlike CSR, the idea of corporate accountability potentially challenges the notion that economic growth and development are best achieved through free markets, free trade, and the free movement of capital; and through the deregulation of labour markets, privatisation

¹⁶⁹ P Newell, 'From responsibility to citizenship: Corporate accountability for development' (2002) 33 IDS Bulletin 91, 92.

¹⁷⁰ The campaign was initiated by Friends of the Earth International. See Friends of the Earth International (FoEI), 'Towards Binding Corporate Accountability' FoEI position paper for the WSSD (FoEI, January 2002) <www.foei.org/en/campaigns/corporates/towards.html> accessed 5 September 2008.

¹⁷¹ UN, *Report of the World Summit on Sustainable Development Johannesburg, South Africa, 26 August-4 September 2002* (UN Document A/CONF. 199/20) (UN, 2002) Para. 49, 38 <<http://daccessdds.un.org/doc/UNDOC/GEN/N03/204/23/PDF/N0320423.pdf?OpenElement>> accessed 5 September 2008.

¹⁷² Utting and Zammit (n 155) 8.

¹⁷³ As discussed in the previous chapter.

and the minimisation of state interventions in economic affairs. It also challenges the continued existence of the shareholder-oriented model of the corporation.

The literature on corporate accountability can, in fact, be divided into two ‘post-voluntarist’¹⁷⁴ strains (and strategies): the first looks at the ways in which ‘private’ legal mechanisms can be used to harden voluntary CSR initiatives (in so doing, it argues that the boundaries between voluntary and legalistic approaches have become complementary or synergistic¹⁷⁵) whilst the second challenges the neo-liberal consensus by calling for direct state mandatory regulation and a reform of the market and corporate law.

‘Hardening’ voluntary CSR initiatives

This strand of the literature focuses on what McBarnet calls the ‘subtle, indirect and creative ways’ in which law is being used to make the business adoption of CSR policies much more of a legal obligation than the discourse of voluntarism would suggest.¹⁷⁶ As she explains:

[t]his is not, on the whole, state regulation that we are discussing, nor indeed international law, though both come into the picture, but other facets of law, often private law being used by private parties.¹⁷⁷ (emphasis added)

There have been attempts by advocates of CSR to give *indirect force of law* to corporate self-regulatory codes. In the now well-known case of *Kasky v Nike*, for example, an activist on environmental issues and labour rights brought a legal case against Nike on the basis that the company had made false statements in its CSR reports. In response to criticism about sweatshops, Nike had stated in its report that its suppliers adhered to its code of conduct which did not permit sweated labour. This, Kasky argued, was not only untrue but in violation of California’s legislation on unfair competition and false advertising. The case ended with an out-of-court

¹⁷⁴ Utting (n 102) 384

¹⁷⁵ See P Utting, ‘Social and Environmental Liabilities of Transnational Corporations: New Directions, Opportunities and Constraints’ in P Utting and J Clapp (eds), *Corporate Accountability and Sustainable Development* (OUP India, New Delhi 2008).

¹⁷⁶ Doreen McBarnet, ‘Corporate social responsibility beyond law, through law, for law: The new corporate accountability’ in *McBarnet and others* (n 134) 12.

¹⁷⁷ *McBarnet* (n 176) 31.

settlement, with Nike paying \$1.5 million to the NGO, the 'Fair Labor Association'.¹⁷⁸

It is not just private activists who have been using private law to make corporations more accountable. In recent years, big businesses have been using contract law, for instance, to impose CSR policies on other businesses - what McBarnet calls 'contractual control'.¹⁷⁹ There is thus a growing trend for major companies to include CSR commitments in the terms and conditions they set out for their contracts with their suppliers.¹⁸⁰ This has come about mainly because these companies have been pilloried by NGOs for the practices of suppliers who were formally legally separate and external to them, and as such not their legal responsibility, but for whose actions they were nonetheless held accountable.¹⁸¹ This area is in its infancy and has, therefore, yet to be properly evaluated. Other 'creative' uses have been and are being made of legal ('foreign direct liability', 'public interest litigation' and international law) and extra-legal (ethical shareholder activism) instruments.

Hence the term 'foreign direct liability' has been used by Halina Ward¹⁸² to refer to legal procedures which involve the use of national law to prosecute MNEs for their alleged harmful activities in their host countries. As she explains, '[t]hese "foreign direct liability" claims represent the flip side of foreign direct investment.'¹⁸³ Santos and Rodriguez-Garavito¹⁸⁴ have called this 'subaltern (cosmopolitan)' or 'counter-hegemonic' legality whereby social groups and communities whose livelihoods, identities, rights and quality of life are negatively affected by states and corporations

¹⁷⁸ This case is discussed in more detail in chapter 3.

¹⁷⁹ *McBarnet* (n 176) 42. In a more general sense of one business entity imposing CSR standards on another, McBarnet and Kurkchian call it 'other-regulation'. See D McBarnet and M Kurkchian, 'Corporate social responsibility through contractual control? Global supply chains and 'other-regulation' in *McBarnet and others* (n 134) 59.

¹⁸⁰ *McBarnet* (n 176) 42.

¹⁸¹ *McBarnet* (n 176) 42.

¹⁸² Halina Ward, 'Governing Multinationals: The Role of Foreign Direct Liability' (2001), Briefing Paper New Series No. 18 (The Royal Institute of International Affairs, London). See also Halina Ward, *Legal Issues in Corporate Citizenship* (Globalt Ansvar and IIED, London 2003) iv <<http://sweden.gov.se/content/1/c6/02/18/54/46e90176.pdf>> accessed 14 September 2008.

¹⁸³ *Ward* (n 182, 2001) 1.

¹⁸⁴ B Santos and C A Rodriguez-Garavito (eds) *Law and Globalization from Below: Towards a Cosmopolitan Legality* (Cambridge University Press, Cambridge 2005) cited in *Utting* (n 175) 99.

use the existing legal apparatus to seek redress for injustice, and to participate in struggles and processes associated with accountability.¹⁸⁵

Such 'creative'¹⁸⁶ use of the home country court of a MNE has been made by the revival of the Alien Tort Claims Act (ATCA) in the United States, an Act which relates to 'piracy on the high seas' and dates back to 1789. It was rarely used until the case of *Filártiga v Pena- Irala*¹⁸⁷ which was brought by the human and civil rights organisation the Centre for Constitutional Rights (CCR) in the 1980s. CCR's case focused on human rights abuses and not business issues.¹⁸⁸ In the 1990s, the law was also used to prosecute US companies for socio-environmental damage and complicity in human rights violations, one of the earliest cases being that of *Unocal*,¹⁸⁹ which was brought to court by the CCR again together with Earthrights International and Amnesty International. The use of ATCA has increased enormously since.

Another aspect of subaltern legality has been the use of 'public interest litigation' (PIL) or 'social action litigation'¹⁹⁰ in India. As its name suggests, PIL is litigation in the interest of the public in general. It was 'primarily judge-led and even to some extent judge-induced',¹⁹¹ emerging in the late 1970s. As such, it allows (non-affected) parties who would traditionally have no *locus standi* (standing required in law) to instigate proceedings. Recently, PIL cases have focused on the social and environmental performance of firms, one example being the filing of a petition by the Centre for Public Interest Litigation that aims to oblige Coca-Cola and PepsiCo to list all chemicals present in their bottled drinks.¹⁹² There are many others.¹⁹³

¹⁸⁵ *Utting* (n 175) 106.

¹⁸⁶ *McBarnet* (n 176) 38.

¹⁸⁷ 630 F 2d 876 (2d Cir. 1980) cited in *McBarnet* (n 176) 39.

¹⁸⁸ See website <<http://ccrjustice.org/>> accessed 23 August 2008.

¹⁸⁹ *John Doe I v Unocal Corp* 963 F Supp 880 (C.D. Cal. 1997) cited in *McBarnet* (n 176) 166.

¹⁹⁰ U Baxi, 'Taking Suffering Seriously: Social Action Litigation' in Tiruchelvam and Coomaraswamy (eds), *The Role of the Judiciary in Plural Societies* (St Martin's Press, New York 1987).

¹⁹¹ P N Bhagwati 'Judicial Activism and Public Interest Litigation' (1984) 23 *Columbia Journal of Transnational Law* 561.

¹⁹² --'Court seeks Coke, Pepsi reply to additives petition' *Reuters India* (India 4 August 2006) <<http://www.corpwatch.org/article.php?id=13981>> accessed 14 June 2008.

¹⁹³ For an overview of the cases being brought under PIL, see *Utting* (n 175) 110-111. A recent (and controversial) study of PIL is Hans Dembowski's *Taking the State to Court - Public Interest Litigation and the Public Sphere in Metropolitan India* which was originally published by Oxford University Press in 2001. The publisher, however, soon discontinued distribution because of contempt of court proceedings started by the Calcutta High Court. The book can be found online at <<http://www.asienhaus.de/english/index.php?LINK=6&ULINK=4&UULINK=0#438>> accessed 8 July 2009.

In addition, there has been a growing focus on making corporations accountable by means of international law instruments. For instance, Zerk argues that:

despite its fundamental 'state-centredness', [international law] offers more regulatory opportunities in the CSR field than many people assume. International law is not a solution in itself, but a set of tools. It may not be a perfect framework for regulating multinationals, but at the moment we are not even making the best of what we have.¹⁹⁴

Whilst she sees many problems in trying to negotiate an overarching treaty on CSR, she argues that devising international regimes to tackle specific CSR issues might be more feasible.¹⁹⁵ Moreover, specifically in the area of international human rights law, commentators have recently noted how 'the existing general rules ... now fix on non-state actors so that they may be held accountable for violations of this law.'¹⁹⁶ Peter Muchlinski, for example, has traced various developments in international human rights law to show that the traditional idea that it applies to states rather than corporations has been eroded.¹⁹⁷ Legal obligations under international law thus seem to be extending to corporations.¹⁹⁸ Yet, as Muchlinski notes:

much of the literature on this issue suggests ways to reform and develop the law towards full legal responsibility, rather than documenting actual juridical findings of human rights violations by MNEs, or indeed other non-state actors.¹⁹⁹

Furthermore, 'soft' international law is also seen to be a way of 'ratcheting up' voluntary initiatives. As we have already seen, soft law instruments carry no penalties in the conventional sense - of fines or imprisonment - but they nevertheless carry moral authority; a case in point being the *OECD Guidelines for MNEs*, discussed earlier. Indeed, Utting sees the *OECD Guidelines* as being 'one of the most significant developments in the arena of international soft law'.²⁰⁰ Despite the criticisms

¹⁹⁴ Jennifer A Zerk, *Multinationals and Corporate Social Responsibility- Limitations and Opportunities in International Law* (Cambridge University Press, Cambridge 2006) 310.

¹⁹⁵ Olufemi O Amao, 'Book Review of J Zerk, *Multinationals and Corporate Social Responsibility- Limitations and Opportunities in International Law*' (2007) 10 (1) *Journal of International Economic Law* 161,162.

¹⁹⁶ A Clapham, *Human Rights Obligations of Non-State Actors*, (OUP, Oxford 2006) 28.

¹⁹⁷ P Muchlinski 'Corporate social responsibility and international law: the case of human rights and multinational enterprises' in *McBarnet and others* (n 134) 341.

¹⁹⁸ See in general, P Muchlinski, *Multinational Enterprises and the Law* (2nd edn OUP, Oxford 2007).

¹⁹⁹ Muchlinski (n 197) 439.

²⁰⁰ Utting (n 175) 105.

mentioned above²⁰¹, he argues that the Guidelines have enhanced the role of 'national contact points' that constitute a form of complaints procedure, which allows third parties such as trade unions and NGOs, to file a complaint. He further notes that the number of complaints is increasing: by June 2005, over hundred complaints had been filed by NGOs and trade unions.²⁰²

Moving on to the extra-legal instruments, new forms of CSR shareholder activism or 'responsible ownership'²⁰³ have also emerged in recent years.²⁰⁴ This is evidenced by the use by NGOs of company law to gain legal status and a voice in companies: by buying shares they have acquired rights and been able to bring resolutions to annual general meetings (AGMs). In California in 2004, for example, the Interfaith Center on Corporate Responsibility, an umbrella organisation filing for a group of shareholding NGOs, withdrew a resolution destined for Occidental's AGM only when the company agreed to adopt a human rights policy.²⁰⁵ In the UK, the charity FairPensions has been calling for socially responsible investment by UK pension funds²⁰⁶ by campaigning for them to use their (institutional) shareholder power to hold companies to account.²⁰⁷ The strategy being used here is extra-legal in nature in that the main object of these 'groups' is to generate 'economic sanctions' (as opposed to legal ones) for alleged violations of unethical behaviour (for instance, through not abiding by certain codes of conduct) by a mixture of gentle persuasion and threat: pressurizing companies to become more ethical by means of AGM resolutions (voice) and/or withdrawing investment in these companies completely (exit). Recently, the literature

²⁰¹ See note 162 above.

²⁰² OECDWatch, *Five Years On: A Review of the OECD Guidelines and National Contact Points* (Centre for Research on Multinational Corporations (SOMO), Amsterdam 2005) 5.

²⁰³ A O'Rourke, 'A new politics of engagement: Shareholder activism for corporate social responsibility' (2003) 12 *Business Strategy and the Environment* 227.

²⁰⁴ As O'Rourke notes, '[s]hareholder activism, under different guises, has taken place for decades.' See O'Rourke (n 203) 229-230.

²⁰⁵ William Baue SocialFunds.com, 19 March 2004 (Ethical Corporation, 20 March 2004) cited in *McBarnet* (n 176) 37. McBarnet gives a number of examples of these types of shareholder resolutions being used in the US and the UK –see *McBarnet* (n 176) 37-38.

²⁰⁶ It must be noted that the Pensions Act 2004, s 114 provides a statutory obligation for all pension funds to have a public 'statement of investment principles', declaring 'The extent (if at all) to which social, environmental, or ethical considerations are taken into account in the selection, retention and realization of investments, and their policy (if any) in relation to the exercise of rights (including voting rights) attaching to investments'. (The Pension Protection Fund (Statement of Investment Principles) Regulations 2005).

²⁰⁷ See the FairPensions website <<http://www.fairpensions.org.uk/index.asp>> accessed 5 September 2008.

on CSR shareholder activism and socially responsible investment has steadily grown.²⁰⁸

It is rather obvious from the above that the first strand of the literature on the corporate accountability movement does not directly challenge the neo-liberal consensus concerning the role of the state. The strategies documented, rather, attempt to circumvent both the absence of direct state regulation and the challenge to shareholder primacy. This is not to say that those involved do not recognise the drawbacks of the strategies they advocate.²⁰⁹ It is nevertheless the case that this component of the corporate accountability movement and literature operates very much within the neo-liberal paradigm, *engaging* with it rather than challenging it. On the other hand, there is a new emerging strand within the corporate accountability movement and literature which is more radical, openly calling for a restructuring and rethinking of the relationship between business and the state. It demands more mandatory *legal* regulation of corporations by the state and other agencies; it demands a return to 'hard' or, at least, 'harder' law.

Challenging Neo-liberalism: Mandatory State Regulation

A growing number of those identifying themselves with the corporate accountability movement are openly mounting a challenge to dominant neo-liberal ideas about the role of the state in relation to corporations and corporate regulation; and to the belief that corporations can be made to act in a socially responsible manner through voluntary self-regulation by corporations themselves. Indeed, some go even further than this. Joel Bakan, author of *The Corporation*²¹⁰, now contends that CSR in its contemporary, voluntarist, self-regulatory form is actually potentially dangerous, enabling companies to appear to be addressing their social and environmental

²⁰⁸ See, amongst others, B Amann and others, 'Shareholder activism for corporate social responsibility: law and practice in the United States, Japan, France and Spain' in *McBarnet and others* (n 134) 336-364.

²⁰⁹ See *McBarnet* (n 176) 43-44 as well as her warning about mandatory regulation (discussed in the next section) due to the use 'creative compliance' of companies who have a tendency to focus on the letter rather than the spirit of the law- see *ibid* 44-54. Utting calls this 'hegemonic legality' whereby 'powerful actors, institutions and discourses counteract or dilute the progressive potential of institutional and legal reforms, promote 'soft' or normative alternatives to deflect harder ones, and assume leadership positions in reform movements.' See *Utting* (n 175) 111.

²¹⁰ *Bakan* (n 24).

'externalities' and reducing the pressure for proper state-based and backed regulation. Although, he argues, robust nongovernmental institutions and community activism can make important contributions, they can never be a substitute for government regulation.²¹¹ In similar vein, Thomas McInerney of the International Development Law Organization²¹², writing mainly from a development perspective, has recently argued that '[s]tates occupy a privileged position in connection with regulatory activities' as only they 'can undertake the necessary work to ensure that international norms to which they have bound themselves in international fora are respected in their territories'.²¹³ 'While voluntary CSR measures, he says, 'at best offer spotty coverage of firms and industries, states regulate comprehensively.'²¹⁴ He also argues that:

[r]ather than stand by as mere passive observers of the development process as implicitly or even explicitly favoured by neoliberals, states must develop their capacities to foster development in strategic and intelligent ways. Turning over power to control (i.e. regulate) socially harmful practices to the private sector through CSR initiatives, effectively undermines the development of state capacity not only to regulate but also expand the domestic economy and mitigate social harms.²¹⁵

Using examples of (developing) African countries, McInerney shows how state regulatory and enforcement authorities in Lesotho and Cameroon have worked to develop strong responses to societal needs,²¹⁶ confronting socially irresponsible corporate conduct hands-on and directly.

²¹¹ Chris Marsden, 'In Defence of Corporate Responsibility' in Andrew Kakabadse and Mette Morsing in association with the European Academy of Business in Society (EABIS) (eds), *Corporate Social Responsibility- Reconciling Aspiration with Application* (Palgrave Macmillan, EABIS, 2006) 25.

²¹² The International Development Law Organization is an international intergovernmental organisation dedicated to promoting the rule of law and good governance in developing countries, countries in economic transition and in those emerging from armed conflict- see The International Development Law Organization website <<http://www.idlo.int/english/External/IdloHome.asp>> accessed 5 September 2008.

²¹³ T F McInerney, 'Putting Regulation Before Responsibility-The Limits of Voluntary Corporate Social Responsibility' (2005) II (3) *Voices of Development Jurists* 28, 28-29.

²¹⁴ McInerney (n 213) 29.

²¹⁵ McInerney (n 213) 31.

²¹⁶ McInerney (n 213) 36- 41: In Lesotho, he looks at how building state capacity enabled the state to confront socially irresponsible conduct in terms of corruption whilst in Cameroon, he examines how the state has implemented (by mandatory regulation) the Africa Forest Law Enforcement and Governance initiative.

Deborah Doane, the head of Corporate Accountability at the New Economics Foundation and chair of CORE, the Corporate Responsibility Coalition²¹⁷, similarly argues that contemporary advocates of CSR might have been 'promoting a strategy that is more likely to lead to business as usual, rather than tackling the fundamental problems.'²¹⁸ She therefore calls for a return to direct state regulation:

Traditional regulatory models would impose mandatory rules on a company to ensure that it behaves in a socially responsible manner. The advantage of regulation is that it brings with it predictability, and, in many cases, innovation. Though fought stridently by business, **social improvements may be more readily achieved through direct regulation than via the market alone.**²¹⁹ (emphasis added)

Indeed, not only does Doane advocate direct state regulation, she also explicitly rejects the free market model of economic development of neo-liberalism. In a recent article, she purports to expose what she calls 'the four myths of CSR': (1) the market can deliver short-term financial returns and long-term social benefits (it cannot as there is little if any empirical evidence that the market behaves in this way²²⁰) (2) the ethical consumer will drive change (this is not true as most surveys show that consumers are more concerned about things like price, taste, or sell-by date than ethics²²¹), (3) there will be a competitive 'race to the top' over ethics amongst businesses (not always the case as some companies sign up to certain initiatives without actually changing their behaviour²²²) and (4) in the global economy, countries will compete to have the best ethical practices (not the case as some companies fail to uphold voluntary standards of behaviour in developing countries, arguing instead that they operate within the law of the countries in which they are working²²³). In addition to advocating the rejection of contemporary CSR's self-regulatory voluntarism and a return to state regulation, therefore, Doane launches a scathing attack on the free market, neo-liberal model upon which contemporary ideas about CSR are based. She

²¹⁷ See the CORE website <<http://www.corporate-responsibility.org/>> accessed 8 July 2009. CORE represents over 100 charities, faith-based groups, community organisations, unions, businesses and academic institutions.

²¹⁸ D Doane 'The Myth of CSR- The problem with assuming that companies can do well while also doing good is that markets don't really work that way' [Fall 2005] *Stanford Social Innovation Review* 23, 28.

²¹⁹ Doane (n 218) 28.

²²⁰ Doane (n 218) 25.

²²¹ Doane (n 218) 26.

²²² Doane (n 218) 27.

²²³ Doane (n 218) 28.

also calls for a 'radical overhaul of the corporation',²²⁴ endorsing the views of radical stakeholders who challenge the prevailing, exclusively shareholder-oriented conception of the corporation.

Radical Stakeholding: Reconceptualising the Corporation

As we have seen, the majority of contemporary pro-CSR commentators make a 'shareholder value', 'business' case for CSR. There remain, however, some advocates of CSR who question the shareholder-oriented model of the corporation and propose more fundamental corporate reforms. In a well-known article written in 1999²²⁵, for example, Margaret Blair and Lynn Stout laid out a theory of the corporation based on a so-called 'team production' theory derived from economics.²²⁶ The corporation, they argue, should be viewed as engaging in team production, with its constituencies - managers, stockholders, employees - as the contributing groups.²²⁷ The way these different groups manage their interactions without shirking duties or employing other strategic behaviour to seize a disproportionate share of the team's surplus, is by ceding control to a 'mediating monarch'.²²⁸ In the corporation, this monarch is the board of directors, which is then responsible for balancing the competing groups so that all stay happy and contribute their just share to the corporation.²²⁹ Blair and Stout claim that corporate law already recognises this view of the corporation²³⁰, and that shareholder primacy is simply an error of legal analysis. Blair and Stout's article is not immune to criticism²³¹ but they are arguing that not only should the board take into account demands of diverse constituencies - the normative claim - but that it is *already* the board's legal and economic role to do so- the new descriptive claim.²³² In making these arguments, of course, Blair and Stout echo the case made for the SRC

²²⁴ Doane (n 218) 28.

²²⁵ Margaret M Blair and Lynn A Stout, 'A Team Production Theory of Corporate Law' (1999) 85 Virginia Law Review 247. The following analysis of the article is taken from C A Harwell Wells, 'The Cycles of Corporate Social Responsibility: An Historical Retrospective for the Twenty-first Century' (2003) 51 University of Kansas Law Review 77, 136-139.

²²⁶ Blair and Stout (n 225) 249. Team production occurs when production of a good requires the coordinated effort of several groups, and when the good produced cannot be easily apportioned among the contributing groups.

²²⁷ Blair and Stout (n 225) 253.

²²⁸ Blair and Stout (n 225) 320.

²²⁹ Blair and Stout (n 225) 281.

²³⁰ '[D]irectors are trustees for the corporation itself' - see Blair and Stout (n 225) 280-281.

²³¹ See John C Coats IV, 'Measuring the Domain of Mediating Hierarchy: How Contestable Are U.S. Public Corporations?' (1999) 24 Journal of Corporation Law 837 (1999).

²³² Wells (n 225) 138.

by Dodd in the 1930s. As we have seen in chapter two of the thesis, Dodd argued that corporations were becoming increasingly social and public in scope and nature, and that their managers should therefore exercise their powers in a manner which recognises the company's social responsibilities to its employees, consumers and to the general public. Like Dodd, Blair and Stout challenge shareholder primacy and advocate a return to radical CSR.

Concluding Remarks

This chapter has attempted to selectively review the voluminous literature both for and against that has emerged on CSR.

The anti-CSR literature criticises the idea of CSR both in its radical incarnation (as expressed in the notion of the SRC) and in its contemporary, ameliorative form. Radical CSR is attacked for its transformative aspirations, as dangerously promoting something other than capitalism. It is accused of being a 'subversive' doctrine.²³³ Contemporary, ameliorative CSR does not fare much better. Some of its critics admit that it is a largely cosmetic exercise whereby companies pay lip-service to ideas of social responsibility and condemn it precisely on this basis; it is pointless and should be abandoned. Other critics attack the so-called 'business case' for contemporary CSR - that is, the pursuance of CSR on the grounds that it will benefit the bottom-line. These critics claim that engaging in CSR will simply reduce overall shareholder value instead of enhancing it. The main goal of business, they argue, is and should be to maximise profits for shareholders, for this not only benefits the latter, it contributes to overall societal well-being. Pursuing CSR simply distracts corporate managers from that all-important goal.

The bulk of the pro-CSR literature which has recently emerged makes, I have argued, a business case for self-regulatory CSR. The case it makes is, ultimately, a shareholder value case, resembling the case which has been made in a slightly different context for shareholder-oriented stakeholding. Broadly speaking, the

²³³ See note 5.

contemporary literature supporting CSR does not dispute that the ultimate goal of business is the maximisation of shareholder value but argues that that goal should be pursued in the long- rather than short-term, and that it would be achieved best if managers took some account of the interests of the other stakeholders, the wider social responsibilities of the corporation and the wider context in which it operates. I have argued that this case is exemplified by the UK CLR's development of the notion of enlightened shareholder value and the subsequent enactment of section 172 of the Companies Act 2006. The great majority of those supporting and advocating CSR in its contemporary form do not mount a fundamental challenge to the prevailing neo-liberal consensus but rather point to the benefits of operating within it: CSR is good for the corporate 'bottom line'- in an expanded 'triple bottom line' sense.

The final part of the chapter examined a newly emerging strain in the pro-CSR literature, known as 'corporate accountability'. It was argued that the corporate accountability literature can be divided into two strands. The first operates within the neo-liberal consensus (just like the bulk of the pro-CSR literature) although it engages with it in a creative way by focusing on legal and extra-legal strategies to make corporations more socially responsible. In this context, I looked at examples of private law mechanisms (indirect private litigation and 'contractual force') as well as public legal instruments ('foreign direct liability', 'public interest litigation' and international law itself) and extra-legal ones (ethical shareholder activism).

On the other hand, the more 'radical' corporate accountability movement and literature challenges to some degree the neo-liberal premises upon which contemporary CSR has hitherto been based, re-asserting the importance of state-led, mandatory regulation in curbing corporate excesses. It is not insignificant that that movement (and literature) is articulated in practice mainly within a development context, as will be discussed in the next part of the thesis. In this respect, it echoes the criticisms made of the neo-liberal, market-centred model of development by economists such as Ha-Joon Chang²³⁴, who argue that history suggests that the state

²³⁴ See Ha-Joon Chang, *Kicking Away the Ladder: Development Strategy in Historical Perspective* (Anthem Press, London 2003) and Ha-Joon Chang, *Bad Samaritans: Rich Nations, Poor Policies, and the Threat to the Developing World* (Random House Business Books, London 2007).

should be at the heart of the development process, for this is how the developed world became developed.

Part III:
CSR and Development

Chapter Five

CSR and Development

Introduction

As we have seen, despite its meteoric rise in recent years, considerable uncertainty surrounds the exact meaning of CSR. In this context, the first part of this thesis has sought to specify with greater precision the nature of contemporary ideas about the social responsibilities of corporations by comparing them with earlier ideas about the 'socially responsible corporation' (SRC). It has been argued that not only have significantly different conceptions of CSR been propounded at different times but that these different conceptions have been founded on very different ideas about the nature of the corporation. Thus, the ideas about the social responsibilities of corporations which emerged in the 1920s and 30s, and which culminated in the emergence of the idea of the SRC in the 1950s and 60s, tended to advocate the abandonment of both the traditional conception of the corporation as a private enterprise and the associated principle of shareholder primacy in favour of a new (what now tends to be called a stakeholding) conception of the corporation as a social institution. CSR in its original form was, therefore, radical and transformative in aspiration.

By contrast, contemporary ideas about CSR are markedly less radical, leaving both the conception of the corporation as a private enterprise and the principle of shareholder primacy essentially unchallenged. Contemporary CSR is thus, I have argued, ameliorative rather than transformative in aspiration. Indeed, in adhering to the tenets of neo-liberalism and advocating self regulation rather than state regulation, it is, arguably, rather conservative in nature. It is, in many ways, an adjunct to neo-liberalism and to the ruthlessly shareholder-oriented, 'shareholder-value' conception of the corporation which has emerged in recent decades.

Against this backdrop, this part of the thesis explores contemporary CSR in the developing world. Until now, the literature on contemporary CSR has concentrated almost exclusively on CSR in advanced capitalist countries, and relatively little has

been written about CSR in the developing world. In the African context, for example, the literature on CSR is very thin indeed. As Wayne Visser's ten-year review of journal articles published over the period 1995-2005 revealed, the volume of published research on CSR in Africa is not only 'extremely low', many of the papers it documents focus on business ethics and on South Africa.¹ Despite this, CSR is increasingly being promoted in a developing country context as an important mechanism for furthering economic and social development goals. Indeed, in recent years, considerable hopes have been attached to it. One cannot help but wonder whether CSR can bear the increased weight of expectations being heaped on its shoulders. This part of the thesis seeks to answer this question by means of a case study of CSR in a developing country, Mauritius.

In effect, having argued that the notion of contemporary CSR in the developed world is ameliorative in nature, this part of the thesis seeks to answer the question as to whether the conception of CSR being deployed in the developing world is, as suggested, a conservative one and, if so, whether this conservatism is likely to render it ineffectual. From this particular perspective, the Mauritian case-study intends to explore the meanings attached to CSR by corporate executives in the island and to *begin* to assess its potential as a mechanism for development. As such, it attempts to evaluate the hypothesis set out in the earlier parts of the thesis.

Mauritius was chosen as a case-study partly for personal reasons: as mentioned in the introduction, I am from Mauritius and was already familiar with its legal institutions and economy. As I have not actually studied law there, however, I felt that this would be a good opportunity to gain a better understanding of its legal system and business environment. Moreover, in recent times, CSR and corporate governance issues have come to the fore of the Mauritian political and financial landscape, with CSR being promoted as something which can make an important contribution to development.² Despite this, no study of this kind has been conducted in Mauritius and apart from a

¹ See Wayne Visser, 'Research on Corporate Citizenship in Africa- A Ten Year Review (1995-2005)' in Wayne Visser, Malcolm McIntosh and Charlotte Middleton, *Corporate Citizenship in Africa: Lessons From the Past, Paths to the Future* (Greenleaf, London 2006).

² See the following chapter.

couple of reports and surveys³ and investigative newspaper reports⁴, which I have drawn upon, very little systematic research has been done into CSR in Mauritius. Given the dearth of empirical literature on CSR in an African context, I also hoped that my research would contribute to the body of knowledge on this subject. My intention was to stimulate a more informed debate about the potential role of CSR as a tool for economic and social development in the context of developing countries. It should be noted, however, that my research is largely exploratory and focuses on the rhetoric (rather than the practices) surrounding CSR and does not adopt any normative stance.

This part of the thesis is divided into three chapters. The first two chapters set the scene. This chapter examines how CSR came to be seen as something which could make an important contribution to development and poverty alleviation in the developing world whilst the second chapter provides a brief overview of the nature and state of the Mauritian economy and of the country's corporate governance framework, as well as the rising profile of CSR in the country. The final chapter explores the concept of CSR in Mauritius in more detail, providing an empirical study of how corporate executives in Mauritius understand CSR. It investigates their rhetorical commitment to CSR and explores their understanding of the nature of CSR: what do they think a rhetorical commitment to CSR entails in practice?

This chapter is divided into two sections and looks at how neo-liberal policies have been promoted in recent decades by international financial institutions (IFIs) such as the World Bank and the International Monetary Fund (IMF) when providing financial assistance to developing countries and advising them on the best route to economic

³ See, for example, Kemp Chatteris Deloitte (Deloitte), *Review of Corporate Social Responsibility policies and actions in Mauritius and Rodrigues* (Kemp Chatteris Deloitte, Mauritius April 2008); Mauritius Employers' Federation (MEF), *MEF Survey Report on Corporate Social Responsibility Survey* (MEF, Port-Louis, Mauritius December 2006). Both the report and the survey are discussed in more detail in the next chapter. The MEF has recently published another survey: MEF, *MEF Survey Report on Corporate Social Responsibility Survey* (MEF, Port-Louis, Mauritius May 2008). A number of their findings reflect those of the Deloitte Report. The latter's findings are in fact much more comprehensive, which is why the latest MEF survey results are not discussed at any length in the next chapter.

⁴ See Corina Julie, 'Quand les entreprises jouent aux bienfaitrices' *L'Express* (Port-Louis, Mauritius 21 May 2006) <http://www.lexpress.mu/print.php?news_id=65331> accessed 28 August 2008. See also Azhagan Chenganna, 'Responsabilité sociale- Quand les entreprises s'achètent une conscience' *L'Express* (Port-Louis, Mauritius 6 April 2008) <http://www.lexpress.mu/display_search_result.php?news_id=105776#> accessed 28 August 2008.

and social development. It is argued that the rise of neo-liberalism has been accompanied not only by a push to extend the sphere of the market and to 'deregulate' but also by a fierce reassertion of the principle of shareholder primacy and a shareholder-oriented model of the corporation. Indeed, the OECD and the World Bank have been promoting the latter in developing countries via the OECD's recently revised *Principles on Corporate Governance*⁵ and the World Bank's Reports on the Observance of Standards and Codes (ROSCs).⁶ Paradoxically, it is in this context that contemporary CSR has risen to prominence. In recent years big business has been encouraged by the international development community and NGOs to engage more proactively in social development and poverty reduction by supporting the Millennium Development Goals (MDGs) through CSR. Yet the voluntary, self-regulatory nature of contemporary CSR has also begun to meet with more and more criticism in the developing world, with commentators pointing to the growing discrepancies between CSR rhetoric and reality. The rise of the corporate accountability movement, introduced in the previous chapter, is examined in this context.

⁵ Initially adopted in 1999, revised in 2004. For full text see <<http://www.oecd.org/dataoecd/32/18/31557724.pdf>> accessed 8 July 2009.

⁶ See below.

I. The rise of CSR as a developmental tool

'[The MNE is] one of the most effective engines of development'

Former US Secretary of State Henry Kissinger

'[The MNE is] one of the most powerful impediments to Third World development'

Ronald Muller⁷

In chapter three, it was argued that contemporary ameliorative self-regulatory CSR does not advocate a radical re-conceptualisation of the shareholder-oriented corporation as a social institution⁸ and that its emphasis is on voluntarism and corporate self-regulation rather than on coercive state regulation. As such, it was argued, it permits corporations and their executives to pursue the goal of maximising shareholder value while claiming to be more sensitive about the effects of their activities on society and the environment. It is, it was argued, because of its essentially unthreatening nature - it leaves the basic shareholder-oriented tenets of contemporary corporate governance and culture unchallenged - that contemporary ameliorative CSR has been so whole-heartedly embraced by business interests.

Interestingly, in recent years contemporary CSR in its self-regulatory form has also been embraced by various development agencies and by governments. They all - governments, civil society organisations and business - see self-regulatory CSR as, to some extent at least, a potential bridge connecting the arenas of business and development, and increasingly discuss self-regulatory CSR programmes in terms of their potential contribution to poverty alleviation and other development goals in developing countries.⁹ For example, the UK's Department for International

⁷ Address by Henry R Kissinger on 'Global Consensus and Economic Development', delivered by Daniel P Moynihan, US Representative to the UN, Seventh Special Session of the UN General Assembly, September 1, 1975; Ronald Muller, 'The Multinational Corporation and the Exercise of Power: Latin America' in Abdul A Said and Luiz R Simmonds (eds), *The New Sovereigns: Multinational Corporations as World Power* (Englewood Cliffs, New Jersey 1975) 55 both cited in Joseph Lapalombara and Stephen Blank, 'Multinational Corporations and Developing Countries' (1980) 34 (1) *Journal of International Affairs* 119, 119.

⁸ Along the lines of the SRC, which was associated with what has earlier been labelled transformative CSR.

⁹ Michael Blowfield and Jędrzej George Frynas, 'Setting new agendas: critical perspectives on Corporate Social Responsibility in the developing world' (2005) 81 *International Affairs* 499, 499.

Development (DFID) states: 'By following socially responsible practices, the growth generated by the private sector will be more inclusive, equitable and poverty reducing'.¹⁰ Antonio Vives of the Inter-American Development Bank goes even further: 'CSR, by its very nature, is development done by the private sector, and it perfectly complements the development efforts of governments and multilateral development institutions'.¹¹

Why has there been such widespread interest in and support for contemporary CSR as a potential developmental tool?¹² Prima facie, it is something of a paradox that the re-emergence of the concept of CSR coincided with the rise of neo-liberal globalisation from the 1980s onwards. The next section explores the broader economic and political context within which NGOs and states in the developing world have been formulating their development strategies.

Neo-Liberal Globalisation and Governance

Put simply, neo-liberalism rests on economism and marketism, as reflected in the ideas of privatisation, liberalisation and deregulation.¹³ In essence, neo-liberals argue that in the economic sphere, the state should create private property rights (privatisation)¹⁴, encourage free trade and free markets (deregulation and

¹⁰ DFID, *Socially Responsible Business Team Strategy: April 2001- March 2004* (DFID, London 2004) 2 cited in Rhys Jenkins, 'Globalization, Corporate Social Responsibility and poverty' (2005) 81(3) *International Affairs* 525, 525. Valerie Amos, the then Secretary of State for International Development in 2003 stated, 'Foreign investors can contribute to economic growth through capital, technology transfer, access to specialised skills, and through their ability to integrate production across several countries. Those businesses that are committed to socially responsible practices can have an even greater impact. They can reinforce the poverty reduction strategies of the country in which they are operating, contribute to environmental sustainability and promote core labour standards and human rights.' See DFID, *DFID and Corporate Social Responsibility: An Issues Paper* (DFID, London 2003) 1.

¹¹ A Vives, 'The role of multilateral development institutions in fostering corporate social responsibility' (2004) 47(3) *Development* 45, 46.

¹² In 2004, for instance, European NGOs and trade unions called for the European Union to propose a new CSR agenda, demanding that CSR 'demonstrate its credibility globally, particularly in the developing country context', NGO and Trade Union Statement at the European Conference on Corporate Social Responsibility, Maastricht, 7-9 November 2004 cited in M Blowfield, 'Corporate Social Responsibility: reinventing the meaning of development?' (2005) 81 *International Affairs* 515, 515.

¹³ Jan Aart Scholte, 'The Sources of Neoliberal Globalization' (2005) *Overarching Concerns Programme Paper No. 8* (UNRISD, Geneva) 7.

¹⁴ Neo-liberals argue that, for instance, privatisation of pensions and health care for instance is superior to all other options on several counts: expansion of coverage; competition; administrative cost of the system; and its impact on capital markets, national savings and investment. See UNRISD, *Social Policy*

liberalisation), and ensure that freely negotiated contracts are enforced and protected (the rule of law)¹⁵, but should not do much more. Too many state interventions in the 'free market', it is argued, will merely distort its beneficent, wealth-maximising rationality. Hence, the state should adopt an essentially non-interventionist and deregulatory approach to economic affairs and instead promote market-enabling governance.¹⁶ This 'economic' view of the world has been forcefully propounded in recent decades by IFIs such as the IMF and the World Bank¹⁷ when providing financial assistance to developing countries and advising them on the best route to economic growth and development. Thus neo-liberal ideas about development underlay the so-called structural adjustment programmes (SAPs) implemented in the 1980s and 90s¹⁸, now reinvented¹⁹ in the form of 'Poverty Reduction Strategy Papers' (PRSPs).²⁰ Through these mechanisms, international agencies have encouraged developing countries to develop investment codes that promote foreign direct investment (FDI).²¹ Amongst other things, many developing countries - Mauritius

in a Development Context- Report of the UNRISD International Conference, 23-24 September 2000, Tammsvik, Sweden (UNRISD, Geneva 2001) 9.

¹⁵ David Harvey, *A Brief History of Neoliberalism* (OUP, Oxford 2005) 2.

¹⁶ As Scholte puts it, '[in] neoliberal eyes, the role of the public sector in the economic sphere is to 'enable' rather than to 'do'. *Scholte* (n 13) 8.

¹⁷ The World Bank Group comprises of five different organisations: The International Bank for Reconstruction and Development (IBRD) and the International Development Association provide loans, grants and technical assistance to member governments (currently 185). The International Finance Corporation (IFC) provides financial support for private sector investments, the Multilateral Investment Guarantee Agency gives political risk insurance to private investors and the International Centre for Settlement of Investment Disputes provides facilities for the conciliation and arbitration of investment disputes between member countries and private investors. See the 'About Us' section on the World Bank website <<http://www.worldbank.org>> accessed 28 August 2008.

¹⁸ See for instance Irene A Belot, 'The Role of the IMF and the World Bank in Rebuilding the CIS (Commonwealth of Independent States)' (1995) 9 *Temple International and Comparative Law Journal* 83, 83-84; Kim Reisman, 'The World Bank and the IMF: At the Forefront of World Transformation' (1992) 60 *Fordham Law Review* 349; Jeremy J Sanders, 'The World Bank and the IMF: Fostering Growth in the Global Market' (2000) 9 *Currents: International Trade Law Journal* 37.

¹⁹ S Soederberg, *The Politics of the New International Financial Architecture: Reimposing Neoliberal Domination in the Global South* (Zed Books, London 2004) 139.

²⁰ According to the IMF, 'PRSPs are prepared by governments in low-income countries through a participatory process involving domestic stakeholders and external development partners, including the IMF and the World Bank. A PRSP describes the macroeconomic, structural and social policies and programs that a country will pursue over several years to promote broad-based growth and reduce poverty, as well as external financing needs and the associated sources of financing.' See the 'PRSP Factsheet' on the IMF website <<http://www.imf.org/external/np/exr/facts/prsp.htm>> accessed 28 August 2008.

²¹ Naomi Cahn, 'Corporate Governance Divergence and Sub-Saharan Africa: Lessons from out here in the Fields' (2004) 33 *Stetson Law Review* 893, 902.

included - have established Export Processing Zones (EPZs)²² to attract foreign capital by giving them preferential treatment in terms of subsidies and tax breaks.

Recently, IFIs have also been promoting the notion of 'good governance' as part of their 'Post-Washington consensus'²³ development strategy for developing countries. The concept of 'governance' has myriad definitions. For instance, the Institute on Governance in Canada defines it as the 'process whereby societies or organizations make important decisions, determine whom they involve in the process and how they render account'²⁴, whilst the World Bank defines it as 'the manner in which power is exercised in the management of a country's economic and social resources for development'.²⁵ According to Santiso, at the World Bank 'there is heightened awareness that the *quality* of a country's governance system is a key determinant of the ability to pursue sustainable economic and social development (emphasis in original)'.²⁶ Researchers at the World Bank Institute have thus distinguished six main dimensions of 'good' governance: (1) voice and accountability, which includes civil liberties and political stability; (2) government effectiveness, which includes the quality of policy making and public service delivery; (3) the lack of regulatory burden; (4) the rule of law, which includes property rights; (5) independence of the judiciary; and (6) control of corruption.²⁷ It seems, therefore, that the focus of good governance strategies is the strengthening of public institutions in order to make governments more 'effective'. However, as Santiso observes:

²² 'Many countries designate "export processing zones" to encourage export-platform investments. These zones offer special infrastructure, such as port facilities and power supplies, often at subsidised rates. Production is normally free of the duties, income taxes and minimum wage requirements etc., that prevail in the rest of the host economy'. M Casson and Associates, *Multinationals and World Trade* (Allen and Unwin Ltd, London 1986) 4.

²³ Whilst the Washington Consensus was built on neo-liberal ideas based on a mix of structural adjustment and economic stabilisation mentioned earlier, the Post-Washington Consensus refers to an enlarged package of policy prescriptions that gives the state, law and institutions a greater role to play, hence the increased use of the term 'governance'. However, Glinavos argues that this does not constitute a major shift as there is 'the continuing insistence on a strict separation of state and market'. I Glinavos, 'Neoliberal Law: unintended consequences of market-friendly law reforms' (2008) 29(6) *Third World Quarterly* 1087, 1088. Önis and Şenses go even further: the Post-Washington Consensus 'does not go far enough in overcoming the limitations of the neoliberal policy agenda'. Z Önis and F Şenses, 'Rethinking the Emerging Post-Washington Consensus' (2005) 36(2) *Development and Change* 263, 265. See also the discussion below on the notion of 'good governance'.

²⁴ John Graham, Bruce Amos and Tim Plumptre, 'Principles for Good Governance in the 21st Century' Policy Brief No. 15 (Institute On Governance, Canada August 2003) 1.

²⁵ World Bank, *Governance and Development* (World Bank, Washington DC 1992) 1.

²⁶ Carlos Santiso, 'Good Governance and Aid Effectiveness: The World Bank and Conditionality' (2002) 7 *Georgetown Public Policy Review* 1, 5.

²⁷ Daniel Kaufmann, Aart Kraay and Pablo Zoido-Lobaton, 'Governance Matters', Policy Research Working Paper 2196 (The World Bank, Washington DC October 1999) cited in Santiso (n 26) 5.

while the governance agenda amends the dominant neo-liberal economic policy model, it does not repudiate it ... The IFIs tend to view **sustaining economic reform and anchoring the market logic** as the ultimate objective of governance and institutional reform.²⁸ (emphasis added)

As such, policies to attract FDI are at the heart of the 'good governance' agenda promoted by the IFIs as it is believed that opening up markets to foreign investors will lead to economic growth, which will in turn lead to sustainable development. As a result, corporate governance reform has been primarily concerned with increasing investor confidence - and especially foreign investor confidence - in these countries. Indeed, corporate governance reform has become a vital part of the 'good governance' reforms advocated by the IFIs.

Corporate Governance

Charles Oman of the OECD has argued that 'as globalisation enhances the strength of the market forces relative to that of regulation by national and sub-national governments, corporate governance ... becomes still more important'.²⁹ The market-based investment process is thus portrayed as being underpinned by good corporate governance. Atacik and Jarvis, consultants at the World Bank, declare that the 'state of corporate governance can have an important impact on the availability and cost of capital for firms and financial stability, a critical ingredient to sustainable development'.³⁰ This is because corporate governance is seen as 'the market mechanism most effective in protecting investors' rights; it is also necessary to secure a stable supply of long-term capital essential for sustained growth'.³¹ Significantly, the corporate governance model that is being advocated in developing countries is essentially an Anglo-American model, which unambiguously prioritises shareholder interests (and especially foreign minority shareholder interests) above all else. As

²⁸ Santiso (n 26) 16.

²⁹ Charles Oman, *Corporate Governance in Development* (OECD Development Centre for International Private Enterprise, May 2003) (mss), 10.

³⁰ Mehmet Can Atacik and Michael Jarvis, 'Better corporate governance: More value for everyone' (2006) Business and Development Discussion Papers, Paper No.2 (World Bank Institute, Washington DC) 1. They go on further to explain that a good corporate governance regime is central to the efficient use of capital as it promotes market confidence, and also helps to ensure that corporations take into account the interests of various constituencies.

³¹ Ha-sung Jang, 'Corporate Governance and economic development: the Korean experience' in Farrukh Iqbal and Jong-Il You (eds), *Democracy, Market Economics and Development: An Asian Perspective* (World Bank Group, Washington DC 2001) 73.

Reed explains, 'the Anglo-American model of corporate governance is a logical micro level complement of the macro neo-liberal global economy'.³²

This model is embodied in the *OECD Principles on Corporate Governance* (The Principles). The Principles were first issued in 1999, and were revised in 2004 following a comprehensive survey of corporate governance practices in and outside the OECD area.³³ They have been endorsed as one of the Financial Stability Forum's twelve key standards essential for financial stability³⁴, and they form the basis of the corporate governance component of the World Bank - IMF Reports on the Observance of Standards and Codes (ROSCs).³⁵ There are twelve modules to the ROSCs: data dissemination, fiscal transparency, monetary and financial policy transparency, banking supervision, securities regulation, insurance supervision, payments systems, market integrity (anti-money laundering and combating the financing of terrorism), corporate governance, accounting, auditing, insolvency regimes and creditor rights.³⁶ Each unit represents an 'internationally agreed standard', which is then benchmarked against country practices in a given area of state policy or market behaviour.³⁷

Although the Preamble to the Principles states that '[t]here is no single model of good corporate governance',³⁸ it is clear that the Principles are based on the Anglo-American model of the corporation as a private enterprise to be run in the interests of its shareholders rather than as a social or quasi-social institution with wider responsibilities. Thus, the Principles refer to the 'key ownership functions' of

³² Darryl Reed, 'Corporate Governance Reforms in Developing Countries' (2002) 37 *Journal of Business Ethics* 223, 231.

³³ *Atacik and Jarvis* (n 30) 2.

³⁴ The Financial Stability Forum (FSF) was convened in April 1999 to promote international financial stability through information exchange and international co-operation in financial supervision and surveillance. The Forum brings together on a regular basis national authorities responsible for financial stability in significant international financial centres, international financial institutions, sector-specific international groupings of regulators and supervisors, and committees of central bank experts. The FSF seeks to co-ordinate the efforts of these various bodies in order to promote international financial stability, improve the functioning of markets, and reduce systemic risk. See website <<http://www.fsforum.org/home/home.html>> accessed 29 August 2008.

³⁵ The standards and codes initiative was launched in 1999 by the IMF and the World Bank.

³⁶ For the list of the different standards, see <http://www.fsforum.org/cos/key_standards.htm> accessed 8 July 2009.

³⁷ Susanne Soederberg, 'The promotion of 'Anglo-American' corporate governance in the South: who benefits from the new international standard?' (2003) 24 *Third World Quarterly* 7, 8.

³⁸ *OECD Principles of Corporate Governance* (OECD, Paris 2004) 13.

corporate shareholders.³⁹ The ROSC also display features which clearly favour the Anglo-American model.⁴⁰ The Principles urge the development of two main mechanisms for ensuring that corporations are run in the interests of investors: one external, one internal. The external mechanism is the 'market for corporate control'⁴¹ whilst the internal mechanisms centre on the fiduciary duties of directors and on the monitoring role of non-executive directors. Both mechanisms are aimed at creating a safe investment climate for investors – and particularly for minority, foreign *rentier* shareholders. As mentioned above, since states are seeking to attract FDI, they feel that shareholder interests have to be given priority.

The Principles are divided into five topics: the rights of shareholders, the equitable treatment of shareholders, the role of stakeholders in corporate governance, disclosure and transparency and the responsibilities of the board. At the outset, the Principles state that the 'corporate governance framework should protect and facilitate the exercise of shareholder rights.'⁴² They also go directly to the issue of minority shareholder rights - and thus to the issue of *rentier* foreign investors - by asserting that all shareholders of the same class should be treated equitably and that insider dealing and self-dealing should be prohibited.⁴³ Moreover, board members are required 'to act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the company and **the shareholders** (emphasis added)'.⁴⁴ Finally, although the Principles do recognise the rights of stakeholders, it is worth noting that they do not consider them rights that should be protected by corporate law but, rather, by other bodies of law, such as labour and environmental laws. In other words, they should be protected *outside* of corporate law. This is very much in line with the traditional Anglo-American shareholder-oriented model of the corporation, which has come to dominate.⁴⁵ Despite the references to stakeholder rights, therefore, the

³⁹ OECD (n 38) 14, 18.

⁴⁰ In the assessment carried out in different developing countries, the World Bank advocates a board structure which gives almost exclusive rights to shareholders by asking the countries for example, to empower shareholders in their company law. The World Bank also advocates a dominant role for financial markets. See the next chapter on the ROSC recommendations in Mauritius.

⁴¹ See chapter 1.

⁴² OECD (n 38) 18.

⁴³ OECD (n 38) 20.

⁴⁴ OECD (n 38) 24.

⁴⁵ See chapter 1 and especially Easterbrook and Fischel's point that market efficiency equated with shareholder value ranks above all else and that other areas of law should deal with externalities such as employees' rights or environmental damage.

Principles essentially re-assert the primacy of the shareholder value norm, which is then implemented by the ROSCs. The ROSC assessments are voluntary but compliance is not, for, as Soederberg says, 'non-compliance would send negative signals to the international financial community, resulting in possible capital flight and investment strike'.⁴⁶ All these mechanisms thus put pressure on developing countries to adopt the Anglo-American model of corporate governance.

Investor Rights and The New Constitutionalism

Meanwhile the Uruguay Round of multilateral trade negotiations⁴⁷ substantially broadened and deepened reductions in statutory barriers to cross-border commerce by, inter alia, absorbing the General Agreement on Tariffs and Trade into the new World Trade Organisation. Bilateral investment treaties also brought major reductions in state involvement in FDI matters.⁴⁸ The purpose of this framework - with its principles of non-discrimination, most-favoured-nation-status, protection against expropriation and so on - is to protect foreign investments by constraining states from doing things which would put the integrity and value of those foreign investments at risk. Stephen Gill has referred to this process as the 'new constitutionalism' because it is, he argues, an attempt to 'standardise the enduring rules of the game' and to provide foreign investors with inviolable legal and quasi-legal rights akin to constitutional rights.⁴⁹ Under this 'new constitutionalism', states are not only constrained by the fear of capital flight but by the threat of litigation by investors. As David Schneiderman observes, '[t]hrough bilateral, regional, and multilateral agreements, rules for the protection of FDI have emerged as a priority item for international trade law and thereby, an important component of the new constitutionalism.'⁵⁰ Thus, if a developing country's constitutional clauses are at odds with the investment rules, the

⁴⁶ Soederberg (n 37)13.

⁴⁷ From 1986-1994. For full text, see

http://www.wto.org/english/docs_e/legal_e/legal_e.htm accessed 8 July 2009.

⁴⁸ Scholte (n 13) 9.

⁴⁹ See Stephen Gill, 'Globalisation, Market Civilisation, and Disciplinary Neoliberalism' (1995) 24 *Millennium: Journal of International Studies* 399.

⁵⁰ David Schneiderman, 'Investment Rules and the New Constitutionalism: Interlinkages and Disciplinary Effects' (2000) 25 *Law and Social Inquiry* 757, 759.

latter is likely to prevail.⁵¹ The effect of the new constitutionalism has been to significantly limit the policy choices available to states in the realm of business regulation and in the economic sphere more generally. Indeed, according to Gill, this is precisely what was intended. The goal was to insulate key aspects of economic policy from majoritarian politics and to thereby limit the reach of democracy.⁵² Paradoxically, states have been complicit in their own disempowerment. Obviously, these developments have also reshaped the relationship between business and the state.

Increasingly constrained in their policy choices, states have become less able to regulate business in the traditional (mandatory) way⁵³ and come increasingly to rely on business self-regulation. In fact, with the 'developmental state'⁵⁴ in retreat, it was felt that governments in developing countries would not be able to address the development challenges on their own.⁵⁵ As a result, in recent years, governments have been forced to change their strategies when implementing goals related to development. The developmental state has given way to the 'good governance' state, meaning a state which provides a good investment climate for foreign capital. This is the climate in which CSR in its contemporary form has emerged.

⁵¹ Schneiderman examines the Calvo clauses in the Mexican constitution and explains how the government amended them so that Mexico could accede to the North American Free Trade Agreement – see *Schneiderman* (n 50) 765-767.

⁵² *Gill* (n 49) 412.

⁵³ Often referred to as a 'command and control' relationship between the state and business. See chapter 3 in relation to models of CSR.

⁵⁴ The notion of the developmental state is used in the context of the East Asian countries such as Japan and Korea whereby the state was and is seen as playing a critical role in the process of economic and social transformation. See generally M. Woo-Cummings, *The Developmental State* (Cornell University Press, Ithaca, London 1999). Following the East Asian crisis of 1997-98, the IFIs forced these states to embrace hard-line neo-liberal policies – it was felt that the crisis was due to both state and market failure: according to the IMF, the state failed to properly monitor economic activities and therefore failed to reduce exposure to foreign exchange risks in both the financial and corporate sectors. 'Crony capitalism' (concentration of ownership in corporate and banking sectors, which diminished the ability of outside actors and institutions to impose checks and balances) had to be eradicated by opening up the markets to transnational finance, that is, foreign investors. *Soederberg* (n 37) 10-11.

⁵⁵ Tom Fox and Dave Prescott, *Exploring the role of development cooperation agencies in corporate responsibility*. Document based on discussions at the conference, 'Development cooperation and corporate social responsibility: exploring the role of development cooperation agencies', Stockholm, 22-23 March 2004' (IBLF, IIED, 2004) 2.

The emergence of anti-globalisation movements in the 1990s (now referred to by some as ‘alter-globalisation’ movements⁵⁶), which brought the misdemeanours (human rights abuses, use of sweatshops and so on) of various corporations in developing countries to the attention of the general public also contributed to the meteoric rise of the contemporary CSR movement.⁵⁷ As elaborated in chapter three, in keeping with the prevailing neo-liberal ideas, the CSR agenda of the 1990s emphasised corporate self-regulation and voluntary initiatives involving codes of conduct, environmental management systems, social and environmental reporting and so on. This type of approach, however, soon met with a barrage of criticism, leading to claims that CSR was nothing more than a public relations or window dressing exercise.⁵⁸ Corporations were seen by many as rapacious profit-maximising beasts which had little regard for the social and human development of the developing countries in which they had implanted themselves⁵⁹, and which contributed little to the creation of sustainable inclusive and equitable development.⁶⁰ For instance, the Christian Aid Report, *Behind the Mask: The Real Face of Corporate Social Responsibility*⁶¹, published in January 2004, lists a string of transgressions by MNEs like Shell, BAT and Coca-Cola at the same time as they were espousing their commitment to CSR. This prompted the charity to call for corporate behaviour to be governed and regulated by enforceable rules and to join hands with Action Aid, Amnesty International, Friends of the Earth and Traidcraft through the CORE

⁵⁶ ‘Alter’ as in alternative to globalisation. See Yahia Desai and Meghnad Desai, ‘Trade and global civil society: The anti-capitalist movement revisited’ in Mary Kaldor, Helmut Anheier and Marlies Glasius (eds), *Global Civil Society 2003* (OUP, Oxford 2003) 59. See generally Kleber B Ghimire, ‘Contemporary Social Global Movements, Emergent Proposals, Connectivity and Development Implications’ (2005) Civil Society and Social Movements Programme Paper No. 19 (UNRISD, Geneva) on the different ‘global movements’ emanating from the World Social Forum, an annual event rallying people and organisations around the world, opposed to neo-liberal globalisation and pro-social justice.

⁵⁷ See chapter 3.

⁵⁸ P Utting, ‘Regulating Business via Multistakeholder Initiatives: A Preliminary Assessment’ in *Voluntary Approaches to Corporate Responsibility: Readings and a Resource Guide* (NGLS and UNRISD, Geneva 2002) 69. See also chapter 4 of the thesis.

⁵⁹ See D Korten, *When Corporations Rule the World* (Kumarian, London 1995).

⁶⁰ Utting and Zammit define this as meaning patterns of economic growth, resource distribution and decision-making processes that contribute to reducing social and income deprivation and inequalities, enhancing people’s rights and empowering groups who historically have experienced marginalisation and injustice. See P Utting and A Zammit, ‘Beyond Pragmatism - Appraising UN-Business Partnerships’ (2006) Markets, Business and Regulation Programme Paper No. 1 (UNRISD, Geneva) 1.

⁶¹ Christian Aid, *Behind the Mask: The Real Face of Corporate Social Responsibility* (Christian Aid, London 2004) <<http://212.2.6.41/indepth/0401csr/index.htm>> accessed 20 August 2008. The report was discussed in chapter 3.

coalition⁶² to seek the passing of legislation which would require the UK Government to complete a twelve-month investigation and review into the negative impact abroad of the activities of UK companies, and recommend legal changes on how they might be addressed. Since then, CORE has also proposed two possible models for a new UK body to deal with problems of corporate abuses abroad: a full-blown Commission with an extensive advisory and policy-making mandate and a dispute resolution mechanism attached or a simple ombudsman service to resolve complaints involving UK-based groups informally.⁶³

II. Corporate Responsibility versus Corporate Accountability

As noted in the previous chapter, commentators have begun to identify an emerging division between those concerned about corporate *responsibility* and those concerned about corporate *accountability*.⁶⁴ The growing 'corporate accountability' movement views the corporate self-regulation which characterises contemporary CSR as insufficient and, in some versions, as fundamentally flawed, especially in the developing world. It does so for two principal reasons. First, it is argued that voluntary action fails to deal with the problem of 'democratic deficit'.⁶⁵ Thus, Newell claims that the civil groups engaging with business have 'neither the mandate nor the

⁶² See the CORE website <<http://www.corporate-responsibility.org/>> accessed 8 July 2009. CORE represents over 100 charities, faith-based groups, community organisations, unions, businesses and academic institutions.

⁶³ Jennifer A Zerk, *Filling the gap: A new body to investigate, sanction and provide remedies for abuses committed by UK companies abroad* (CORE, London December 2008) Executive Summary.

⁶⁴ J Bendell, 'Barricades and Boardrooms: A Contemporary History of the Corporate Accountability Movement' (2004) Technology, Business and Society Programme Paper No. 13 (UNRISD, Geneva) 18. The literature on this is wide-ranging and has already been discussed in chapter 4. Amongst others, see J Richter, *Holding Corporations Accountable: Corporate Conduct, International Codes, and Citizen Action* (Zed Books, London 2001) and D McBarnet, A Voiculescu and T Campbell (eds), *The New Corporate Accountability: Corporate Social Responsibility and the Law* (Cambridge University Press, Cambridge 2008).

⁶⁵ Bendell (n 64) 17.

legitimacy to represent broader publics'⁶⁶, whilst Bendell argues that 'civil regulation' can never be a substitute for state or international regulation.⁶⁷ Secondly, it is increasingly being argued by NGOs that the voluntary self-regulation championed by the advocates of contemporary CSR is ineffective and needs to be replaced by regulation. In the words of a recent UNRISD Report, 'international business cannot be expected to author [its] own regulation: this is the job of good governance'.⁶⁸ In similar vein, the UNDP Human Development Report for 1999 concluded that 'multinational corporations are too dominant a part of the global economy for voluntary codes to be enough. Globally agreed principles and policies are needed'.⁶⁹ CORE is even blunter, asserting that 'the voluntary approach to corporate responsibility has failed'.⁷⁰

As already discussed, the idea of corporate accountability seeks to overcome some of the deficiencies of contemporary CSR. It places much greater emphasis on 'hard' corporate obligations in which legal liabilities and penalties are imposed for non-compliance.⁷¹ In the words of Friends of the Earth, it demands 'going beyond voluntary approaches and establishing mechanisms which provide adequate legal and financial incentives for compliance'.⁷² To this end, the emerging corporate accountability movement has embraced a wide variety of mechanisms for holding corporations to account as an alternative to simply urging them voluntarily to improve standards or report.⁷³ Advocates of corporate accountability thus support initiatives which empower 'stakeholders' to challenge corporations⁷⁴ and promote everything from complaints procedures to independent monitoring, from compliance with national and international law and other agreed standards, to mandatory reporting and

⁶⁶ P Newell, 'Managing Multinationals: The Governance of Investment for the Environment' (2001) 13 *Journal of International Development* 907, 913.

⁶⁷ See Bendell (n 64).

⁶⁸ UNRISD, *States of Disarray: The Social Effects of Globalisation* (UNRISD, Geneva 1995) 19.

⁶⁹ UNDP, *Globalisation with a Human Face: Human Development Report 1999* (UNDP, New York 1999) 100 <http://hdr.undp.org/en/media/hdr_1999_en.pdf> accessed 29 August 2008.

⁷⁰ This is clearly stated on its website. See

<http://www.corporate-responsibility.org/C2B/document_tree/ViewACategory.asp?CategoryID=41> accessed 29 August 2008.

⁷¹ See P Utting, 'Social and Environmental Liabilities of Transnational Corporations: New Directions, Opportunities and Constraints' in P Utting and J Clapp (eds), *Corporate Accountability and Sustainable Development* (OUP India, New Delhi 2008).

⁷² Friends of the Earth International (FoEI), *Towards Binding Corporate Accountability: FoEI position paper for the WSSD* (FoEI, London 2002) cited in Bendell (n 64) 18.

⁷³ UNRISD, 'Corporate Social Responsibility and Business Regulation' (2004) Programme on Technology, Business and Society Research and Policy Brief 1 (UNRISD, Geneva) 3. See also Utting (n 71) and chapter 4 of the thesis.

⁷⁴ FoEI (n 72).

redress for malpractice.⁷⁵ It encompasses such things as the UN 'Norms on Responsibilities of TNCs and Other Business Enterprises with Regard to Human Rights',⁷⁶ the Aarhus Convention on mandatory environmental reporting⁷⁷, the International Right to Know Campaign (IRTK)⁷⁸, the creative use of the United States Alien Tort Claims Act (ATCA) and various forms of transnational litigation.⁷⁹ The idea is to make it impossible for corporations to 'pick and mix' bits of voluntary, self-regulatory CSR to 'make themselves look cuddly'.⁸⁰

One of the principal strategies of the corporate accountability movement has thus been to try to 'ratchet up' voluntarism to such an extent that:

the boundary between voluntary and legalistic institutional arrangements becomes a much greyer area where some soft and some hard approaches or instruments coexist and fuse in ways that [are] complementary.⁸¹

⁷⁵ UNRISD (n 73) 3.

⁷⁶ For full text see

<[http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.Sub.2.2003.12.Rev.2.En](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.Sub.2.2003.12.Rev.2.En)> accessed 29 August 2008. These were drafted and adopted in 2003 by the UN Sub-Commission on the Promotion and Protection of Human Rights but failed to get the political backing from the UN Commission on Human Rights to become international law. In 2005, the Commission called on the UN Secretary-General to appoint a Special Representative to organise further consultations on the issue of TNC responsibility for human rights and to report back to the Commission (now the Human Rights Council- HRC) with recommendations in 2008. The Final Report is entitled *Protect, Respect and Remedy: a Framework for Business and Human Rights* but is more commonly known as the 'Ruggie Report 2008'. It was published in April 2008 and presented to the UNHRC in June 2008. For a copy of the report and related materials, see

<<http://www.business-humanrights.org/Documents/RuggieHRC2008>> accessed 29 August 2008.

⁷⁷ See UNECE 'Governments Reach Agreement on New United Nations Treaty on Pollution Information Disclosure', Press Release ECE/ENV/03/P01 (UNECE, Geneva 31st January 2003). <<http://www.unece.org/env/pp/press.releases/prtr.31.01.03.pdf>> accessed 29 August 2008.

⁷⁸ It includes the union federation AFL-CIO (American Federation of Labor and Congress of Industrial Organizations), Amnesty International USA, Earth Rights International, Global Exchange, Oxfam America, and the Sierra Club. Their proposal aims to extend the Emergency Planning and Community Right to Know Act of 1986. The legislation established a US Toxic Release Inventory, which required companies in the US to register information on their use, storage and release of toxic substances. This had a beneficial impact in reducing emissions by US companies over subsequent years. However, the legislation only applied to activities in the US, an irony given that the legislation was in part a response to the Indian chemical factory disaster in Bhopal in 1984 that killed thousands. The 200 groups backing the IRTK campaign argued that the US should extend its right to know laws geographically to cover US activities abroad and qualitatively, to also cover important non-environmental issues. For the 2003 IRTK Report entitled, *IRTK: Empowering Communities Through Corporate Transparency* (IRTK Campaign, Washington DC 2003) See <<http://www.amnestyusa.org/justearth/irtk.pdf>> accessed 8 July 2009.

⁷⁹ See discussion in chapter 4. See also Peter Muchlinski, *Multinational Enterprises and the Law* (2nd edn OUP, Oxford 2007).

⁸⁰ Lucy Siegle, 'Faking it' *The Observer* (London 31 October 2004)

<<http://observer.guardian.co.uk/print/0,3858,5049792-110648,00.html>> accessed 29 August 2008.

⁸¹ Utting (n 71) 98.

It has, to some extent at least, succeeded in that voluntarism has in certain contexts become almost mandatory: law has been used 'to make business adoption of CSR policies much more of a legal obligation than the discourse of voluntarism ... would suggest.'⁸²

Although it is in its infancy, the corporate accountability movement sets itself in certain respects against contemporary CSR and in many ways represents a re-radicalisation of the idea of CSR, seemingly seeking to challenge the prevailing neo-liberal consensus. As indicated earlier, in chapter four, it is seeking to re-establish the authority of states and intergovernmental institutions over corporations, challenging prevailing ideas about the role of the state in corporate regulation and the belief that CSR can be achieved by voluntary self-regulation by corporations themselves. It also implicitly challenges the idea that the purely 'economic' rationality of the unregulated market operates so as to maximise social wealth and welfare; and, indeed, the idea that the pursuit by corporations of the interests of their shareholders necessarily serves the interests of society as a whole.

Development Revisited

At the same time as the corporate accountability movement started making its voice heard, the discourse on development started to expand to include the social dimensions of development, as exemplified by the creation of the Human Development Index by the UNDP.⁸³ In 2000, the UN Millennium Development Goals (MDGs)⁸⁴, focussing on the eradication of poverty and hunger, the achievement of universal primary education, the promotion of gender equality, the reduction of mortality and the improvement of health and ensuring environmental sustainability⁸⁵, were adopted. The MDGs represent the overarching action framework of international

⁸² Doreen McBarnet, 'Corporate social responsibility beyond law, through law, for law: the new corporate accountability' in *McBarnet* (n 64) 12.

⁸³ *Jenkins* (n 10) 529.

⁸⁴ The MDGs commit the international community to an expanded vision of development, one that vigorously promotes human development as the key to sustaining social and economic progress in all countries, and recognises the importance of creating a global partnership for development. The goals have been commonly accepted as a framework for measuring development progress, see 'About the Goals' on <<http://ddp-ext.worldbank.org/ext/GMIS/home.do?siteId=2>> accessed 8 July 2009.

⁸⁵ *Jenkins* (n 10) 529.

development policy⁸⁶, stressing the critical importance of alliances between governments and non-state actors, including the private sector. For instance, the UN Commission on the Private Sector and Development observes that a ‘coalition [of multiple stakeholders in the private and public sectors] is essential to unleashing the capacity of the private sector, to achieving the MDGs and to alleviating poverty (emphasis added)’.⁸⁷

It would appear, therefore, that in response to the backlash against voluntary CSR and corporate self-regulation, IFIs and various other international agencies have begun to promote the notion of ‘partnership’ and, more specifically, of private-public partnerships (PPPs). I have discussed the idea of partnership in more detail in chapter three.

The most active participants of PPPs have been UN agencies, especially in developing countries. For instance, Coca Cola and UNAIDS have worked together on coordinating AIDS education, prevention and treatment; CISCO Networking and UNDP are involved in delivering e-learning to twenty-four of the least developed countries and UNICEF and the ILO work with sporting goods manufacturers to prevent the use of child labour.⁸⁸ Moreover, the World Bank has been actively promoting CSR through its Corporate Social Responsibility Practice, located within its Foreign Investment Advisory Service, which advises developing country governments on public policy roles and instruments they can use to encourage CSR.⁸⁹ In terms of partnerships, it also created the Global Alliance for Workers and Communities, working with companies such as Nike and Gap in improving workplace conditions throughout their supply chains.⁹⁰

⁸⁶ Djordjija Petkoski, Michael Jarvis and Gabriela de la Garza, *The Private Sector as a True Partner in Development* (The IBRD, The World Bank, World Bank Institute, Washington DC, 2006) 6 <<http://siteresources.worldbank.org/CGCSRLP/Resources/Theprivatesectorasatruepartnerindevelopment.pdf>> accessed 29 August 2008.

⁸⁷ Commission on the Private Sector and Development, *Unleashing Entrepreneurship: Making business work for the poor*, Report to the Secretary-General of the United Nations (UNDP, New York 2004) ii <<http://www.undp.org/cpsd/report/index.html>> accessed 29 August 2008.

⁸⁸ *Vives* (n 11) 47.

⁸⁹ See the CSR page on the IFC website

<<http://www.ifc.org/ifcext/economics.nsf/Content/CSR-IntroPage>> accessed 29 August 2008.

⁹⁰ *Utting* (n 58) 77.

Apart from the IFIs, development agencies such as the Canadian International Development Agency, the Swedish International Development Agency, the German Federal Ministry for Economic Cooperation and Development and the Dutch Ministry of Development Cooperation are amongst many others which have recently emphasised the role of CSR in promoting development.⁹¹

From the foregoing, it can be seen that contemporary self-regulatory CSR is now firmly entrenched as a development strategy, and is supported by the IFIs and by various Western countries. But is CSR an adequate developmental tool or is it largely rhetorical in nature, especially in the current climate? What form does CSR take within a developing country? Does CSR indeed contribute to sustainable development? These are the questions which this part of the thesis will attempt to answer with particular reference to Mauritius.

Concluding remarks

This chapter has sought to demonstrate how CSR has come increasingly to be perceived as having a potentially vital contribution to make to economic and social development within the developing world. The first section of the chapter sought to show the various reasons why CSR has become one of the flavours of the new Millennium in terms of development strategy. It was argued that with the IFIs promoting the neo-liberal 'good life' when giving financial assistance to developing countries, the latter have been constrained and forced to rely on CSR in its self-regulatory, contemporary form to try to fill the 'governance gaps'. Questions remain as what form CSR takes within a developing country, and whether it indeed contributes to sustainable development. The next chapter seeks to explore these questions in the Mauritian context.

⁹¹ *Jenkins* (n 10) 531.

Chapter Six

The Neo-Liberal Route to Development: CSR in Mauritius

Introduction

Having looked at how CSR has come increasingly to be seen as central to developmental issues in recent years in the previous chapter, this chapter introduces the case-study. It is divided into three sections. It begins by locating Mauritius from a historical and a socio-economic point of view, exploring in particular the implications of the neo-liberal policy reforms advocated by the International Financial Institutions (IFIs), and embraced by the Mauritian government.

The second section looks at how the IFIs have pressed for the establishment of an Anglo-American regime of corporate governance in Mauritius, despite the fact that such a regime does not readily fit the structure of Mauritian firms. In this context, the implementation of the Mauritian Code of Corporate Governance is explored. The section argues that the latter embodies the principle of Enlightened Shareholder Value (ESV) as enunciated by the UK Company Law Review (CLR)¹ and seeks, therefore, to make a business case for CSR: companies should look to profit-maximise in the long-term, thereby allowing corporate managers to take some account of stakeholders' interests in making decisions whilst ultimately prioritising the shareholder interest. Against this backdrop, one of the questions which arises is whether contemporary CSR can make a significant contribution to sustainable development if it is, in fact, simply an adjunct to a shareholder-oriented conception of the corporation.

The final section of the chapter examines the rising profile of CSR in Mauritius. It is argued that contemporary ameliorative CSR in its self-regulatory form has only emerged in the last decade, and that the 'jargon' associated with ameliorative CSR can be traced back only as far as 2003 when the first 'Social Report' was published by

¹ See chapter 2 of the thesis.

British American Tobacco (Mauritius) (BAT). It is also argued that the government of Mauritius has, in recent years, been pursuing an increasingly neo-liberal approach to development and that as it has done so, it has, at the same time, encouraged companies to become more socially responsible, and expressly used the acronym 'CSR' to refer to the social responsibilities of corporations operating on the island. Two recent surveys published on CSR practice in Mauritius are also analysed.

I. Mauritius – Overview

'You gather the idea that Mauritius was made first, and then heaven; and that heaven was copied after Mauritius.'²

History

Mauritius is a tiny island of 1865 square kilometres situated in the Indian Ocean off the South East coast of the African continent. It was uninhabited when it was first discovered by the Portuguese at the beginning of the sixteenth century. As Miles explains, the island has a 'historical experience of sequential colonialism'³: it was first settled by the Dutch in 1598⁴, followed by the French in 1715 and by the British in 1810. The British were in control until 1968, when the country gained independence.⁵ Mauritius became a Republic in 1992 and forms part of the British Commonwealth.

Mauritius is generally grouped within the African region but many observers consider it different from African societies on account of its island status and the immigrant

² Mark Twain, *Following the Equator and Anti-Imperialist Essays* (OUP, Oxford 1996, originally published in 1897) 619.

³ William F S Miles, 'The Mauritius Enigma' (1999) 10 *Journal of Democracy* 91, 95.

⁴ The Dutch left in 1710.

⁵ Sheila Bunwaree, 'State-Society Relations: Re-engineering the Mauritian Social Contract' The Council for the Development of Social Science Research in Africa General Assembly Conference, Maputo, Mozambique December 2005, 3.

origin of its peoples.⁶ Houbert clarifies: 'In Mauritius, colonialism was not something which came from outside; it was built into the fabric of the whole society'.⁷ The French had imported slaves from mainland Africa and Madagascar, and when the British abolished slavery in 1835, indentured labourers were brought from India, and a small minority from China. Thus, by the end of the nineteenth century, Mauritius was already a multi-racial society. It remains a melting pot of European, African and Asian cultures.⁸ Despite these reservations about Mauritius' status as 'African', it is very much seen as part of Africa and is a member of the African Union⁹, the Common Market for Eastern and Southern Africa (COMESA)¹⁰, the Southern African Development Community (SADC)¹¹ and the New Partnership for Africa's Development (NEPAD).¹²

Socio-economic conditions

The Nobel Prize winning economist, Professor J.E. Meade, who led a survey mission to Mauritius in 1960, predicted a grim future for the country, announcing that 'the

⁶ *Miles* (n 3) 94. Miles in fact observes that 'Mauritius is perhaps best understood as a miniature version of the U.S. model.' *Miles* (n 3) 101.

⁷ Jean Houbert, 'Mauritius: Independence and Dependence' (1981) 19 *The Journal of Modern African Studies* 75, 75. Houbert gives a compelling account of economic and political life in Mauritius in the early days until the 1980s.

⁸ Nikhil Treebhoohun, 'The Mauritian Experience' *The Conference on Small States, St Lucia, West Indies, February 17-19 1999*, 3.

⁹ The aims of the African Union are 'to rid the continent of the remaining vestiges of colonization and apartheid; to promote unity and solidarity among African States; to coordinate and intensify cooperation for development; to safeguard the sovereignty and territorial integrity of Member States and to promote international cooperation within the framework of the United Nations'. See 'About Us' on the website <<http://www.africa-union.org/>> accessed 31 December 2008.

¹⁰ The COMESA comprises a total of 20 African states, which have resolved to promote the integration of the Eastern and Southern African region through trade development and investment. In order to promote regional development and the region's integration into the global market, tariff and non-tariff barriers have been eliminated between the nine members of the COMESA Free Trade Area, including Mauritius in October 2000. See the website <http://www.comesa.int/index_html/view> accessed 29 August 2008.

¹¹ The SADC comprises a total of 14 Southern African countries. The SADC Trade Protocol became operational from September 2000; it provides for the facilitation of commercial transactions between SADC member states and aims at removing all trade barriers within a period of eight years. SADC also proposes to transform itself into a Free Trade Area between 2008 and 2012. See the website <<http://www.sadc.int>> accessed 29 August 2008.

¹² NEPAD is designed to address the current challenges facing the African continent. Issues such as the escalating poverty levels, underdevelopment and the continued marginalisation of Africa needed a new radical intervention, spearheaded by African leaders, to develop a new Vision that would guarantee Africa's Renewal, see 'NEPAD In Brief' <<http://www.nepad.org/>> accessed 29 August 2008.

outlook for peaceful development is poor'¹³ because of its 'very typical African economy- monocrop (sugarcane)'. It was, he argued, 'prone to terms of trade shocks; witnessing rapid growth rate in population; and susceptible to ethnic tensions'.¹⁴ Yet, Mauritius defied these predictions to become one of Africa's richest countries in the space of four decades¹⁵: '[f]rom a remote, cyclone-prone, densely populated island with no natural resources, it had become an upper-middle income developing country with a growing service sector'.¹⁶ It ranks seventy-fourth in the world and second in Africa (after the Seychelles) on the latest Human Development Index.¹⁷

To explain the 'Mauritian miracle', as it is usually referred to, studies have focussed primarily on its market-oriented policies.¹⁸ What is notable about Mauritius, however, is that it achieved growth and poverty reduction through a highly interventionist trade regime, which remained protectionist during a period in which (the rest of) Africa was liberalising in the 1980s.¹⁹ In fact, even though the country had to embark on an IMF-based Structural Adjustment Policy (SAP) from 1979 to 1986, the latter did not include wide ranging liberalisation policies.²⁰ Indeed, the government takes great pride in the fact that Mauritius resisted the IMF's request to abolish free education

¹³ James Edward Meade and others, *The Economics and Social Structure of Mauritius- Report to the Government of Mauritius* (Methuen, London 1961) cited in Arvind Subramanian and Devesh Roy, 'Who can explain the Mauritian miracle: Meade, Romer, Sachs or Rodrik?' (2001) IMF Working Paper 01/116 (IMF, Washington DC) 4 <<http://www.iie.com/publications/papers/subramanian0701imf.pdf>> accessed 29 August 2008.

¹⁴ *Subramanian and Roy* (n 13) 4.

¹⁵ Mauritius has one of the highest standards of living in Africa. It enjoyed sustained growth of more than 6 per cent in the 1990s and reached GDP per capita of \$12 637 (in PPP terms) in 2008. See the African Economic Outlook 2008/2009 figures for Mauritius on their website <<http://www.africaneconomicoutlook.org/en/countries/southern-africa/mauritius/>> accessed 6 July 2009.

¹⁶ John Reed, 'The ill winds of trade start blowing again' *Financial Times* (London 13th March 2006) <www.ft.com/reports/mauritius2006> accessed 30 August 2008.

¹⁷ See the '2008 Statistical Update on Mauritius' page on the Human Development Report website <http://hdrstats.undp.org/en/2008/countries/country_fact_sheets/cty_fs_MUS.html> accessed 6 July 2009.

¹⁸ See Ibrahim M Alladin, *Economic Miracle in the Indian Ocean: Can Mauritius Show the Way?* (Editions de l'Océan Indien, Rose Hill, Mauritius 1993); Emilio Sacerdoti, Gamal El-Masry, Padamja Khandewal and Yudong Yao, *Mauritius: Challenges of Sustained Growth* (IMF, Washington DC 2005).

¹⁹ Claire Melamed, *What Works? Trade, Policy and Development* (Christian Aid, London July 2002) 4 <<http://212.2.6.41/indepth/0207trad/whatwork.pdf>> accessed 30 August 2008.

²⁰ Sunil K Bundoo and Beealasingh Dabee, 'Gradual Liberalization of Key Markets: The Road to Sustainable Growth in Mauritius' (1999) 11(3) *Journal of International Development* 437, 438. The article gives a detailed analysis of the economic policies pursued by Mauritius during the SAP, and argues that more pervasive liberalisation measures were only introduced in the 1990s once policy makers felt that they could be sustained.

and subsidies on food.²¹ The result, Bunwaree has argued, was ‘SAP with a human face’.²² Even before the SAP was in place, mindful of the island’s almost total dependence on sugar, Mauritius decided to diversify its economy by combining import-substitution policies with the establishment of an Export Processing Zone (EPZ), which benefited from tax incentives, duty-free imports and loose labour legislations.²³ Some commentators have labelled it a ‘developmental state’,²⁴ because of the way that the state engineered the industrialisation process in Mauritius. In fact, as was the case in many Asian countries, where close business-government relations are widely credited with facilitating economic transformation²⁵, in Mauritius, from around 1970, high-level public-private sector meetings started to become institutionalised.²⁶ As Bräutigam and others observe, many companies in Mauritius have multiple business interests: sugar exporters may also own hotels and local bottling plants, and these multiple interests have contributed to demands from business for overall macroeconomic stability combined with policies that do not discriminate against exports. Policies like these are thought to have promoted growth and organised business in Mauritius is solidly behind them and it has been able effectively to promote its views with a government that takes careful note.²⁷ The engines of growth have been sugar (under the European Union Sugar Protocol²⁸),

²¹ Sheila S Bunwaree, ‘Economics, Conflicts and Interculturality in a Small Island State: The Case of Mauritius’ (2002) 9 *Polis/R.C.S.P/C.P.S.R* (Numero Special) 1, 5

<<http://polis.sciencespobordeaux.fr/vol10ns/bunwaree.pdf>> accessed 30 August 2008.

²² *Bunwaree* (n 21) 5.

²³ Jens Andersson and others, ‘Trade and Structural Adjustment Policies in Selected Developing Countries’ (2005) OECD Development Centre Working Paper No. 245 (OECD, Paris) 39.

²⁴ See for example, Thomas Meisenhelder, ‘The Developmental State in Mauritius’ (1997) 35 *The Journal of Modern African Studies* 279; and *Bunwaree* (n 5). See previous chapter for a discussion of the developmental state in the context of development.

²⁵ See, for instance, R Doner, ‘Limits of state strength: towards an institutionalist view of economic development’ (1992) 44 *World Politics* 398 and A Laothamatas, *Business Associations and the New Political Economy of Thailand* (Westview, Boulder, CO 1992).

²⁶ D Bräutigam, L Rakner and S Taylor, ‘Business associations and growth coalitions in Sub-Saharan Africa’ (2002) 40 *Journal of Modern African Studies* 519, 526.

²⁷ *Bräutigam, Rakner and Taylor* (n 26) 528. In this context, the Joint Economic Council (JEC) has had a key role to play. Founded in 1970, the JEC is the coordinating body of the Private Sector of Mauritius and it regroups the main business organisations of the country. As noted above, Mauritius has a long-standing tradition of Government/Private Sector dialogue which allows the Private Sector to voice its views on the development strategy of the country. The dialogue takes place in a structured manner as well as on an *ad hoc* basis. See website <<http://www.jec-mauritius.org/>> accessed 30 August 2008. David Lincoln notes however, that corporatism in Mauritius is weak: it ‘is seemingly a corporatism of concessions without consensus, of compromise without bargaining’. See D Lincoln, ‘Beyond the plantation: Mauritius in the global division of labour’ (2006) 44(1) *Journal of Modern African Studies* 59, 70-71.

²⁸ Known as the ACP (African, Caribbean and Pacific group)/EU Sugar Protocol. See <<http://www.acpsugar.org/Sugar%20Protocol.html>> accessed 6 July 2009.

tourism, and textiles (under the Agreement on Textiles and Clothing²⁹, commonly known as the Multi-Fibre Agreement³⁰ or MFA, and now under the African Growth and Opportunity Act or AGOA³¹).

New challenges

However, this picture-perfect track record started to erode in the 1990s, and the problems which began to emerge at that time continue today.

The Social Dimension

In February 1999, riots erupted in Mauritius. They were generally attributed to what has been labelled 'le malaise Créole' (the Creole unease), referring to the appalling conditions in which large numbers of Mauritians of African descent, usually called the Creoles, live.³² Prior to this, open racial discord had been very rare in Mauritius and the riots came to be seen as indicative of 'something rotten in the state'. As Bunwaree notes,

[i]n the process of channelling its energies towards the consolidation of its economic nationalism [the country] has perhaps ignored the need to develop a strong sense of interculturality as well as Mauritian identity.³³

Peace was restored after a week or so, but cracks had started to show in the cohesion of the 'rainbow nation'.

²⁹ For the full text of the Agreement see

<http://www.wto.org/english/docs_e/legal_e/legal_e.htm#textiles> accessed 30 August 2008.

³⁰ A General Agreement on Trade and Tariffs agreement that placed quotas on volumes of garments and textiles from the main textile and garment producing countries to mostly North America and European countries, which ended in January 2005.

³¹ A US Trade Act which significantly enhances US market access to sub-Saharan African countries. See <<http://www.agoa.gov/>> accessed 30 August 2008.

³² *Bunwaree* (n 5) 9. See B W Carroll and T Carroll, 'The consolidation of democracy in Mauritius' (1999) 6(1) *Democratization* 179 and T Carroll and B Carroll, 'Trouble in Paradise: ethnic conflict in Mauritius' (2000) 38(2) *The Journal of Commonwealth and Comparative Politics* 25 for an account of the riots. The last riots before the 1999 ones were in 1968 before the country's accession to independence.

³³ *Bunwaree* (n 21) 1.

Economic Dimension

Recently, the small island state has faced numerous economic challenges. The rate of unemployment, for example, has risen steadily since the 1990s, peaking at around 10 per cent in 2005,³⁴ and is estimated at 8 per cent for the first quarter of 2009.³⁵ The country's economic performance suffered, the growth in GDP (gross domestic product) for 2005 falling to 2.2 per cent.³⁶ It rose again to 5.3 per cent in 2008 but is forecast to decrease to 2.5 per cent for 2009³⁷, in light of the current financial crisis.

The main reason for the shift in Mauritius' fortunes was the loss of trade concessions in two of its main industries, textiles and sugar, at the beginning of the new millennium.³⁸ With the ending of the MFA agreement, a number of Hong Kong investors decided to move to locations where cheaper labour was more readily available, such as China and India. In a recent statement, Edmond Lau of the now defunct firm Sinotex explained that 'we love Mauritius for its political stability and educated work force ... but our shareholders are expecting returns on their investment'.³⁹ Moreover, even though Mauritius falls under the AGOA, because of its relatively high income level, it lost its exemption on garments using fabric imported from third countries.⁴⁰ In addition, the sugar preferences Mauritius currently enjoys - together with other African, Caribbean and Pacific (ACP) countries - will be phased

³⁴ OECD/African Development Bank (AfDB), *African Economic Outlook (AEF) 2005/2006* (OECD, Paris 2006) Country Study – Mauritius 358 <<http://www.oecd.org/dataoecd/33/46/36741476.pdf>> accessed 29 August 2008. For an economic analysis of the unemployment problem, see Calvin McDonald and James Yao, 'Mauritius: Unemployment and the Role of Institutions' (2003) IMF Working Paper 03/211 (IMF, Washington DC) (examining the impact of the country's institutions on the prospects of developing new sectors and the resultant impact on the labour market) and Nathan Porter, 'Wage Compression, Employment Restrictions, and Unemployment: The Case of Mauritius' (2004) IMF Working Paper 04/205 (IMF, Washington DC) (looking at the impact of government intervention in the labour market in relation to low-skill workers).

³⁵ Central Statistics Office (CSO), *Labour Force, Employment and Unemployment- First Quarter 2009* (CSO, Mauritius 2009)

<http://www.gov.mu/pv_obj_cache/pv_obj_id_91018288F604649E7632CDC61337C6D615A90400/filename/labour.pdf> accessed 6 July 2009.

³⁶ CSO, *National Accounts Estimates (2004-2007) March 2007 Issue* (CSO, Mauritius 2007) 1

<<http://www.gov.mu/portal/goc/cso/ei626/toc.htm>> accessed 30 August 2008.

³⁷ CSO, *National Accounts Estimates (2006-2009) June 2009 issue* (CSO, Mauritius 2009) 1

<http://www.gov.mu/pv_obj_cache/pv_obj_id_F6AAACE14D644B05AF7610E2322FC840B2CBF0700/filename/natacc.pdf> accessed 6 July 2009.

³⁸ Reed (n 16).

³⁹ Sarah Perman and others, *Behind the brand names- Working conditions and labour rights in export processing zones* (International Confederation of Free Trade Unions, Brussels 2004) 42.

⁴⁰ David White, 'Textiles: In search of a new league' *Financial Times* (London 13 March 2006) <www.ft.com/reports/mauritius2006> accessed 30 August 2008.

out over the next seven years. By 2015 all these preferences will have gone.⁴¹ Under the ACP deal, Mauritius sends all but a small share of its sugar to Europe, almost all in raw form. The arrangement means it effectively commands the same price as EU sugar beet producers. It exports thirty-eight percent of the ACP quota.⁴²

Faced by all these challenges, Mauritius has laid the groundwork over the past decade to move the economy towards more knowledge- and skill-intensive activities and towards higher-value-added financial and business services.⁴³ The government has thus passed legislation⁴⁴ aimed at developing its financial services sector by creating an offshore centre based on favourable double tax treaties.⁴⁵ It has also been encouraging foreign universities to offer degree programmes⁴⁶ and promoting itself as a 'Cyber Island' by designating a Cyber Park and building a publicly funded, state of the art, Cyber Tower with fibre optic wiring.⁴⁷ In addition, it has modernised the port and established a Freeport, providing a duty-free logistics, distribution and marketing hub⁴⁸ so as to put itself forward as a 'seafood hub' for investors seeking to catch, process, or farm fish for export.⁴⁹

⁴¹ Tony Hawkins, 'Sugar: Learning to live without preferential treatment' *Financial Times* (London 11 March 2008) <www.ft.com/reports/mauritius2008> accessed 30 August 2008. The island is in the process of restructuring the sugar sector with the objective of becoming a competitive producer of refined sugar and derivative products based on sugar cane. See OECD/AfDB, *AEF 2008* (OECD, Paris 2008) Country Study –Mauritius 433 <<http://www.oecd.org/dataoecd/13/7/40578285.pdf>> accessed 30 August 2008.

⁴² David White, 'Sugar cane: At the root of all things', *Financial Times* (London 13 March 2006) <www.ft.com/reports/mauritius2006> accessed 30 August 2008.

⁴³ Mauritius Country Brief, World Bank website <<http://www.worldbank.org/mauritius>> accessed 30 August 2008.

⁴⁴ The Financial Services Act 2007 replaced the Financial Services Development Act 2001 and provides a common framework for licensing and supervision of all financial services other than banking and for the global business sector, see Lorys Charalambous, 'Mauritius Assembly Passes Financial Services Bills' 1st August 2007 <http://www.taxnews.com/archive/story/Mauritius_Assembly_Passes_Financial_Services_Bills_xxxx28016.html> accessed 27 August 2008. For an online version of the Act, see the Mauritius Financial Services Commission website <<http://www.gov.mu/portal/sites/ncb/fsc/index.html>> accessed 6 July 2009.

⁴⁵ See John Reed, 'Financial Services: Carving a niche as offshore centre' *Financial Times* (London 13 March 2006) <www.ft.com/reports/mauritius2006> accessed 30 August 2008.

⁴⁶ For the government's vision of what has been labelled the 'knowledge hub' see Ministry of Education and Scientific Research, *Developing Mauritius into a Knowledge Hub and a Centre of Higher Learning* (Government of Mauritius 2006) <www.gov.mu/portal/goc/educationsite/file/knowhub.pdf> accessed 30 August 2008.

⁴⁷ The government wants to make the island a hub for IT and business process outsourcing (BPO). See John Reed, 'Cyber island: Big effort to tout for technology' *Financial Times* (London 13 March 2006) <www.ft.com/reports/mauritius2006> accessed 30 August 2008.

⁴⁸ IBRD, *Country Partnership Strategy for the Republic of Mauritius*, Report No. 37703-MU (Southern Africa Country Department, Africa Region, October 12 2006)

All these initiatives by the Mauritian government are evidence of an important change in policy, involving an explicit move towards a more neo-liberal agenda and the implementation of what have been called 'Thatcherite reforms'⁵⁰, of which FDI forms the central plank. The reform strategy, outlined in the budget for the fiscal year 2006/2007, was designed not only to remedy fiscal weaknesses but also to open up the economy, facilitate business, improve the investment climate, mobilise FDI and expertise, and introduce structural reforms to support sustainable growth.⁵¹

There are various schemes that foreign investors can take advantage of under the Investment Promotion Act 2000, as amended.⁵² One such scheme, known as the 'Integrated Resort Scheme' (IRS), enables non-citizens to acquire resort and residential property on the island. In exchange for residence permits, non-citizens have to acquire and/or invest no less than five hundred thousand US dollars within a resort approved by the Board of Investment, the government's investment promotion agency.⁵³ The IRS has attracted a lot of media attention since its inception, as prior to its implementation, foreign residential investors were barred by law.⁵⁴ It is discussed in more detail (especially in relation to CSR) in the following chapter.

Furthermore, in 2006, the government enacted a Business Facilitation Act⁵⁵, designed to eradicate obstacles to investment, job creation and growth.⁵⁶ The Act abolished

<http://www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2006/11/27/000020953_20061127115847/Rendered/PDF/37703.pdf> accessed 30 August 2008.

⁴⁹ John Reed, 'Seafood: Fish feed hope amid a sobering reality' *Financial Times* (London 13 March 2006) <www.ft.com/reports/mauritius2006> accessed 30 August 2008.

⁵⁰ Alec Russell, 'An island bridging Africa and Asia' *Financial Times* (London 11 March 2008) <<http://www.ft.com/reports/mauritius2008>> accessed 30 August 2008.

⁵¹ Embassy of the United States in Mauritius, *Mauritius: 2008 Investment Climate Statement* (US Embassy, Mauritius 2008)

<<http://mauritius.usembassy.gov/uploads/images/m3QzrFQu6QrvhfUUauipRA/Investment-Climate-Statement-2008.pdf>> accessed 30 August 2008.

⁵² For a consolidated version of the Investment Promotion Act see <[www.investmauritius.com/download/Investment%20Promotion%20Act%20Consolidated%20version%20\(4\).doc](http://www.investmauritius.com/download/Investment%20Promotion%20Act%20Consolidated%20version%20(4).doc)> accessed 30 August 2008.

⁵³ See BOI website <<http://www.investmauritius.com/Detail.aspx?PageId=1008>> accessed 30 August 2008.

⁵⁴ See for example, Max Davidson, 'Simply Mauritius' *The Daily Telegraph* (London 27 May 2006) <<http://www.telegraph.co.uk/global/main.jhtml?xml=/global/2006/05/27/pmauritius27.xml>> accessed 30 August 2008.

⁵⁵ For an online version of the Act see <<http://www.investmauritius.com/download/Business%20Facilitation%20Act.pdf>> accessed 30 August 2008.

⁵⁶ Tony Hawkins, 'Economy: A lesson in reinvention' *Financial Times* (London 11 March 2008) <<http://www.ft.com/reports/mauritius2008>> accessed 30 August 2008.

trade licenses and allows businesses to start operations within three days of incorporation.⁵⁷ Also, multiple regulations have been collapsed into single requirements, making it easy for people to become permanent Mauritian citizens because they are investors, self-employed, highly skilled or simply wealthy.⁵⁸ The government's incentives for investment include: a low corporate tax of 15 per cent; exemption from customs and excise duties on imports of equipment and raw materials; exemption from tax on dividends and capital gains; and free repatriation of profits, dividends and capital.⁵⁹

The Mauritian government's initiatives to encourage FDI in the country seem to have paid off. Private investment made the most important contribution to economic growth in 2007, increasing by 17.5 per cent in 2007 after reaching an already high rate of growth of 15.3 per cent in 2006 (mostly attributed to investment in hotels and the IRS projects).⁶⁰ The island benefited from significant FDI in 2007: for the nine-month period ending September 2007, realised investment, according to the BOI was Rs 7.367 billion (approximately two billion pounds), amounting to a larger FDI inflow than in 2006 and confirming Mauritius as an attractive destination for FDI.⁶¹ In fact, Mauritius topped the ranking in Africa on the ease of doing business, scoring even better than South Africa, and ranked twenty-fourth in the global rankings according to the International Finance Corporation and World Bank's 'Doing Business' report of 2009.⁶²

It must be noted, however, that the 'Thatcherite reforms', having been implemented, have met with considerable criticism in some quarters as 'rapid economic change and the emergence of an elite nouveau riche has led to growing discomfort over income

⁵⁷ *Embassy of the United States in Mauritius* (n 51).

⁵⁸ *Hawkins* (n 56).

⁵⁹ *Embassy of the United States in Mauritius* (n 51).

⁶⁰ *OECD/AfDB* (n 41) 432.

⁶¹ *OECD/AfDB* (n 41) 432.

⁶² See the 'Mauritius' page on the 'Doing Business' website

<<http://www.doingbusiness.org/ExploreEconomies/?economyid=125>> accessed 1 March 2009.

Mauritius had also done very well in the 2008 round. See DFID, 'Top reforming African countries- Ghana, Kenya and Mauritius- recognised through World Bank-IFC awards' DFID Press Release (London 12 October 2007) <<http://www.dfid.gov.uk/news/files/pressreleases/africa-business.asp>> accessed 30 August 2008 and IFC, 'Doing Business Reformers' Club: Ghana, Kenya, Mauritius, Burkina Faso, and Mozambique Win Africa's Top Awards for Making Business Easier' IFC Press Release (Ouagadougou, Burkina Faso 8 November 2007)

<<http://www.ifc.org/ifcext/pressroom/ifcpressroom.nsf/PressRelease?openform&68187CDFBFB972808525738D00764584>> accessed 30 August 2008.

disparities.’⁶³ According to one critic, for example, the IRS ‘smacks too much of South Africa’ with the super-rich living in fenced enclosures.⁶⁴ Indeed, since the reforms have focussed on attracting FDI (no capital controls; a floating, but relatively stable, currency; an attractive tax regime; and a large number of Double Taxation Avoidance Agreements⁶⁵), there has been a reduction in social expenditure. The government removed all the subsidies not only on rice and flour but also on the payment of School Certificate and Higher School Certificate examination fees in its 2006/2007 budget.⁶⁶ This has led Vishnu Lutchmeenaraidoo, an acclaimed finance minister in the 1980s and a leading spokesperson for the Opposition, to warn of social unrest:

We’ve been living through stressful periods of price increases, accompanied by the poor getting poorer. We import 100 percent of our rice, oil and milk. Potentially the situation is explosive. These huge increases have created a sense of frustration, and not just in the low income group. The International Monetary Fund-led reforms have extended the rubber band to a point where social peace is threatened.⁶⁷

To fend off these criticisms, and in an attempt to prevent potential social unrest, the Minister of Finance has proposed targeted measures to address poverty⁶⁸, such as the setting up of ‘The Eradication of Absolute Poverty Programme’⁶⁹ and ‘The Social Housing Fund’⁷⁰ in the 2008/2009 Budget, although these measures have not been immune to criticism either.⁷¹

⁶³ Sharmila Devi, ‘A model of multi-cultural co-existence’ *Financial Times* (London 11 March 2008) <<http://www.ft.com/reports/mauritius2008>> accessed 30 August 2008.

⁶⁴ *Hawkins* (n 56).

⁶⁵ Tony Hawkins, ‘Finance: Liberal banking policy helps exploit geography’ *Financial Times* (London 11 March 2008) <<http://www.ft.com/reports/mauritius2008>> accessed 30 August 2008.

⁶⁶ *OECD/AfDB* (n 41) 435.

⁶⁷ Alec Russell, ‘Politics: Little bitterness in spite of the rhetoric’ *Financial Times* (London 11 March 2008) <<http://www.ft.com/reports/mauritius2008>> accessed 30 August 2008.

⁶⁸ For a list of key social measures in the Mauritian 2008/2009 Budget see <<http://www.pwc.com/Extweb/service.nsf/docid/6EB2C50B0BDD67D18025745F0062F0F5>> accessed 30 August 2008.

⁶⁹ Designed to target 229 pockets of absolute poverty.

⁷⁰ This is designed to finance 10 mixed-income communities and will be built on 1000 arpents of land.

⁷¹ See Jane L O’Neill, ‘Conférence de Presse- Vishnu Lutchmeenaraidoo parle de “vaste bluff” du Ministre des Finances’ *L’Express* (Port-Louis, Mauritius 10 June 2008)

<http://www.lexpress.mu/display_search_result.php?news_id=109551#> accessed 30 August 2008.

(explaining that the Budget 2007/2008 would cause more social unrest and that the Minister of Finance was ‘bluffing’).

Significantly, since the implementation of the neo-liberal reforms, the government has also been putting much greater emphasis on the notion of CSR, asking corporations to play a 'social' role in a number of areas (such as the IRS) where the government itself has opted to take a backseat. This political strategy, which involves trying to use CSR to bring companies into the development process, will be discussed in more detail in the last section of this chapter.

Having looked at the current socio-economic conditions in Mauritius, the next section examines its corporate governance framework.

II. Mauritian Corporate Governance Framework

Mauritian Legal System

The legal system in Mauritius is of a hybrid nature, combining elements of both civil and common law systems. The French Napoleonic Code governed the island's legal system during French rule and remained in force under British rule, albeit subject to various amendments to such things as civil and criminal procedure and company law. Because Mauritian law was (and is) an amalgam of British and French law, local magistrates always played a key role in interpreting and enforcing the law.⁷² Mauritius also acquired its own constitution when the island gained independence in 1968.

Corporate Governance

After independence in 1968, companies in Mauritius were subject to the UK Companies Act 1948 (as amended). In 1984, the first revision of companies' legislation took place: the Companies Act 1984 used as its basic model the Singapore Companies Act 1967, as revised in 1970 and 1975. This had used as its basic model the Australian Uniform Companies Act 1961, which was, in turn, itself substantially

⁷² Arthur A Goldsmith, 'How Good must Governance be?' Conference on 'The Quality of Government: What It Is, How to Get It, Why It Matters', Quality of Government Institute, Göteborg University, Sweden, November 17-19, 2005, 21.

based on the UK Companies Act 1948.⁷³ In 1989, the Stock Exchange of Mauritius was set up.⁷⁴ In 2001, the government of Mauritius decided to embark on a major overhaul of companies' legislation, and a new Companies Act was passed, coming into force in December 2001. The new Act replaces most of the Companies Act 1984 apart from sections dealing specifically with insolvency and public companies.⁷⁵

The Government's starting point for the new law was, on this occasion, New Zealand's company law, which is regarded by many as representing the best available compromise between the various common law jurisdictions. The Act brings the law into line with international business practices by, amongst other things, defining directors' duties, clarifying procedures for calling meetings and introducing the mandatory use of International Accounting Standards for all public companies and some private firms.⁷⁶

⁷³ Lorys Charalambous, 'Government Readies New Companies Act in Mauritius' (6 September 2001) <http://www.tax-news.com/archive/story/Government_Readies_New_Companies_Act_In_Mauritius_xxxx5252.html> accessed 30 August 2008.

⁷⁴ See the website <<http://www.stockexchangeofmauritius.com/>> accessed 30 August 2008. Since its launch, the number of listed equities has risen from six to 41, the stock market index has risen 18-fold, doubling in the past two years alone while another 51 companies are listed on the second-tier Developmental Enterprise Index. Mauritius –together with Nigeria and Kenya- is part of the MSCI Frontier Emerging Markets index. Covering 19 countries, the MSCI Frontier Markets Indices are designed to track the performance of a range of equity markets that are now more accessible to global investors. They aim to achieve a broad representation of the investment opportunity set while taking into consideration investability requirements within each market. See the website <<http://www.msclub.com/products/indices/fm/>> accessed 30 August 2008. See also Tony Hawkins, 'Finance: Liberal banking policy helps exploit geography' *Financial Times* (London 11 March 2008) <<http://www.ft.com/reports/mauritius2008>> accessed 30 August 2008.

⁷⁵ Some key new features include: there is no need for a separate objects clause, as the Act provides that a company has the rights, powers and privileges of a natural person (which removes the ultra vires doctrine although a company can still state specific objects in its constitution if it wished to limit the capacity of the company in this way); the Act replaces the Memorandum and Articles of Association by a single constitution, which no longer requires to be notarised; it makes provision for a company to provide in its constitution for the company to have power to indemnify or insure its directors, secretary or employees in accordance with the limitations provided by the Act; it contains a requirement that public companies and non-exempt private companies to prepare and present their accounts in accordance with international accounting standards and that exempt private companies to present their accounts in accordance with accounting practices and principles that are reasonable in the circumstances and having regard to any requirements set out in the regulations made under it; offshore and international companies are brought under the Act and re-designated as Global Business Company 1 and Global Business Company 2 respectively- See *Charalambous* (n 73).

⁷⁶ Sam Nganga, Vimal Jain and Mark Artivor, *Corporate Governance in Africa: A survey of publicly listed companies* (London Business School, London 2003) 22.

The enactment of the new Companies Act was amongst a series of measures⁷⁷ the government decided to take to meet the challenges noted earlier in order to make Mauritius a seemingly trustworthy and credible base for business to flourish. The other measures included the setting up of a National Committee on Corporate Governance (NCCG)⁷⁸ and a request issued to the World Bank to complete a Report on the Observance of Standards and Codes (ROSC) on corporate governance in Mauritius.⁷⁹ Before examining the Code of Corporate Governance that the Committee prepared, the next section will consider briefly the key findings and recommendations of the ROSC.

The ROSC Recommendations

The ROSC noted that '[w]hile some modifications ...are still necessary, the legal framework in Mauritius is quite modern'.⁸⁰ However, it noted that:

the ownership structure of Mauritius companies is dominated by a small group of family-owned companies. Many family-owned companies listed their stock in response to tax and other incentives ... [but] are still controlled by a family holding company or a partnership acting as the holding company.⁸¹

It further noted that these family-owned companies were usually also family managed.

In relation to directors' duties, it observed that the Companies Act provides that a director's duties are owed to the company rather than shareholders.⁸² These duties

⁷⁷ The government decided to (a) undertake an audit of its institutional and regulatory framework, (b) create an environment that facilitates trade and investment for a smooth integration into the world economy and (c) ensure that the corporate sector conforms to international best practices and standards to enhance investors' confidence. See 'Mauritius- Corporate Governance Progress', posted on 25 May 2005 <www.corporategovernanceafrica.org> accessed 17 June 2006.

⁷⁸ The committee was chaired by Tim Taylor, the then CEO of Rogers Group (which the ROSC mentions- see below) and its members came from both public and private sectors, whose mission was to provide a framework for improved corporate governance in the country.

⁷⁹ Pran K Boolaky, 'Corporate Governance in the Financial Services Sector of Small Island Economies: A case study of Mauritius' Governance and Communication Conference Bournemouth University 29-31 March 2006. For a more detailed discussion of the ROSC see the previous chapter.

⁸⁰ World Bank, *Report on the Observance of Standards and Codes (ROSC), Corporate Governance Country Assessment-Mauritius* (World Bank, Washington DC 2002) 1.

⁸¹ World Bank (n 80).

⁸² Companies Act 2001, s 143(5) (a).

include exercising powers in good faith in the company's best interests, as well as with the degree of care, diligence and skill of a reasonably prudent person under similar circumstances.⁸³ The ROSC pointed out that although these requirements are comprehensive, in practice:

some board members are appointed based on their friendship with the majority shareholder, rather than their qualifications. As a result they have been unwilling or unable to ensure effective oversight. Moreover, there are many cases involving the largest companies where directors have failed to play a role in helping ensure the unlocking of shareholder value to benefit **non-controlling shareholders**.⁸⁴ (emphasis added)

It is important to note here that the above paragraph reveals that despite the fact that it has identified the structure of corporate ownership in Mauritius as being family-oriented, the immediate concern of the ROSC was the protection of the interests of minority, non-controlling - and, presumably, **inactive, rentier**⁸⁵ - investors.

Moreover, the ROSC indicated that the duties owed by a director to a shareholder are narrow, and do not include the duties mentioned in Section VI, Principle VI (A) of the OECD *Principles of Corporate Governance* (OECD Principles hereafter).⁸⁶ Instead, duties owed by directors to shareholders are limited to issues like the duty to supervise the share register, disclosure of an interest in a transaction or in company shares.⁸⁷

Therefore, the ROSC recommended that a Mauritius Institute of Directors (IOD)⁸⁸ be established and that a voluntary corporate governance code be drafted. The latter, it

⁸³ *World Bank* (n 80)12-13.

⁸⁴ *World Bank* (n 80) 13.

⁸⁵ See chapters 1 and 2.

⁸⁶ Section VI is about 'The Responsibilities of the Board' and states 'The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders'. Principle VIA reads: 'Board members should act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the company and the shareholders'. See OECD, *Principles of Corporate Governance* (OECD, Paris 2004) 24.

⁸⁷ Companies Act 2001, s 174(3) and see *World Bank* (n 80)13-14.

⁸⁸ The Report further observed that an 'IOD would play a crucial role in informing and continually training its new members on their responsibilities...[also,] to promote the most efficient use of resources, consideration should be given to the possible creation of an IOD for the southern Africa region'. See *World Bank* (n 80) 16.

recommended, should include more detailed guidelines on board composition⁸⁹ and on directors' duties and obligations. It was also felt that the code should explicitly address the issue of the vulnerability of minority, non-controlling shareholders to the concentration of ownership in the hands of a few large family interests, especially when they engaged in undisclosed private shareholder agreements.⁹⁰ Finally, the ROSC recommended improved compliance with labour laws as there were concerns about the ability of employees to obtain redress for violations of their rights.⁹¹

The Code of Corporate Governance

In light of the recommendations made by the World Bank, and after the initial work and consultation undertaken by the NCCG, it appeared that there was a lack of awareness in corporate Mauritius of what exactly constituted 'good' corporate governance. The NCCG, therefore, prepared a 'Report on Corporate Governance for Mauritius' (RCG), including the 'Code of Corporate Governance' (The Code)⁹², which was launched in 2003.⁹³ The Code was further revised in April 2004.

The Code was inspired by the King Report on Corporate Governance in South Africa.⁹⁴ Indeed, Mervyn King, a former judge of the South African Supreme Court and the author of the South African report, was the consultant for the preparation of

⁸⁹ According to the Report, these guidelines could include for example, a minimum number of independent directors, mandatory cumulative voting, and a mandatory audit and nomination committee comprised entirely of independent directors. See *World Bank* (n 80) 16. This is very much in line with voluntary codes prevalent in Anglo-American jurisdictions. See chapter 1 on the UK Combined Code.

⁹⁰ *Nganga and others* (n 76) 23. See *World Bank* (n 80) Annex D on an example of the shareholding structure of a large family-owned company, The Rogers Group.

⁹¹ *World Bank* (n 80) 9. See also *World Bank* (n 80) Annex E for a 'Summary of Key Company Law and Securities Recommendations'.

⁹² Committee on Corporate Governance, *Report on Corporate Governance for Mauritius* (Mauritius, October 2003).

⁹³ At the time of the launch in 2003, the then Minister of Economic Development, Financial Services and Corporate Affairs said: 'The Code purports to be more than a set of rules to enable stakeholders to exercise better oversight of a company's business and affairs. It seeks to provide a set of principles to better harmonise our corporate objectives with the values of our society. It includes considerations that would uplift society, in relation to sustainable development issues, environmental and social concerns, stability of employment, and wealth creation. The premise is that a company that is well governed is transparent and accountable to its shareholders and other stakeholders, including the broader community'. See First Initiative, 'Mauritian Minister Presents the Country's Draft Code of Corporate Governance' First Initiative Press Release

<<http://www.firstinitiative.org/WhatsNew/displayArchivedNewItem.cfm?iWhatsNewID=23>> accessed 30 August 2008.

⁹⁴ The first King Report on Corporate Governance was published in 1994, and incorporated a Code of Corporate Practices and Conduct. In 2002, another King Report was produced. For copies of the Codes, see <http://www.ecgi.org/codes/all_codes.php> accessed 30 August 2008.

the Mauritian Code of Corporate Governance. The RCG explicitly states that in preparing the Code, the Committee had taken into account the OECD Principles.⁹⁵ Under the Financial Reporting Act 2004, all 'business entities' falling under section 1.1 of the Code had to comply with its provisions from the reporting year ending 30 June 2005. These 'business entities' include all companies listed on the official list of the Stock Exchange of Mauritius, large public companies⁹⁶, banks and non-banking financial institutions, state-owned enterprises, including statutory corporations and parastatal (quasi-public) bodies, and large private companies.⁹⁷ In case of non-compliance with any part of the Code, the latter requires corporations to explain the reasons for it. The relevant corporations are also required to include a 'Corporate Governance Report' as a new section in their annual report.

The Code is made up of nine sections: compliance and enforcement; boards and directors; board committees; role and function of company secretary; risk management, internal control and internal audit; auditing and accounting; integrated sustainability reporting; communication and disclosure; and relationship with shareholders.⁹⁸

The Board's responsibility is stated as being to provide effective corporate governance, which includes 'a set of relationships between the management of the company, its board, its shareholders and other relevant stakeholders'.⁹⁹ In this regard, it follows the OECD Principles, since it is stated that the Board should ensure that the company complies with 'the various laws, regulations and codes governing companies'.¹⁰⁰ Moreover, directors 'must act with enterprise for and on behalf of the company and always strive to **increase shareholders' value, while having regard for the interests of all stakeholders relevant to the company (emphasis added)**'.¹⁰¹ The Code thus recommends not only that the shareholder-primacy norm should be explicitly enshrined in law but expresses this in terms of 'shareholder value'. Section

⁹⁵ *Committee on Corporate Governance* (n 92) paragraph 17.3.

⁹⁶ Defined as 'individual companies or group of companies with an annual turnover of Rs 250 million and above', see the Corporate Governance webpage on the Stock Exchange of Mauritius website <http://www.stockexchangeofmauritius.com/corporate_governance.htm> accessed 9 July 2009.

⁹⁷ Defined as above (n 96).

⁹⁸ *Booaky* (n 79) 12.

⁹⁹ *Committee on Corporate Governance* (n 92) Section 2.3.2.

¹⁰⁰ *Committee on Corporate Governance* (n 92) Section 2.3.5.

¹⁰¹ *Committee on Corporate Governance* (n 92) Section 2.7.8.14.

3.6(g) elaborates this idea, stating that the board should ‘identify key risk areas and key performance indicators of the business enterprise in order for the company to **generate economic profit, so as to enhance shareholder value in the long term** (emphasis added)’. It is thus ‘long-term’ shareholder value which is sought. The adoption of the principle of shareholder value is, however, seemingly tempered by the recommendation that the board should recognise ‘the wider interests of society’. This is explained as flowing from the fact that:

boards should recognise that companies do not act independently from the societies in which they operate and should strive to ensure that corporate actions are compatible with societal objectives concerning social cohesion, individual welfare and equal opportunities for all.¹⁰²

The Code thus echoes the UK CLR and its concept of ‘Enlightened Shareholder Value’ (ESV), discussed in chapters two and four. As we saw, the concept of ESV seeks to lengthen the time horizons of profit maximisation, encouraging managers to *consider* other stakeholders’ interests in the interests of ensuring *long-term* shareholder value. Therefore, under the ESV model of the corporation the arguments made in favour of taking account of the interests of other stakeholders are, ultimately, justified in terms of the interests of shareholders. The case for ESV thus mirrors the business case for contemporary CSR.

The over-riding focus on shareholder value in the Mauritian Code is reflected in other ways. Thus, section 9.1 explicitly states that ‘[i]t is the duty of the board to keep shareholders informed regarding material events affecting the company, especially if an event could have an effect on the share price’. In similar vein, paragraph 1 of Chapter 6, which deals with ‘Board and Director Appraisal’, asserts that:

[c]ompanies must have controls in place to promote their continued survival and profitability. As this is a function of the board, it makes sense for **the performance of the board and directors to be included in the monitoring and evaluation process.** (emphasis added)

¹⁰² *Committee on Corporate Governance* (n 92) 55, Chapter 1, paragraph 6.1.

Paragraph 2 adds that:

[w]hile it is difficult to prove a direct link between a board's effectiveness and the company's profit, **a board that knows it will be regularly monitored is more likely to focus its attention on good corporate governance issues. Once this is entrenched in the company's culture, it is difficult for a chief executive officer or any director to dominate a board or avoid being held accountable for poor performance.** (emphasis added)

The Code clearly envisions that not only should internal controls play a key role in providing 'regular monitoring', so too should the market for corporate control.¹⁰³ The belief is that directors must be made to feel that if they do not pursue the goal of profit-maximisation, they will be at risk of being replaced. This, it is hoped, will pressurise them into toeing the line. But they are, of course, asked to toe the line on a long-term basis rather than striving for short-term profits.

It is also clear that the Code has been heavily influenced by the recommendations made by the ROSC in that the focus is, once again, on inactive, outside, non-controlling, rentier shareholders. Indeed, the Code seems at times to assume that these are the norm. This is rather surprising and, indeed, incongruous, given that, as the ROSC itself notes, companies in Mauritius are largely family-owned. More generally, of course, it is questionable whether it is meaningful to talk of a market for corporate control in the Mauritian context where the economy is dominated by family-owned enterprises.¹⁰⁴

The shareholder-oriented nature of the stakeholding elements of the Code is also made quite clear. Thus we are told that companies:

must ensure that an appropriate balance is maintained between the interests of stakeholders and the interests of the company. It is now agreed that there is a need to weigh the shareholders' expectations of maximum returns against other priorities which are the interests of those with whom the company is **contractually engaged** as well as the concerns of its immediate community and society at large.¹⁰⁵ (emphasis added)

¹⁰³ See chapter 1.

¹⁰⁴ The evidence from jurisdictions such as Germany, where companies are family-owned, suggests that the market for corporate control is not that relevant. See A Shleifer and R W Vishny, 'A Survey of Corporate Governance' (1997) 52(2) *Journal of Finance* 737. See further chapter 2 of the thesis.

¹⁰⁵ *Committee on Corporate Governance* (n 92) 109, Paragraph 3.3.

In terms of CSR, as indicated above, the Code talks of the need to meet ‘societal objectives’. In this context, section 7, which deals with non-financial reporting, in effect explicitly endorses the business case for CSR:

[e]very company should recognise that it operates within a social and economic community, and should identify the particular circumstances, whether environmental or social, relevant to the company’s business. It is **in the long-term economic interest of a company to conduct itself as a ‘responsible corporate citizen’, and to act in a manner which is non-exploitative, non-discriminatory and respectful of human rights. Failure to adopt such policies may well hinder its development and participation in an international context which is increasingly sensitive to sound corporate values, good practice and respect for the environment.**¹⁰⁶ (emphasis added)

The buzz-words ‘responsible corporate citizen’ are used here to point to the fact that companies have to take into account their social responsibilities whilst creating long-term shareholder value. Once again, there are strong echoes of the ESV model of the corporation developed by the CLR in the UK. It is, however, difficult not to suspect that the references to ‘social responsibilities’ are mere platitudes.

The Code then goes on to emphasise the need for companies to adopt a code of ethics, which ‘should refer to the principles, norms and standards that the company wants to promote and integrate within its corporate culture that determines the conduct of its activities, including internal relations, interaction and dealings with external stakeholders’.¹⁰⁷ The stakeholders of a company are identified under paragraph 3.1 of Section 7 as shareholders (as providers of capital), employees and officers of the enterprise, parties that contract with the enterprise, non-contractual parties, including civil society, local communities, non-governmental organisations, trade unions and other special interest groups whose concerns may be issues such as customer protection, market stability and the environment, and the state as policy-maker, legislator and regulator.

¹⁰⁶ *Committee on Corporate Governance* (n 92) Section 7.1.

¹⁰⁷ *Committee on Corporate Governance* (n 92) Section 7.3.3. On the basis of this, the JEC issued a Model Code of Conduct, which has been adopted by most companies <<http://www.jec-mauritius.org/conduct.htm>> accessed 30 August 2008.

We are further told that companies are required to be ‘actively involved in managing their activities so as to minimise any negative impact on the environment’.¹⁰⁸ ‘Social issues’ are dealt with under section 7.6, though these seem to be confined to the assertion that companies should practise ‘fair policies in recruitment and promotion’.¹⁰⁹ Charitable donations are referred to in section 8.5.2, where it is stated that ‘[i]t is the responsibility of the board to decide whether the company should make any charitable donations’. We are finally told that annual reports should present a comprehensive and objective assessment of the activities of the company so that all stakeholders can obtain a full and fair view of its performance.¹¹⁰

It seems clear that the drafters of the Code felt bound to adopt the ‘vision’ of the ROSC. Based on the OECD Principles, the ROSC assumes that the ‘normal’ form of shareholding is one of dispersed ownership - the best kind in their eyes - and, accordingly, the Code is much concerned with the position of non-controlling minority shareholders who are not involved in management - hence, for example, the focus on share price. As we have seen, one of the main concerns of the OECD Principles was, and is, the protection of (foreign) minority interests through mechanisms such as the market for corporate control. But how relevant are these concerns (and mechanisms) in Mauritius? Arguably, there is an incompatibility between the concerns which lie at the heart of the OECD Principles - and therefore of the Code - and the reality ‘on the ground’ in Mauritius where ownership structures are family-centred. The substantial overlap of ownership and management in most Mauritian firms means that the ‘separation of ownership and control’ identified by Berle and Means is far less prevalent.

In keeping with the OECD Principles, the Code ‘nods’ in the direction of other ‘stakeholders’, but without really elaborating on the mechanisms for protecting their interests. The protection of stakeholder interests is seen, for the most part, as something to be dealt with *outside* the framework of corporate governance. To the extent that stakeholding values are to be taken into account and embraced, it is in

¹⁰⁸ *Committee on Corporate Governance* (n 92) Section 7.4.

¹⁰⁹ *Committee on Corporate Governance* (n 92) Section 7.6.2. Section 7.6.1 observes that ‘[c]ompanies in Mauritius play an important role in sustaining social harmony, especially through their employment policies and their ownership structure’.

¹¹⁰ *Committee on Corporate Governance* (n 92) Section 8.2.

pursuit of long-term shareholder value. The model is thus one of ESV: corporate managers are urged to pursue profits in the long-term, *taking into account* stakeholder interests to the extent that long-term shareholder value requires them to do so. There is little, however, to indicate what ESV really entails.

It is also arguable that the Code largely ignores the fact that development and growth in Mauritius have been achieved in significant part by virtue of an interventionist state which was in constant dialogue with a private sector in which there is a significant overlap between ownership and management. As a result, there was - and arguably still is - potentially much more scope for trade-offs and social compromises with little fear of 'capital flight'. Moreover, as Bräutigam and others explain:

[i]n Mauritius, the importance of state-society linkages and networks was strongly borne out. People move in and out of government and the private sector (particularly the private sector's business associations), and the ties strengthen the networks of which they are part.¹¹¹

In other words, there remains in Mauritius, with its family-owned firms and strong links between government and the private sector, scope for the construction of a 'shared project' to promote growth.¹¹² In this context, to focus above all else on the creation of conditions attractive to mobile (foreign) capital and outside minority shareholders – to create a market for corporate control to discipline managers, for example – is, arguably, seriously misguided.

Overall, then, it is clearly arguable that the reforms being advocated by the IFIs in order supposedly to boost growth and development in Mauritius neither fit the structure of Mauritian firms, nor mesh with the policies which enabled the country to achieve high rates of growth for so many years. Yet these reforms have been, for the most part, whole-heartedly accepted and embraced by the government. Have they brought benefits? As we have seen, FDI has grown and Mauritius has topped the charts as the most 'business-friendly' country in Africa. It remains to be seen, however, whether the recent spurt in growth is sustainable and whether it has come at the expense of social cohesion. It also remains to be seen what impact the current

¹¹¹ Bräutigam, Rakner and Taylor (n 26) 539.

¹¹² Bräutigam, Rakner and Taylor (n 26) 539. See next chapter as well where some of the interviewees talk about this.

global financial crisis will have on the Mauritian economy and, more generally, on neo-liberal models for achieving growth and development.

III. The Rising Profile of CSR in Mauritius

As discussed in the first section of this chapter, the government of Mauritius has been propounding and implementing a neo-liberal agenda in the quest for sustained economic growth since the beginning of the twenty-first century. It has described the resulting policy changes as marking 'the transition from preference dependence and protection, to competitiveness in, and opening to, a liberalised global world.'¹¹³ It has already been noted that neo-liberalism advocates 'new forms of political-economic governance premised on the extension of market relationships'.¹¹⁴ The key supposition of neo-liberalism is, therefore, that free markets - private, contractual economic ordering and the unregulated forces of supply and demand - are the best way to ensure the efficient allocation of resources and the maximisation of wealth and welfare. Indeed, so strong is neo-liberal theory's belief in the market that non-market institutions tend to be portrayed as artificial, man-made, market substitutes only to be used in situations of 'market failure'.¹¹⁵ It follows that for neo-liberals the state should provide an institutional framework within which the market and its economic logic can operate, but should otherwise seek to minimise its interventions in the economy, including in corporate affairs. As detailed above, this is the approach that the government of Mauritius has been following recently.

It would appear that to bolster and legitimise its neo-liberal approach to development, the government started laying emphasis on the notion of CSR, transforming it into an

¹¹³ Rajiv Servansingh, 'What's new in the development model?' *L'Express* (Port-Louis, Mauritius 21 September 2005) <http://www.lexpress.mu/print.php?news_id=50569> accessed 30 August 2008.

¹¹⁴ Wendy Larner, 'Neo-liberalism, Policy, Ideology, Governmentality' (2000) 63 *Studies in Political Economy* 5, 5.

¹¹⁵ Ha-Joon Chang, *Globalisation, Economic Development and the Role of the State* (Zed Books, London 2002) 90-93, 97-100.

essential feature of government social policy, especially in the last three years.¹¹⁶ This echoes the views of some proponents of CSR in a development (and developing country) context, who see it 'as a means of filling gaps in governance that have arisen with the acceleration of liberal economic globalization.'¹¹⁷ Indeed, De Oliveira notes how in Latin America 'in certain cases where governments lack resources to make the social investments to minimise social problems, various companies have stepped in as social investors to fill some of the gaps.'¹¹⁸

It is against this backdrop that this section charts the rising profile of CSR in Mauritius. In fact, according to the recent Kemp Chatteris Deloitte final report (the Deloitte Report hereafter) on CSR in Mauritius, 'CSR initiatives go quite a long way back in Corporate Mauritius ... up to 20 years back.'¹¹⁹ As this section will attempt to demonstrate, this is not entirely true as it appears that CSR in Mauritius has somewhat followed the ebb and flow of the global CSR movement¹²⁰ - albeit in different forms.

Regulatory CSR

Indeed, a particular type of 'regulatory CSR' (as I labelled it in chapter three)¹²¹ can be traced back to two governmental initiatives in the late 1940s and late 1980s.

In 1948, the government established the Sugar Industry Labour Welfare Fund (SILWF). The SILWF is a parastatal¹²² body which is funded by part of a 'cess'¹²³ to which sugar producers contribute. The object of the SILWF, as spelt out in the

¹¹⁶ See below.

¹¹⁷ Michael Blowfield and Jędrzej George Frynas, 'Setting new agendas: critical perspectives on Corporate Social Responsibility in the developing world' (2005) 81 *International Affairs* 499, 508.

¹¹⁸ J A P de Oliveira, 'Corporate Citizenship in Latin America: New Challenges for Business-Introduction' (2006) 21 *Journal of Corporate Citizenship* 17, 18.

¹¹⁹ Kemp Chatteris Deloitte, *Review of Corporate Social Responsibility policies and actions in Mauritius and Rodrigues* (Kemp Chatteris Deloitte, Mauritius April 2008) 22.

¹²⁰ See the Introduction and chapter 3 of the thesis.

¹²¹ I have labelled Regulatory CSR as CSR which is equated with state-led external regulation as it is imposed from the outside.

¹²² The Board members of the organisation are appointed by the government and are paid a nominal attendance fee. They are accountable to Parliament.

¹²³ This is known as the Global Cess Fund, which is levied after deduction of administrative and marketing costs at source by the Mauritius Sugar Syndicate and before sharing out revenue to planters and millers. It is used to provide services to stakeholders of the industry. Government of Mauritius, *A Roadmap for the Mauritius Sugar Cane Industry for the 21st Century* (Government of Mauritius, Mauritius September 2005)12 <www.gov.mu/portal/goc/moa/files/roadmap.doc> accessed 30 August 2008.

SILWF Act is to do 'all such things as appear requisite and advantageous for or in connection with the advancement and promotion of the welfare of workers and their children.'¹²⁴ Its mission statement is to 'offer a wide range of welfare programmes aimed at improving the quality of life of sugar workers, retired dock workers and their families.'¹²⁵ The main activities of the SILWF fall into five categories: housing, community development, scholarship schemes, amenities at social welfare/community centres and cyclone refugee centres. For example, the scholarship scheme is one whereby financial assistance is given to children of sugar workers at secondary and university level and also for vocational training schools. Moreover, the sugar estates have built concrete houses for some of their workers and have also donated the land on which housing estates have been built by the SILWF.¹²⁶

There appears to have been a lull after this, as the next major development in terms of CSR in Mauritius took place a full forty years later when, in 1988, another parastatal body, the Export Processing Zone Labour Welfare Fund (EPZLWF) was set up under the EPZLWF Act 1987. Like the SILWF, the object of the EPZLWF is 'to do all such things as appear requisite and advantageous for or in connection with the advancement and promotion of the welfare of workers and their children'¹²⁷, this time in the EPZ sector. It also operates a number of different schemes, amongst others a day-care centre scheme¹²⁸, a scholarship scheme and a household appliances programme.

It can be seen that these two initiatives were instituted and implemented by the state¹²⁹, and in that sense might be seen as 'regulatory CSR'. However, this particular form of 'regulatory CSR' is quite different to the one identified and described in

¹²⁴ Sucre-Ethique, *Corporate Social Responsibility within the African sugar industry* (Sucre-Ethique, France June 2006) 14 <http://www.sucre-ethique.org/IMG/pdf/CSR_in_Africa.pdf> accessed 30 August 2008.

¹²⁵ See the SILWF page on the Mauritian Ministry of Social Security, National Solidarity and Senior Citizens Welfare and Reform Institutions website <<http://www.gov.mu/portal/site/ssnssite/menuitem.554be93e504fc90e8f77861084d521ca/>> accessed 30 August 2008.

¹²⁶ *Sucre-Ethique* (n 124).

¹²⁷ See the EPZLWF website <<http://www.webofmauritius.com/epzlwf>> accessed 30 August 2008.

¹²⁸ This was designed in 1988 to bridge the gap between demand for day-care services from working mothers and unmet day-care needs. See *EPZLWF website* (n 127).

¹²⁹ In fact, the President of the Labour Watch in Mauritius explained how these social initiatives had come from the government rather than the private sector. See -- 'SOCIETE- Davantage de responsabilité sociale du secteur privé souhaité' *Le Mauricien* (Port-Louis, Mauritius 31 May 2007) <<http://lemauricien.com/mauricien/070531/so.HTM>> accessed 5 December 2007.

chapter three: rather than state-led external regulation in the form of a penalty on companies for misconduct (for example, fines for polluting the environment), here, the state levies a social charge on certain companies to make sure that some of the social welfare needs of their employees are met. It amounts, in effect, to a form of indirect tax.

Self-Regulatory CSR

CSR in its 'self-regulatory'¹³⁰ form only seems to have emerged in Mauritius in the late 1990s. As already mentioned in the first section of this chapter, in February 1999, riots erupted in Mauritius. This appears to have been a wake-up call for some corporations to start thinking of their social responsibilities, specifically in terms of trying to help to integrate what are perceived as marginalised and vulnerable groups into Mauritian society.¹³¹ Thus, the 'Fondation Espoir et Développement' (FED) - literally, the 'Foundation for Hope and Development' - was set up by the Beachcomber Group, pioneers of the hotel industry in Mauritius¹³², in April 1999.¹³³ The FED was the first independent entity to be created by a company to design and implement CSR commitments although the term CSR itself was not used at the time. We are told that the 'FED differentiates itself from many social welfare organisations. While providing substantial financial support to ... NGOs, the FED's ultimate aim is to teach the underprivileged to become self-sufficient and able to sustain themselves.'¹³⁴

¹³⁰ Self-regulatory CSR as it is labelled in chapter 3 is voluntary CSR. Rather than state-led, coercive regulation, companies adopt 'socially responsible practices' of their own volition.

¹³¹ Ashraf Oozeerally, 'Brand_Talk- Building Socially-Correct corporate reputations' *L'Express* (Port-Louis, Mauritius 14 April 2004) <www.lexpress.mu/print.php?news_id=16567> accessed 30 August 2008. A number of the interviewees also mentioned the 1999 riots, see transcripts of Interviews F and V in Appendix E.

¹³² The Group opened its first hotel on the island in 1952. See the Beachcomber website <<http://www.beachcomber-hotels.com>> accessed 30 August 2008.

¹³³ See FED's website <<http://www.fonesdev.org/index.asp>> accessed 30 August 2008 and Beachcomber Hotels, *Dream is a serious thing* (Beachcomber Hotels, Mauritius) 16-17

<<http://www.beachcomber-hotels.com/downloads/new-projects/en/new-projects.pdf>> accessed 30 August 2008. See also Premila Dosoruth, 'La Fondation Espoir et Développement pour la dignité' *L'Express* (Port-Louis, Mauritius 24 October 2005)

<http://www.lexpress.mu/print.php?news_id=52769> accessed 30 August 2008.

¹³⁴ See *Beachcomber Hotels* (n 133).

The next major 'visible happening' in terms of self-regulatory CSR was the publication in 2003 of a Social Report by British American Tobacco (BAT). It was the first company to publish such a report in Mauritius. The General Manager of the company at the time explained that: 'Social Reporting is recognised worldwide as being an effective means of achieving constructive discussion on difficult issues in an open and transparent manner in a climate of mutual trust and respect.'¹³⁵

Shortly after, in November 2003 Princes Tuna (Mauritius) Limited¹³⁶ became the second African enterprise to obtain the SA 8000 certification.¹³⁷ The ex-Director General of the firm explained at the time that they wanted to get the certification as the company

wanted to demonstrate that we are a socially responsible enterprise. We have a responsibility vis-à-vis our employees, our neighbours and the community in general ... We chose the strictest certification ... With the SA programme one has to keep records of what has been done ... For instance, in terms of employee training, we need to prove who has been trained and by whom ... [At the end of the day] it's a **partnership**. We help our employees and the community and in return, our shareholders will be happy to see an improved performance. **It's a win-win situation.**¹³⁸ (emphasis added) (translated from French)

It is noteworthy that the terminology used in the above quote is very much that of the advocates of 'self-regulatory CSR' globally. It is also not insignificant that the 'pioneers' of 'self-regulatory CSR' in Mauritius appear to be subsidiaries of Multinational Enterprises (MNEs).¹³⁹ This arguably reflects the global trend among MNEs of latching on to the concept of CSR for legitimacy reasons, as explained in previous chapters. The increasing importance of the CSR phenomenon is also evidenced by the number of articles devoted to the subject in the local media: it

¹³⁵ N Sivaramen, 'Responsabilité Sociale- La BAT répond a ses détracteurs' *L'Express* (Port-Louis, Mauritius 14 July 2003) <http://www.lexpress.mu/print.php?news_id=767> accessed 30 August 2008.

¹³⁶ --' Princes Tuna (Mauritius) reçoit le certificat SA 8000' *L'Express* (Port-Louis, Mauritius 30 November 2003) <http://www.lexpress.mu/print.php?news_id=8747> accessed 30 August 2008.

¹³⁷ In brief, it is a labour standard. See chapter 3 for details of the certification.

¹³⁸ Stéphane Saminaden, 'Questions à Rick Heroux, Directeur Général de Princes Tuna- Nos investissements sont preuve de notre confiance à Maurice' *L'Express* (Port-Louis, Mauritius 3 December 2003) <http://www.lexpress.mu/print.php?news_id=8927> accessed 30 August 2008.

¹³⁹ This is not particular only to Mauritius but also a number of developing countries. See the special issue of the *Journal of Corporate Citizenship* Issue 24 (2006), 'Corporate Social Responsibility in Emerging Economies'.

increased from around ten in 2003 to around seventy in 2008 and will probably keep increasing in the future.¹⁴⁰

Convergence of Regulatory and Self-Regulatory CSR: Social Policy

The government started to pay more attention to CSR in its contemporary form in 2006. Indeed, this was a crucial period for the development of the idea of CSR in Mauritius. For instance, in the 2002/2003 budget, it was announced that Public Private Partnerships (PPPs)¹⁴¹ would be used as a new form of procuring and financing infrastructure projects and services in the public sector.¹⁴² The PPP Act, enacted in 2004 and proclaimed in 2005, provides for the implementation of PPP agreements between contracting authorities and private parties and establishes a set of rules governing public-private procurement.¹⁴³ However, it has only been since the beginning of 2007 that there has been renewed and increasing interest in PPPs as the PPP Guidance Manual was launched at the end of 2006 and an important project under the PPP started during the same period.¹⁴⁴

Moreover, in the 2006 Budget Speech, the Minister of Finance talked about making CSR mandatory for the promoters of the Integrated Resort Scheme (IRS)¹⁴⁵:

we are making new regulations to enhance [the IRS's] attractiveness, make it more investor-friendly and define the social obligations of [the] promoters

¹⁴⁰ The articles referred to here are those that have been published in the two major French-speaking newspapers in the country, *L'Express* and *Le Mauricien*, both accessible online respectively at <<http://www.lexpress.mu>> and <<http://www.lemauricien.com>>. I started collecting a few newspaper articles when I started my research in 2003 and the rest have been printed from the online archives, using search terms like 'responsabilité sociale' (social responsibility) and 'corporate social responsibility'. Unfortunately, the online archives of *Le Mauricien* are constantly being replaced and therefore, a number of the links to their articles cited in this thesis no longer work. *L'Express* also revamped its website in December 2008, which means a number of the links to their articles cited in this thesis no longer work either.

¹⁴¹ An important component of CSR as explained in chapter 3.

¹⁴² Ministry of Economic Development, Financial Services and Corporate Affairs (at the time), *Public Private Partnership Policy Statement* (Government of Mauritius, Mauritius, May 2003) 2.

¹⁴³ PPP Unit of the Ministry of Finance and Economic Development (PPP Unit), *PPP Newsletter* (Ministry of Finance and Economic Development, Mauritius, October 2007) 2. See the PPP Unit Website <<http://www.gov.mu/portal/sites/ncb/ppp/about.htm>> accessed 30 August 2008.

¹⁴⁴ *PPP Unit* (n 143) 1. The important project is known as the Highlands Project, which is the development of a plot of land in Highlands, a place in Mauritius, belonging to the state-owned company 'The State Land Development Company Ltd', into an Urban and Knowledge Industry Development Project.

¹⁴⁵ See the earlier sections of this chapter for a detailed description of the IRS.

... The new regulations will spell out the parameters for determining the level of contributions for the benefit of the local community.¹⁴⁶ (emphasis added)

We saw above that the IRS is a project in which foreign investors are invited to buy and/or to promote the building of luxurious residential properties on the island.¹⁴⁷ The Scheme created a lot of controversy in Mauritius. It attracted a lot of media attention, for example, when a group of fishermen protested against the work started on some of the areas for the schemes, claiming that it would destroy their livelihoods.¹⁴⁸ It seems that the government decided to make CSR a strong policy focus partly in response to the opposition these schemes faced.¹⁴⁹

Indeed, the Minister of Finance expressly referred to the term 'CSR' for the first time in his 2007 Budget Speech, equating it with charitable donations:

I would like to invite the private sector to forge a partnership with Government and NGOs to expand the reach and effectiveness of a national effort to assist those who cannot help themselves. Most companies, though sensitive to the issue of Corporate Social Responsibility (CSR) do not have structured programmes of support. With the exception of a few companies, CSR is being carried out on an 'ad hoc' basis and the areas for support are education and training, protection of the environment, sports and 'cultural activities'... it is [the government's] conviction that there should be a concrete show of solidarity with the weak, the vulnerable and the poor. To

¹⁴⁶ Rama Sithanen, 'Securing the Transition: From Trade Preferences to Global Competition', Budget Speech 2006-2007, Delivered to Mauritian Parliament on 9 June 2006, 18
<<http://www.gov.mu/portal/goc/mof/files/20062007/speech06.pdf>> accessed 30 August 2008.

¹⁴⁷ See Bridget Stott, 'Mauritius ready to open the doors to paradise' *The Observer* (London 19 February 2006)
<<http://www.guardian.co.uk/money/2006/feb/19/buyingpropertyabroad.observercashsection>> accessed 30 August 2008.

¹⁴⁸ The fishermen finally accepted a sum of Rs 30000 (£500) each as compensation. See Nicholas Rainier, 'Boolell doit calmer le jeu entre promoteur et pêcheurs' *L'Express* (Port-Louis Mauritius 17 March 2006) <http://www.lexpress.mu/display_search_result.php?news_id=61228> accessed 30 August 2008; Shyama Soondur, 'Anahita: entre opportunisme et militantisme' *L'Express* (Port-Louis Mauritius 19 March 2006) <http://www.lexpress.mu/print.php?news_id=61379> accessed 30 August 2008; Pauline Etienne, 'Anahita Integrated Resort Scheme- Trial of strength between fishermen and Ciel properties' *L'Express* (Port-Louis Mauritius 21 March 2006)
<http://www.lexpress.mu/print.php?news_id=61544> accessed 30 August 2008; Akilesh Roopun, 'Questions à Nicolas Vaudin, General Manager de CIEL Properties' *L'Express* (Port-Louis, Mauritius 22 March 2006) <http://www.lexpress.mu/print.php?news_id=61611> accessed 30 August 2008; Thierry Chateau, 'Anahita-La majorité des pêcheurs compensés' *L'Express* (Port-Louis Mauritius 15 July 2006) <http://www.lexpress.mu/print.php?news_id=68682> accessed 30 August 2008.

¹⁴⁹ It must be noted that the IRS still continues to attract a lot of criticism: in October 2007, the 'Plate-Forme des Citoyens Engagés'-literally 'Platform for Engaged Citizens'- organised a march demonstrating against poverty and especially the IRS, which the organisers believed would contribute even further to poverty- see --'Actualités- Pauvrete- Plateforme des Citoyens Engagés: "Absence de consideration sociale dans les projets IRS"' *Le Mauricien* (Port-Louis Mauritius 17 October 2007)
<<http://lemauricien.com/mauricien/071017/ac.HTM>> accessed 5 December 2007.

this end, a number of firms in the corporate sector have agreed to **voluntarily contribute at least 1 percent of their profits to CSR activities run by them. I make an appeal to companies that can afford it to contribute more.**¹⁵⁰ (emphasis added)

He further explained in a speech in November 2007 at the launch of the 'National Capacity Building Training for Corporate Citizenship in Mauritius Workshop', '[w]e want businesses to be more aware of their impact on society and of the **potential for CSR to help with development**, especially community based initiatives (emphasis added).'¹⁵¹ He elaborated the government's two-pronged approach in respect of CSR: 'in the IRS we have set clear requirements, which at the same time outline the priority areas of Government for CSR.'¹⁵² In the rest of the economy CSR is left to **voluntary measures** (emphasis added).¹⁵³ In fact, in respect of the IRS, the Minister of Finance announced at the end of November 2007 that new regulations had now been introduced, the aim being to transform the IRS into 'a real locomotive for socio-economic development' and to 'ensure that the benefits trickle down from the developers to the local people'.¹⁵⁴ These new regulations entail, amongst other things, a written undertaking by the promoters of IRS projects that benefits shall accrue to the local community and to small entrepreneurs generally in terms of employment and business opportunities.¹⁵⁵

Interestingly, in his latest Budget Speech, in May 2009, the Minister of Finance proposed new legislation to require 'all profitable firms to either spend 2 percent of their profits on CSR activities approved by Government or to transfer these funds to Government to be used in the fight against poverty.'¹⁵⁶ Some commentators have

¹⁵⁰ R Sithanen, 'Consolidating the Transition and Securing Full Employment', Budget Speech 2007-2008, Delivered to Mauritian Parliament on 15 June 2007, 32

<<http://www.gov.mu/portal/goc/mof/files/20072008/speech07.pdf>> accessed 30 August 2008.

¹⁵¹ R Sithanen, Speech on the Launch of the 'National Capacity Building Training for Corporate Citizenship in Mauritius' 26 November 2007

<http://www.gov.mu/portal/site/MOFSite/menuitem.37d33af2d526d8f4e0aad110a7b521ca/?content_id=b9d232b673d76110VgnVCM1000000a04a8c0RCRD> accessed 30 August 2008.

¹⁵² These priority areas are poverty alleviation, youth and women empowerment, training and empowerment, outsourcing, community development, and environmental protection and enhancement.

¹⁵³ R Sithanen (n 151).

¹⁵⁴ Olivier Masson, 'Development Scheme- Ensuring the social contribution of IRS' *L'Express* (Port-Louis, Mauritius 3 December 2007) <http://www.lexpress.mu/print.php?news_id=98832> accessed 30 August 2008.

¹⁵⁵ Masson (n 154).

¹⁵⁶ R Sithanen, 'Riding out the Global Crisis: Saving Jobs- Protecting People- Preparing for Recovery', Budget Speech 2009-2010, Delivered to Mauritian Parliament on 22 May 2009, 41

called this a 'Corporate Social Tax'¹⁵⁷ although the Minister insisted that 'these levies should not be perceived as a tax' but rather 'are ... a gesture of compassion and solidarity with those who cannot help themselves and with those who will have no means of livelihood if they lose their jobs'.¹⁵⁸ Since this is all very new, it remains to be seen how the legislation will be implemented and enforced – although it does appear to be a 'return' to the type of 'regulatory CSR' implemented in the context of the sugar industry and EPZ sector which I discussed earlier.

What these developments suggest, however, is that the government of Mauritius is now attaching great importance to the issue of CSR from both regulatory and self-regulatory perspectives:

It is in the best interest of the country that Responsible Corporate Citizenship and Corporate Social Responsibility are fully aligned on national priorities as set out by the Government. I am confident that within the process for public-private sector dialogue, we can include CSR as a key issue so that we take a collective and well-coordinated approach to empowerment and social progress.¹⁵⁹ (emphasis added)

This reflects the general trend of CSR in developing countries that have embraced neo-liberal reforms. As Visser points out, 'CSR in developing countries cannot be divorced from the socio-political reform process, which often drives business behaviour towards integrating social and ethical issues.'¹⁶⁰

<http://www.gov.mu/pv_obj_cache/pv_obj_id_922136683BA123FCBD3A80B396EFD3C9D2910200/filename/budspeech09.pdf> accessed 6 July 2009.

¹⁵⁷ Anwar Kaidoo, Operations Manager at the Mauritius Chamber of Commerce and Industry, cited in Valerie Olla, 'Mesures Budgétaires: Responsabilité sociale: les entreprises veulent plus de flexibilité' L'Express (Port-Louis, Mauritius 2 June 2009)

<http://www.lexpress.mu/Services/epaper_36962_-b--MESURES-BUDGETAIRES--Responsabilité-sociale---les-entreprises--veulent-plus-de-flexibilité--b->> accessed 6 July 2009.

¹⁵⁸ R Sithanen (n 156).

¹⁵⁹ R Sithanen (n 151).

¹⁶⁰ W Visser, 'CSR in Developing Countries' in A Crane and others (eds), *The Oxford Handbook of Corporate Social Responsibility* (OUP, Oxford 2008) 473, 482. See further J A P de Oliveira, 'Corporate Citizenship in Latin America: New Challenges for Business- Introduction' (2006) 21 *Journal of Corporate Citizenship* 17 for a Latin American perspective.

The Deloitte Report

Having examined the socio-political context in which CSR is faring in Mauritius, I want to now focus on two recently published local reports on CSR.

In 2006, Kemp Chatteris Deloitte was commissioned by the government of Mauritius in partnership with the Mauritius Council of Social Service (MACOSS)¹⁶¹ and the United Nations Development Programme (UNDP) to undertake a review of CSR in Mauritius. The assignment was part of an overall programme set to strengthen the non-governmental organisation (NGO) sector in Mauritius.¹⁶² The Final Report on the review was published in April 2008.

The sample size used was 100 companies, divided into 63 large national and international corporations and 37 small and medium enterprises (SMEs) respectively.¹⁶³ The survey was conducted through face-to-face interviews¹⁶⁴, and as well as company personnel, representatives of major stakeholders such as the Ministry of Finance and Development, the National Committee on Corporate Governance and the Institute for Consumers Protection were also interviewed.¹⁶⁵

The report found that CSR culture was not yet embedded in Mauritius as 25 per cent of respondents had only started their CSR undertakings in the past three years.¹⁶⁶ Moreover, the majority of organisations in Mauritius were conducting CSR activities in an informal way¹⁶⁷, with 97 per cent of SMEs not having a CSR policy.¹⁶⁸ In terms of large organisations, only 22 per cent of those surveyed had a formal policy towards CSR, a proper CSR structure not being a priority for many of them.¹⁶⁹ Among this 22 per cent, more than 80 per cent engaged in strategic CSR partnership at community level, while more than 60 per cent did so at national level. The report suggested that

¹⁶¹ The umbrella organisation for NGOs in Mauritius.

¹⁶² 'Strengthening of the NGO Sector in Mauritius' is a joint initiative of the Government of Mauritius, MACOSS and the UNDP. See the website of the initiative

<http://www.ngo.org.mu/ngo_sector_mauritius.htm> accessed 30 August 2008.

¹⁶³ *Kemp Chatteris Deloitte* (n 119) 5-8.

¹⁶⁴ *Kemp Chatteris Deloitte* (n 119) 8.

¹⁶⁵ *Kemp Chatteris Deloitte* (n 119) 9-11.

¹⁶⁶ *Kemp Chatteris Deloitte* (n 119) 61.

¹⁶⁷ *Kemp Chatteris Deloitte* (n 119) 62.

¹⁶⁸ *Kemp Chatteris Deloitte* (n 119) 64.

¹⁶⁹ *Kemp Chatteris Deloitte* (n 119) 24.

this finding implied a strong positive correlation for the existence of a formal CSR policy and an engagement in strategic CSR partnership at community and national level.¹⁷⁰ But since the majority did not have a formal CSR policy, the survey revealed that 71 per cent of companies surveyed only carried out CSR activities on an ad hoc basis.¹⁷¹

One significant finding of the report was that despite the fact that Mauritian organisations had been involved in one way or the other in CSR undertakings, the country still lagged behind western countries when it came to the integration of CSR into organisational strategy, structure and operations.¹⁷² This was further highlighted by the fact that CSR activities in Mauritius appeared to be equated with philanthropy and sponsorship: an overwhelming majority (90 per cent) of large companies surveyed carried out philanthropic activities which tended to revolve around three main areas - health and safety, education and community (including sports)¹⁷³ - whilst 83 per cent of them indulged in sponsorship activities.¹⁷⁴ With respect to SMEs, 87 per cent of respondents carried out philanthropic activities while 60 per cent indulged in sponsorship activities.¹⁷⁵

Since the report established that the main reason why companies engaged in CSR in Mauritius was to enhance their image vis-à-vis the internal and external community¹⁷⁶, it was not surprising that philanthropy and sponsorship should rank high as CSR activities. As explained by the report:

[Sponsorship] is a business tool used by many companies as part of their communications, advertising and public relations budget to associate the company name/brand/people with dynamic events and images for their media broadcast and audience. Sponsorship usually requires a service, or action, in return for financial support, so this frequently has clear marketing benefits and is therefore directly linked to a company's bottom line.¹⁷⁷

¹⁷⁰ *Kemp Chatteris Deloitte* (n 119) 24-25.

¹⁷¹ *Kemp Chatteris Deloitte* (n 119) 35.

¹⁷² *Kemp Chatteris Deloitte* (n 119) 31.

¹⁷³ *Kemp Chatteris Deloitte* (n 119) 45. The report noted that 91% of them were satisfied with their activities.

¹⁷⁴ *Kemp Chatteris Deloitte* (n 119) 46.

¹⁷⁵ *Kemp Chatteris Deloitte* (n 119) 82.

¹⁷⁶ *Kemp Chatteris Deloitte* (n 119) 23. It was found that multinationals engaged in CSR not only to enhance their image but also to abide by their global policy.

¹⁷⁷ *Kemp Chatteris Deloitte* (n 119) 45.

Moreover, to further support the finding that CSR was not embedded within the corporate structure in companies in Mauritius, it was discovered that whilst a majority of organisations did have a designated person for CSR, for many of them the persons concerned were members of the human resources (39 per cent) and marketing/communications (23 per cent) departments respectively.¹⁷⁸

The report concluded by asserting that the survey and discussions with stakeholders had revealed that CSR should remain as a voluntary activity. It was felt that the government could, and in fact should, limit its role to being a facilitator in supporting the development of CSR.¹⁷⁹ This is highly significant as it suggests that the model of CSR being advocated (and practised) in Mauritius is very much in line with the contemporary ameliorative model of CSR identified earlier in the thesis, one based on voluntarism, partnerships and corporate self-regulation.

The Mauritius Employers' Federation (MEF) Survey

The second report is that published in December 2006 by the Mauritius Employers' Federation (MEF)¹⁸⁰ based on a survey it conducted in March 2006¹⁸¹ on the involvement of Mauritian companies in CSR activities.¹⁸² The survey was administered by a postal questionnaire sent to its members and contained thirteen questions, which can be broadly categorised into three main areas: (1) the main business drivers of CSR, (2) the types of CSR initiatives undertaken by enterprises and (3) corporate social accounting practices. It covered 145 companies, ranging from

¹⁷⁸ *Kemp Chatteris Deloitte* (n 119) 33. There is someone who is fully involved in CSR activities on a daily basis only in a few companies.

¹⁷⁹ *Kemp Chatteris Deloitte* (n 119) 121.

¹⁸⁰ It is the largest private sector organisation in Mauritius with 913 members. See <<http://www.mef-online.org>> accessed 30 August 2008.

¹⁸¹ Mauritius Employers' Federation (MEF), *MEF Survey Report on Corporate Social Responsibility Survey* (MEF, Mauritius December 2006).

¹⁸² *MEF* (n 181) 2. It must be noted here that the MEF has recently published another survey: *MEF, MEF Survey Report on Corporate Social Responsibility Survey* (MEF, Port-Louis, Mauritius May 2008). A number of their findings reflect those of the Deloitte Report. The latter's findings are in fact much more comprehensive, which is why the latest MEF survey results are not discussed at any length here. Three of the main findings of the May 2008 survey were: 1) 90.5 percent of enterprises were of the view that the primary goal of business should be profitability and to ensure an adequate return to shareholders; 2) 94.8 percent of respondents believed that the pursuit of economic interests needed to be balanced with social and environmental responsibility and 3) 78.4 percent of respondents agreed or strongly agreed that enterprises have the responsibility of driving economic development and job creation in the region where they are located. The survey also noted that in the majority of cases, CSR remains characterised by ad-hoc activities, unrelated to business operations and strategy.

small to large enterprises¹⁸³, from different sectors of the economy, such as agriculture, manufacturing, transport and the EPZ. The report found that the three main motivations for engaging in CSR were ethical considerations, employee motivation and the promotion of brand and reputation.¹⁸⁴ The two main benefits derived from engaging in CSR activities were cited as being better corporate image (63.4 per cent) and increased employee motivation (55.2 per cent).¹⁸⁵

The MEF questionnaire divided CSR into three issues: labour standards, working conditions and community involvement.¹⁸⁶ Regarding community involvement, the results showed that 84 per cent of enterprises engaged in the improvement of the environment and immediate neighbourhood whilst 31 per cent took to sponsoring of activities.¹⁸⁷ In fact, 36 per cent of enterprises surveyed allocated a regular budget for CSR activities in MRU.¹⁸⁸ In terms of CSR reporting, 39 per cent of the enterprises surveyed published their CSR activities in their annual reports, in other publications or on their websites.¹⁸⁹ However, the majority - 51 per cent - of the enterprises surveyed did not get any kind of feedback on their CSR initiatives.¹⁹⁰ In fact, only 19 per cent of surveyed enterprises actually evaluated their social involvement or projects; 75 per cent of enterprises surveyed did not undertake any evaluation of their CSR initiatives.¹⁹¹

The report concluded that there was a dire need for training and action on CSR issues within Mauritian enterprises, and in this context, the MEF saw itself as an ideal partner for enterprises wishing to embark on such a project, having committed itself to the UN Global Compact programme.¹⁹²

¹⁸³ Small enterprises are defined as those that had 1-10 employees whilst large enterprises are defined as those having more than 500 employees, see *MEF* (n 181) 3.

¹⁸⁴ *MEF* (n 181) 8.

¹⁸⁵ *MEF* (n 181) 11. The report noted that 17 per cent of companies surveyed have not seen any tangible benefits so far.

¹⁸⁶ *MEF* (n 181) 4-5.

¹⁸⁷ *MEF* (n 181) 15.

¹⁸⁸ *MEF* (n 181) 20.

¹⁸⁹ *MEF* (n 181) 17.

¹⁹⁰ *MEF* (n 181) 18.

¹⁹¹ *MEF* (n 181) 18.

¹⁹² *MEF* (n 181) 23. See chapter 3 for a detailed description of the Global Compact. For a list of Mauritian companies having signed up to the Compact, see

http://www.unglobalcompact.org/ParticipantsAndStakeholders/search_participant.html?searchmode=basicsearch&name=&type=part_all®ion=All&country%5B%5D=MU&industry%5B%5D=All&biz

The most important finding of the survey was, perhaps, that 95 per cent of the companies questioned perceived CSR as being important for their organisations¹⁹³, for this statistic led the reporters to conclude that 95 per cent of the organisations concerned *actually* engaged in CSR activities¹⁹⁴, rather than seeing this as a matter for further investigation. In fact, the survey did not explore or audit the actual activities of companies to find out if (and how) their CSR rhetoric was translated into practice. The MEF report therefore effectively *presumed* that rhetorical commitment on the part of company officers translated into actual practice or reality.

The issue of rhetoric and reality when it comes to CSR is something I have touched upon a number of times in the course of the thesis.¹⁹⁵ Here, the presumption of the MEF reporters appears to be indicative of a tendency (among all those writing about CSR) to treat a rhetorical commitment to CSR as evidence of a genuine commitment to the concept with real, practical effects. The next chapter will, therefore, attempt to address this issue of CSR rhetoric and reality.

Concluding remarks

This chapter has introduced the case-study. We have seen how Mauritius, after having been a developmental state for the greater part of its recent history - the state having engineered economic growth by means of protectionist and other interventionist measures - is now pursuing a neo-liberal, market-led agenda in collaboration with the IFIs to attract FDI. The reforms appear to be working in the sense that FDI has increased in the past two years since their implementation, even though they have been criticised for lacking a social dimension. In the wake of the financial crisis, however, GDP is now forecast to decrease in 2009. Furthermore, we have seen how the IFIs have pushed for an Anglo-American conception of corporate governance in Mauritius, resulting in the implementation of the Mauritian Code of Corporate Governance. As we have seen, the latter appears to be concerned with the interests of

[type=All&oth_type=All&year=&month=&day=&submit.x=46&submit.y=9&submit=submit>](#)
accessed 9 July 2009.

¹⁹³ MEF (n 181) 7.

¹⁹⁴ MEF (n 181) 23.

¹⁹⁵ See chapter 3 on contemporary CSR and how corporations tend to pay lip-service to the concept.

foreign, minority shareholders, and, in deploying the principle of 'enlightened shareholder value', it makes what is, in essence, a business case for CSR: companies should look to maximise profits in the long-term and this not only permits but requires managers to take into account the interests of stakeholders in their decision-making processes. Finally, the rising profile of CSR in Mauritius was examined. It was argued that in recent years, the government has embraced CSR in its self-regulatory form, encouraging business to take a more active role in development, as the state itself takes a backseat in line with the prevailing neo-liberal orthodoxy. This begs the question as to how CSR is actually perceived and practised in Mauritius. It forms the basis of the next chapter.

Chapter Seven

Exploring CSR in Mauritius

Introduction

The previous two chapters examined the increasing role which has been ascribed to CSR, both by governments and by development agencies, in achieving sustainable development, focusing specifically on Mauritius. This chapter will further explore CSR in Mauritius through an investigation of the impact of CSR on the views and opinions of corporate executives and representatives of local NGOs. It seeks to examine, in particular, the extent of the rhetorical commitment of corporate executives to CSR and their understandings of what such a rhetorical commitment entails in practice.

The first section focuses on the qualitative methodology that I adopted and looks at the advantages and disadvantages of this methodology. The second section is an analysis of the findings of the study. It argues that the interviews make it clear that, for all the professed commitment of executives to CSR, CSR in Mauritius is very much seen as subordinate to the main business goal of maximising shareholder value. It is striking that the company executives interviewed nevertheless appeared to believe that CSR was very much integrated into their core business practices and strategies; they claimed that CSR was an integral part of how they managed their businesses. However, when the executives themselves explained what their CSR activities entailed, there was little evidence that this rhetorical commitment to CSR translated into much in the way of changed corporate practice. Indeed, the interviews suggest that CSR in Mauritius is equated, above all else, with corporate philanthropy. The implications of this in terms of the contribution that CSR can make to sustainable development form the basis of the conclusion to the chapter.

It must be emphasised here, once again, that having argued, in the theoretical part of the thesis, that the conception of contemporary CSR in the developed world is ameliorative in nature, the research study, in this chapter, therefore, focuses on testing

out this particular hypothesis in the context of the developing country of Mauritius. From this perspective, although a lot of material was generated from the interviews,¹ their analysis was deliberately organised in such a way so as to seek to explore whether the conception of CSR in Mauritius is indeed conservative, and whether, as a result, this limits its potential as a developmental tool. Significantly, as mentioned elsewhere in the thesis, since the research study is exploratory in nature, I also felt that it was necessary to clarify precisely what the executives understood by CSR and how, according to them, this understanding was reflected in practice. As a result, these are the main foci of the findings of the study.

I. Research Methodology

Research Method

I wanted to develop what Creswell has described as, ‘an inquiry process of understanding a social or human problem, based on building a complex, holistic picture, formed with words, reporting detailed views of informants, and conducted in a natural setting’², the ‘problem’ here being the meanings attached to and practices in relation to CSR in Mauritius. I realised from the beginning that it would have been difficult, and possibly impossible, for me to actually embark upon a detailed check and audit of CSR activities of companies in Mauritius without considerably more information, resources and time. I decided to focus, therefore, on the significance and meanings attached to the idea of CSR by corporate executives. What did CSR mean to executives in Mauritius? Did they have a rhetorical commitment to it? How strong was this commitment? What did this rhetorical commitment entail? How did they think this rhetorical commitment to CSR impacted on actual company behaviour? What did they think a commitment to CSR entailed in practice? I felt that an exploration of these questions would assist in beginning to understand CSR’s potential contribution, if any, as an instrument for achieving sustainable development.

¹ See Appendix E.

² J Creswell, *Research Design: qualitative and quantitative approaches* (Sage, London 1994) 145. This is how Creswell defines a qualitative study.

As such, my methodology was qualitative in nature rather than quantitative.³ It was based on a two-pronged approach. Interviews were used as a primary source, and company literature, supplemented by newspaper articles and the reports of non-governmental organisations (NGOs)⁴ as secondary sources.

Interviewing

According to Taylor and Bogdan, qualitative methodology refers to research that produces descriptive data: people's own written or spoken words and observable behaviour.⁵ For this reason, I decided to conduct semi-structured face-to-face interviews. As Kvale⁶ points out, at the most basic level, interviews are conversations. He defines qualitative interviews as 'attempts to understand the world from the subjects' point of view, to unfold the meaning of peoples' experiences, to uncover their lived world prior to scientific explanations'.⁷ Furthermore, according to Seidman:

Interviewing provides access to the context of people's behaviour and thereby provides a way for researchers to understand the meaning of that behaviour... Interviewing allows us to put behaviour in context and provides access to understanding their action.⁸

In other words, '[q]ualitative interviewing is a way of finding out what others feel and think about their worlds'.⁹ What I hoped to get, therefore, was a 'feel' for what CSR actually means today to corporate managers in Mauritius; a feel for how they understand it and for the extent to which they take it seriously. Did they see it as

³ According to Denzin and Lincoln, 'Qualitative research is a situated activity that locates the observer in the world. It consists of a set of interpretive, material practices that makes the world visible. These practices...turn the world into a series of representations including fieldnotes, interviews, conversations, photographs, recordings and memos to the self. At this level, qualitative research involves an interpretive, naturalistic approach to the world. This means that qualitative researchers study things in their natural settings, attempting to make sense of, or to interpret, phenomena in terms of the meanings people bring to them.' See N K Denzin and Y S Lincoln (eds), *Handbook of Qualitative Research* (2nd edn Sage, London 2000) 3.

⁴ The cut-off point for the latter two being end of June 2009.

⁵ Steven J Taylor and Robert Bogdan, *Introduction to Qualitative Research Methods: A Guidebook and Resource* (3rd edn John Wiley and Sons Inc, New York 1998) 4.

⁶ Steinar Kvale, *InterViews: An Introduction to Qualitative Research Interviewing* (Sage, London 1996).

⁷ Kvale (n 6) 1.

⁸ Irving Seidman, *Interviewing as Qualitative Research: A Guide for Researchers in Education and the Social Sciences* (Teachers College Press, New York 1998) 4.

⁹ Herbert J Rubin and Irene S Rubin, *Qualitative Interviewing: The Art of Hearing Data* (Sage Publications, Thousand Oaks, CA 1995) 1.

entailing mere philanthropy or did they see it as entailing more than this? Did they believe that CSR and the maximisation of profits were compatible? Did they believe that CSR really could assist in the development of the country? As such, the flexibility of the open-ended interview appealed to me, as will be discussed further below.

My study was originally going to focus on the textile industry in Mauritius, and more specifically on enterprises (indigenous and multinational) operating in the country's Export Processing Zone (EPZ). However, having read the local newspapers and talked to certain individuals working in the private sector in Mauritius, it became clear that the study would provide a more complete picture if it included companies from different sectors of the Mauritian economy - banking, transport, hotel, tobacco, commerce, oil refinery and petroleum, be they indigenous or multinational.

A list of companies was generated from local business directories. I decided to target Chief Executive Officers (CEOs) or other Senior Executive Personnel because I felt that, holding senior positions, they would be the ones most likely to be responsible for formulating the CSR strategies of the companies concerned (if any) and to have informed views about what CSR meant and entailed not only in their company but in their sector and in the economy as a whole. I also decided to try to interview representatives of some of the most important NGOs operating on the island to further flesh out my picture.

Getting hold of people of sufficient seniority was challenging given their busy schedules. I started off by emailing the various companies that I had identified. However, the response was minimal (five out of twenty-six). I then faxed and phoned them, but this only generated three further responses. One of the managers of a multinational company agreed to meet me but insisted on looking at the questionnaire first and decided that she would not be able to answer the questions without first consulting with the company's Head Office in London. They, apparently, had standard responses to some of the questions, and she told me that she would email me their answers. I felt that this would be inappropriate for the purposes of my methodology and therefore declined her offer. Another manager was very reluctant to meet me at first, explaining that she felt that CSR was an issue that did not affect her

company as it was very small; she did not, therefore, understand why I was getting in touch with her. It took a great deal of effort to persuade her to agree to meet me. As for the others, I left a number of messages but responses were not forthcoming.

In the end, I was forced to make use of social networks. Social networking is a very important and prevalent aspect of Mauritian life¹⁰ and my father is a prominent public figure on the island with access to many business leaders. I took advantage of these contacts to arrange a number of interviews. Using a 'snow-ball' circulation technique, these business leaders were then used, wherever possible, to gain access to other business leaders within their social networks. One of them did tell me that he did not think it was appropriate that he should get in touch with the others but when I explained my predicament, he willingly helped me out.

In all, twenty-four interviews were recorded out of forty-five sought, a fifty-three per cent response rate. This was done over a period of five weeks in the summer of 2006.¹¹ I believe that had it not been for my father's contacts, it would have been virtually impossible to arrange as many interviews with senior executives, let alone in such a short period of time. I also feel that my use of the snow-ball effect made a number of business leaders much more inclined to grant me an interview - as demonstrated by my lack of response rate at the beginning. The list of companies and the positions of the officers interviewed is in Appendix A.

Although the questions were in English, some of the interviews were conducted in French as a number of my interviewees felt more comfortable using this medium.

Advantages and Limitations of Interviews

I initially considered using faxed questionnaires and/or postal surveys, but as Wright found in his interviews of US and Japanese senior managers, '[t]he use of telephone or faxed questionnaires and large postal surveys ... could not ... adequately

¹⁰ As one of my friends mentioned at one stage when I was getting desperate: 'Social networking is vital if you want to get anything done in this country!!'

¹¹ 3rd August to 5th September 2006.

substitut[e] for the inputs which ... personal interviews generat[e] using a semi-structured questionnaire'.¹²

I also felt that face-to-face interviews would ensure maximum understanding among the respondents, and would minimise the risk of non-response, of unanswered questions, and of reservations that individual interviewees might have about confidentiality.¹³ In fact, one of the interviewees told me that he accepted my request precisely because it was an interview as opposed to a faxed or written questionnaire in which he would have had to write out responses or tick boxes.

The interviews followed a standard format¹⁴: I started by explaining to the interviewees what I hoped to achieve with the interviews. They were then given a consent form, written in English (see Appendix B). Although some of the interviewees preferred to express themselves in French, all of them were sufficiently well-versed in English to understand what they were consenting to. The consent form explained to them the nature of the study and gave them the choice of having the interview recorded. They were also given the option of anonymity and the opportunity to ask any questions and seek clarifications of the process.

I decided to record and transcribe the interviews. This had many advantages.¹⁵ Of particular importance to me were the fact that this would help to correct the natural limitations of memory and the intuitive glosses that we might place on what we thought people had said in interviews; that it would allow a more thorough examination of what people had said; and that it would permit repeated examinations of the interviewees' answers.¹⁶ The main disadvantage of using a recorder was the risk that it would disconcert respondents, who might become self-conscious or

¹² Len Tiu Wright, 'Exploring the in-depth interview as a qualitative research technique with American and Japanese firms' (2004) 14(6) *Marketing Intelligence and Planning* 59, 61.

¹³ Wright (n 12).

¹⁴ It is important for me to note here that I have never had any formal training as an interviewer although I have conducted interviews for an article in my high school magazine, and my LLM course essay. I did not use them as a source for the latter, however.

¹⁵ For example, see J Heritage, *Garfinkel and ethnomethodology* (Polity, Cambridge 1984).

¹⁶ Other advantages cited by Heritage (n 15) 238 are: it opens up the data to public scrutiny by other researchers, who can evaluate the analysis that is carried out by the original researchers of the data (that is a secondary analysis); it helps to counter accusations that an analysis might have been influenced by a researcher's values or biases; it allows the data to be reused in other ways from those intended by the original researcher- for example, in the light of new theoretical ideas or analytical strategies.

alarmed at the prospect of their words being preserved.¹⁷ In the event, four interviews were not recorded, three of the respondents refusing to be recorded.¹⁸ In these interviews, I took detailed notes.

Two types of semi-structured interview questionnaires were designed and developed to obtain responses elaborating the meanings attached to and practices associated with CSR activities in Mauritius: one for the corporate managers and the other for the representatives of the NGOs (see Appendices C and D). The questions acted as my interview guide, but the interviews did not always proceed in exactly the way outlined in the questionnaires¹⁹, as I felt that it was important sometimes to ‘go with the flow’ and to pursue avenues of particular interest to the interviewees to make the interview a more informative and enriching experience. In fact, echoing Shiner and Newburn, using semi-structured interviews

... minimised the extent to which respondents had to express themselves in terms defined by the interviewe[r] and encouraged them to raise issues that were important to them. It was thus particularly well suited to attempt to discover respondents’ own meanings and interpretations.²⁰

As in the recent study in Nigeria conducted by Amaeshi and others²¹, I recognised that one of the drawbacks of investigations of self-reported CSR activities is the danger of public relations misuse, hence the use of open-ended questions to try to avoid biasing the responses. The questions were also phrased in such a way as to give leeway to the respondents to talk of CSR activities more generally and not simply to ‘plug’ the activities of their own companies. Moreover, as I indicated earlier, because my aim was mainly to get a ‘feel’ of what the concept of CSR meant to the interviewees, I did not always rigidly follow some of the questions, allowing the interview to become more conversational. This is apparent in the transcripts contained in Appendix E. The flexibility of the semi-structured interview also allowed me to probe the answers offered by my interviewees by asking them to clarify or expand on a specific response. I found this particularly useful.

¹⁷ Alan Bryman, *Social Research Methods* (2nd edn OUP, Oxford 2004) 322.

¹⁸ The recorder malfunctioned during one interview.

¹⁹ See Bryman (n 17) 313-315.

²⁰ M Shiner and T Newburn, ‘Definitely, Maybe Not? The Normalisation of Recreational Drug Use amongst Young People’ (1997) 31 *Sociology* 511, 520.

²¹ Kenneth M Amaeshi and others, ‘Corporate Social Responsibility in Nigeria: western mimicry or indigenous influences?’ (2006) 24 *Journal of Corporate Citizenship Issue* 83, 90.

It must still be emphasised that there is nevertheless no guarantee that respondents answered honestly and in an unbiased manner. As Taylor and Bogdan explain, 'people say and do different things in different situations. Since the interview is a particular kind of situation, you cannot assume that what a person says during an interview is what that person believes or will say or do in other situations.'²²

Finally, there is the underlying risk of interviewer bias. This cannot be ignored as it sometimes happens that involuntarily, intonations or facial expressions influence the respondents to answer in a particular way.

Secondary Sources

Apart from the primary sources of the interview transcripts, I have also made use of a number of secondary sources, in the form of company literature which was either publicly available or given to me by the interviewees, local and international online newspaper articles, and NGO reports. As explained in the previous chapter, the latter were compiled from 2003 (when the first ever company Social Report was published in Mauritius) until the end of June 2009.

II. Findings and Discussion

The Rhetorical Commitment to CSR

The interviews strongly suggested that there was a clear rhetorical commitment to CSR. Indeed, the majority of the company managers interviewed (15 out of 19) stated that CSR ranked high in their company's list of main objectives. The Managing Director (MD) of ██████ (an indigenous public company), for example, stated that '[w]e are fully committed to social responsibility ... by conviction ... it's part of [our] culture.'²³ The idea that CSR was part of the company's 'culture' was also emphasised by the managers of wholly or partly owned subsidiaries of multinationals.

²² *Taylor and Bogdan* (n 5) 91.

²³ Interview W.

Thus the country representative of [REDACTED] (Mauritius) stated that being the fourth biggest multinational oil company in the world, '[corporate] social responsibility is [part] of our culture.'²⁴ The Assistant General Manager (GM) of [REDACTED], a multinational textiles company, similarly explained that what is known as the 'e-culture' of the group comprised 'ethics, environment, exploration, excellence and education ... We want to be good citizens and [a] good employer ... this is our culture.'²⁵ And the Corporate and Regulatory Affairs (CRA) Manager of [REDACTED] [REDACTED] pointed out that CSR was one of the four core objectives of [REDACTED]²⁶, which are each given equal importance, thus purporting to show that [REDACTED] adopts an integral approach to responsibility. The frequent references to the idea that CSR was part of the 'culture' of a corporation were clearly intended to suggest that CSR was embedded within the corporations concerned.

Even though other company managers did not describe CSR as part of the 'culture' of the company, they still indicated that it was regarded as very important. The (now) ex-Chairman of [REDACTED] [REDACTED] for example, went so far as to say not only that the company had 'a social role', but that there was 'an onus that we should be going that extra mile that some other non government-owned company would not go.'²⁷

However, although CSR was viewed as very important, it was nevertheless considered to be subordinate to the main goal of profit-making - of maximising shareholder value. Hence the Financial Services Division Manager (FSDM) [REDACTED] [REDACTED] a public indigenous company, explained that '[CSR] is part and parcel of our main objective which is to maximise shareholder value. It includes caring for our stakeholders, that is, our employees, the government, the public and our customers.'²⁸ The Human Resources (HR) Manager of [REDACTED] [REDACTED], an indigenous private company, which is part of the [REDACTED], affirmed that '[CSR] is amongst our top three objectives ... after profit-making and

²⁴ Interview L.

²⁵ Interview P.

²⁶ Growth, productivity, responsibility and winning environment- 'it's a four-pronged long-term objective of BAT.' See Interview B.

²⁷ Interview D.

²⁸ Interview W.

[expanding] our market share [in terms of the goods we produce].'²⁹ The (now) ex-CEO of the [REDACTED] an indigenous group of companies, stated that '[CSR] is something we take seriously', before adding that '[o]bviously our main business is business and making money.'³⁰ The Company Secretary of [REDACTED], a public indigenous company [REDACTED], an indigenous group of companies, said: 'We have to look not only to maximise profit for shareholders, we also have to look after the welfare of our employees, their families, and also the welfare of the region where we operate.'³¹ The MD of [REDACTED], a foreign owned private company, pointed out that while, 'of course, the purpose of the business is to make money ... we are very conscious of the interest and need to satisfy the interest of all the stakeholders...'³² For the Personal Financial Services Manager (PFSM) of the multinational [REDACTED], '[CSR ranks] very high [among the main objectives of the company]. It starts from the bottom and goes all the way up.'³³ Moreover, the HR Manager of [REDACTED], a private company, half foreign-owned, which exports 80 per cent of its products to Marks and Spencer in England, specified that:

[CSR forms] part of our list of objectives but not the main one. Of course, we want to make profits but we also look at the interests of our clients and employees. We are not working in a vacuum and realise the importance of our stakeholders.³⁴ (emphasis added)

The link between CSR and profits was made more clearly by the Executive Director of [REDACTED], a foreign-owned private company. He explained that although CSR ranked '[f]airly high up [in the company's list of main objectives ... the main criteria for us to be able to be socially responsible is that we need to be profitable (emphasis added).'³⁵

²⁹ Interview Q.

³⁰ Interview F.

³¹ Interview V.

³² Interview E.

³³ The interviewee had explained earlier in the interview that profit-maximisation was 'definitely' one of the bank's objectives as 'otherwise, we won't be in the business.' See Interview H.

³⁴ Interview S.

³⁵ Interview G.

By no means, however, was there unanimity as to the importance of CSR: not all the corporate managers interviewed believed that CSR was important to/in their companies. Two of them opined that CSR did not rank very high at all and another rated its importance as 'average'. These three managers were, however, from small foreign-owned private companies³⁶ rather than large ones, multinational or indigenous. This seems to suggest that the degree of the rhetorical commitment might vary between managers of smaller companies in Mauritius and those of larger companies. As the Executive Director of ██████████ explained:

[CSR] is not very high [on the company's list of main objectives]...to provide jobs is already our share of what we can do for our country ... [n]ow we are hearing more about [CSR] ... It is in the newspapers about how companies are becoming more aware [of] it. **But it is mostly the big companies.** You have quite some important groups which are helping the poor and financing a lot of projects.³⁷ (emphasis added)

This view was reinforced by the Personnel Manager of ██████████
██████████ who was of the opinion that:

[CSR is] average [in our company] ... [There are] companies which have the capacity to fund all kinds of projects to help combat poverty, illiteracy, etc ... That's done on a large scale. As for us, we are after all much smaller.³⁸
(translated from French)

The Executive Director of ██████████, a wholly-owned subsidiary ██████████
██████████ went further, 'We are a medium-sized company so we don't have that much money or resources to engage in ... CSR.'³⁹

Overall, however, the responses of most of the company executives interviewed provided clear evidence of a widespread and growing rhetorical commitment to CSR. This is further evidenced by the ways in which so many of them deployed the language and terminology of CSR and in the fact that some of them had gone so far as to draft CSR policies. Thus the MD of ██████████ explained that 'the board [believes] in triple bottom line [that is,] economic, societal and environmental [duties,] ... to look

³⁶ Employing 135,203 and 300 employees respectively as at August 2006 - see Interviews M, I and O.

³⁷ Interview I.

³⁸ Interview O. It must be noted that the company has signed up to the Global Compact since the beginning of August 2008.

³⁹ Interview M.

after the interests of all our stakeholders and society and the environment.’⁴⁰ For the MD of the [REDACTED], an indigenous company listed on the secondary market, which exports textile products to British companies such as BHS and Topshop:

Doing business is [no longer] the bottom line for shareholders. It is partnership today, long-term trust, ethics to customers, etc ... We are in a trade which is very highly criticised throughout the world with issues like child labour and working hours ... [Throughout] the year we are subject to social audits and we have to adhere to the norms and cascade down the social responsibility to suppliers. After many years, we have drafted our own social responsibility programme.⁴¹

The MD of [REDACTED] claimed that: ‘... We have a very clear [CSR] policy.’⁴² The CRA Manager at [REDACTED] referred me to the company’s framework for CSR, which is part of its ‘Statement of Business Principles’, which deal with the principles of mutual benefit, responsible product stewardship and good corporate conduct. According to the mutual benefit principle, for example:

[REDACTED] believe[s] in creating long-term shareholder value, in engaging constructively with our stakeholders, in creating inspiring working environments for our people, in adding value to the communities in which we operate, that suppliers and other business partners should have the opportunity to benefit from their relationship with us.⁴³

Overall, therefore, the executives interviewed displayed a clear rhetorical commitment to CSR and were well versed in its language and terminology. What, however, was the nature of this commitment? In other words, what exactly did these executives consider their corporate commitment to CSR to entail?

Managerial Understandings of CSR

The various responses of the executives suggested that a number of different meanings are ascribed to CSR.

⁴⁰ Interview W.

⁴¹ Interview J. The company has a formal written CSR policy, which was photocopied and given to me at the interview.

⁴² Interview E. The company has formal written policies on the environment and employment, which were sent to me via email after the interview.

⁴³ Leaflet given to me at Interview B.

Minimalist Conceptions of CSR

A number of those interviewed operated with what we might call a minimalist conception of CSR, equating it with little more than obeying the law. The CEO and Chairman of [REDACTED], an international private company, claimed that:

These⁴⁴ are new words and having started business many years ago, these words were not in vogue then. Anyway, to me responsibility, whether social or otherwise, is to do the right thing, whether by the work force, by the community in which you live ... **my company works within the laws of the country, whatever law is there, whether it is banking, customs. We obey these laws very strictly and we seem to be comfortable by doing that.**⁴⁵ (emphasis added)

The MD of [REDACTED] expounded on the notion of CSR:

... as an organisation of a global company, we are operating in different economies, different cultures, different countries, different social mixes. We are therefore very aware of **the need to operate in each country abiding by the laws of these countries. Abiding by the laws is the basic most common denominator** and whatever we can do better in terms of whether it's environment, whether it's in terms of employment practices, then we do better than that ...⁴⁶ (emphasis added)

In similar vein, some associated CSR with legal and 'social compliance'. Thus two of the companies involved in the research had signed up to social certification programmes such as the Worldwide Responsible Accredited Production (WRAP) and the Ethical Trading Initiative (ETI).⁴⁷ The HR Manager at [REDACTED] stated that his company was part of the:

[ETI] and we are WRAP-certified. We are continually trying to improve. We attach great importance to equal opportunities in terms of our recruitment policies. We don't discriminate and we have codes of conduct that we abide by.⁴⁸

For this executive, this was evidence of the company's commitment to CSR. The Assistant GM of [REDACTED] also explained that

⁴⁴ Meaning CSR.

⁴⁵ Interview U.

⁴⁶ Interview E.

⁴⁷ For a more detailed explanation of WRAP and the ETI, see chapter 3.

⁴⁸ Interview S.

we are also working in a way that we are not polluting the environment. We have collected the sewage, we have the ISO 9000 and the ISO 14 001 certification⁴⁹... We got the WRAP certification and it is a reference to all other companies in Mauritius.⁵⁰

‘Doing More’: Positive Conceptions of CSR

Overall, however, a clear majority of the company executives interviewed saw CSR as involving something more than mere legal and social compliance and as entailing, in some sense, ethical behaviour by corporations. For instance, the HR Manager of ██████ argued that ‘when one produces a good or provides services, it’s important to be ethical, to have a certain responsibility towards the neighbourhood. So as not to destroy anything. So [as] not to engage in anything illegal or unethical.’⁵¹ The CRA Manager of ██████ asserted that being aware of the fact that the industry in which the company operated was a controversial one, it felt the need to show that it was socially responsible: ‘there’s so much controversy around our products (we don’t want), and it’s not going to help the business if added to this there’s more controversy about the way we manage [it].’⁵² For the MD of ██████, ‘[CSR] is how you manage the business. [It] encompasses us not to affect other parties adversely.’⁵³ The ex-CEO of ██████ stated that ‘we ██████ believe in ethics. Each [company] one has [its] own set of ethics. We have our set of ethics. We would like to think that we make money ethically’.⁵⁴

For some of the executives, therefore, CSR was seen as a catalyst capable of bringing about positive changes in terms of taking into account the interests of all stakeholders in society. The MD of ██████ was of the opinion that ‘l’objectif fondamental de toute entreprise est de créer des richesses matérielles et immatérielles à l’intention de tous ceux qui la font exister’ (‘the fundamental objective of a company is to create material and immaterial wealth for those who help in its existence’).⁵⁵ The Personnel Manager of ██████ described CSR as ‘[h]ow the company feels towards society, towards civil society, not only its employees but also towards the external world/community...the

⁴⁹ See chapter 3 of the thesis for these certification programmes.

⁵⁰ Interview P.

⁵¹ Interview S.

⁵² Interview B.

⁵³ Interview J.

⁵⁴ Interview F.

⁵⁵ Interview W.

neighbours, organisations that need help to combat poverty...'.⁵⁶ In similar vein, the ex-CEO of ██████ stated that the company had:

a stakeholder concept ... It's not only money, it's people and it's the way we do things ... we also look after our employees, one of our prime stakeholders. We [...] rely on the Mauritian society and we can only operate if the society works well and there are many needs in the society but obviously a programme of corporate social responsibility can only cater for those we can, for we cannot solve all the problems of Mauritius.⁵⁷

The country representative for ██████ asserted that 'for ██████, [CSR] ... [is] to play our social role towards the communities where we are; we protect the people; we protect the environment and we take care of all our stakeholders.'⁵⁸ In similar vein, the Communications Manager (CM) of ██████, which is part of the ██████, described CSR as reflecting a deep-rooted connection between the company and society, and saw it as contributing to the economic and social development of the country:

██████ has the distinctive feature of being a truly Mauritian company, a company that has accompanied the development of the country... We have been helping in the development of Mauritius and so we have a sort of responsibility towards it. ... Our first responsibility is to create employment, it's very important. ... I believe that we have an obligation that the level of growth achieved by ██████ should be shared not only with its employees but also with Mauritius in its entirety, with society, NGOs, the government. So, this forms part of the social responsibility of ██████.⁵⁹ (translated from French)

Generating employment was, indeed, a recurrent theme in terms of what the company managers perceived as constituting CSR. Thus, for the assistant GM of ██████:

[the company is] part of the society ... We see to it that all our local people get their chance to work within the company and are paid according to the conditions, and we give them the opportunity to grow with the company ... And we are also working in a way that we are not polluting the environment.⁶⁰

⁵⁶ Interview O.

⁵⁷ Interview F.

⁵⁸ Interview L.

⁵⁹ Interview K.

⁶⁰ Interview P.

The Executive Director of ██████████ expressed CSR as having:

the responsibility to see if we can help the government to help the poor. ... [Also] I consider my employees, since they are already earning a living here, indirectly they are participating in some sort of social responsibility towards our country.⁶¹

For the MD of ████████:

... by generating employment itself, we satisfy the first goal of social responsibility... [but] unless the business delivers the required financial performance, we will not be able to do what we'd like to do for these employees.⁶²

From generating employment, the notion of CSR was broadened to 'giving help to society'. For example, the HR Manager of ██████████ was of the opinion that '[t]o remain in business, a company has to cater for its villages.'⁶³ It entails giving proper assistance as opposed to just marketing.'⁶⁴ For the PFSM of ██████████, this takes the form of personal involvement:

[The bank] believe[s] that our responsibility extends to all segments of the society. [CSR is equated with] personal involvement. It starts with you, you feel strongly about certain projects and [want to] get involved and the bank will facilitate you wherever it can.⁶⁵

In contrast, the Executive Director of ██████████ saw CSR as:

some kind of [financial] help towards society. This is how it is perceived here. Help towards society. It is not necessarily like big projects, can be small projects of Rs 500-1000 or it can be like big organisations here in MRU have done about Rs 1.2 million because their size allows them to be able to contribute that much amount.⁶⁶

A significant number of the executives associated CSR with corporate philanthropy in this way. Others, however, saw it as entailing more than this. Thus, the FDM of ██████████ explicitly stated that:

⁶¹ Interview I.

⁶² Interview E.

⁶³ He meant neighbourhood.

⁶⁴ Interview R.

⁶⁵ Interview H.

⁶⁶ Interview M. £1 equals to Rs 54, as at the end of June 2009.

CSR is more than corporate philanthropy. It is an implicit contract that the company has with society, which means, we have to give something back to society. We give our employees value back to them, the services they need to our customers, and different objectives to our shareholders. It's a constant balancing act between generating profits and giving value back.⁶⁷ (emphasis added)

Managerial Understandings of CSR in Practice

Notwithstanding the claim that CSR is much more than corporate philanthropy, many of the corporate executives interviewed equated CSR with philanthropic activities of various sorts. This section explores in more detail the ways in which corporate executives in Mauritius saw their rhetorical commitment to CSR translating into practice.

When asked about whether their companies engaged in CSR, a number of the executives answered in the affirmative. However, for a great majority, CSR was seen as subordinate to the shareholder interest. In this context, the association of CSR with essentially philanthropic activities is significant, for philanthropic activities take place *after* money has been made. They do not necessarily impact in real terms on corporate practices and goals, on the ways in which money is made. As Jenkins explains:

This is not to deny that [companies] may well contribute to poverty reduction through social projects of a charitable nature, but this should not be confused with the adoption of CSR, which involves the integration of environmental and social considerations into core business strategies.⁶⁸

Philanthropy

Thus, after having stated that CSR is much more than philanthropy, the Finance Division Manager (FDM) of [REDACTED] then went on to say that:

Yes [we engage in CSR] **but as corporate philanthropy.** We have a budget earmarked for CSR purposes for things such as the environment, education, poverty, social events. At a shareholders' meeting, we decided to establish three trusts: (1) the [REDACTED] Education Fund (which tries to improve the

⁶⁷ Interview X.

⁶⁸ Rhys Jenkins, 'Globalisation, corporate social responsibility and poverty' (2005) 81 *International Affairs* 525, 540.

conditions of the most deprived segment of the population by giving away funds for educational purposes), (2) a Staff Welfare Fund and (3) an [REDACTED] Sports Fund. These all come up to about Rs100 million worth of assets and are managed by independent trustees.⁶⁹ (emphasis added)

There was evidence that a number of the companies concerned had 'CSR budgets'. The HR Manager of [REDACTED], for example, indicated that, '[w]e have a special budget assigned to CSR. We make donations to certain non-profit organisations for example.'⁷⁰ And the MD of [REDACTED] asserted that: '... [w]e have got a commitment whereby 2 per cent of our profits will go towards social and community development.'⁷¹ Another company, [REDACTED], decided to give away more money in 2007, which was double the previous budget, that is, 2 per cent of profits after tax based on the 2007 company results, amounting to Rs 40 million over the course of three years.⁷²

As the CRA Manager of [REDACTED] explained:

I think the way [CSR is] viewed in Mauritius, it's just the philanthropy part. It's just the setting up of social projects and helping society. It's that part that is known and that is practised more and more. I mean practice more and more because [REDACTED] is probably one of the pioneers of such activities in Mauritius... But ... I don't know to what extent, companies view CSR as being an integral approach to responsibility.⁷³

According to the former General Manager of [REDACTED], the company has a 'long tradition of assistance on various social development projects for the betterment of the community with [the] focus mainly on education and environmental protection projects'.⁷⁴ For instance, the company has sponsored libraries and a home for old people; it also offers undergraduate scholarships to the University of Mauritius each year. In its Donations Policy, [REDACTED] states that its objectives are to 'enhance the

⁶⁹ Interview X.

⁷⁰ Interview R.

⁷¹ Interview W.

⁷² -- 'Brèves: [REDACTED] accentue son programme de responsabilité sociale' *L'Express* (Port-Louis, Mauritius 16 October 2007) <http://www.lexpress.mu/display_search_result.php?news_id=95817> accessed 30 November 2008. It must be noted that in the most recent Mauritian budget (May 2009), the government has made it compulsory for profitable companies to either spend 2 % of their profits on CSR activities approved by the government or to transfer these funds to the government to be used in the fight against poverty. See previous chapter on this.

⁷³ Interview B.

⁷⁴ V Leclézio, '[REDACTED] Activities in Mauritius' (January 2002) <<http://www.takingontobacco.org/qofm/0201/mauritius.html>> citing M Aleem, the ex-GM of [REDACTED] in Mauritius, accessed 4 July 2009.

reputation [of the company] and its employees as good corporate citizens' and 'to ensure that the [c]ompany's corporate contributions and support are spent in a way that maximises their positive impact on the Mauritian society and economy'.⁷⁵

The Chairman of █████ articulated the company's CSR programme in the following way:

[w]e have a very important presence in our local community. We support sports, schools. We support libraries. Every year we have a certain sum available and we support schools. I make it a point to support schools because there are not [that] many big institutions in this area. And whenever I get requests, I send help to them. We support every institution within this area ... The religious institutions also come to us for support because [when] they hold their prayers and their meetings [...] they need support for providing food [for example].⁷⁶

The ex-Chairman of █████ said that his company:

[does] a lot. The recent events have shown how we have been promoting socio cultural events with major concerts by artists coming from many parts of the world ... we look also to events that can bring us some visibility internationally. It can be sports events or other events [...] ... [Another example is if] someone needs to go abroad for an operation and has the necessary documentation, we would give that person a 50 per cent rebate for him and for the person accompanying him or her.⁷⁷

The Personnel Manager of █████ also affirmed that his company:

help[ed] from time to time ... for fundraising activities ... if from time to time the neighbouring estate asks us to fund some festivals/parties for the old, we give money, we help a bit. But it's rather limited. We give cakes, soft drinks, things like that. But that's about it.⁷⁸

It was also clear from the interviews that some companies were prepared to give money away in times of crisis or emergency, for example in 2005 and 2006, when there was an outbreak of the Chikunkuya virus in Mauritius.⁷⁹ The CM of █████ explained that 'in the case of the Chikunkuya epidemic ... we spent more than a

⁷⁵ █████, *Social Report 2003/2004* (█████, Port-Louis, Mauritius 2004) 54.

⁷⁶ Interview U.

⁷⁷ Interview D.

⁷⁸ Interview O.

⁷⁹ See World Health Organisation (WHO), 'Chikunkuya in Mauritius, Seychelles, Mayotte (France) and La Reunion island (France)' (1 March 2006) *Disease Outbreak News* <http://www.who.int/csr/don/2006_03_01/en/index.html> accessed 4 July 2009.

million rupees, giving away mosquito repellent products to certain villages.’⁸⁰ The FDM of [REDACTED] also said:

We ... give money if we feel it is for a worthy cause like in the case of the Chikunkuya epidemic last year. We can’t obviously give all our money away though but there is an implicit or informal understanding that we will give money in times of need.⁸¹

Philanthropy Plus

Social/Community Projects

In addition to ‘pure philanthropy’ - that is, charitable donations - there was also evidence of CSR being associated with activities having a ‘philanthropic bent’ - that is, spending money and putting effort into, and sponsoring, worthy projects of various sorts.

Hence, the ex-CEO of [REDACTED] asserted that:

we focus on things over time, we have set up programmes and we have identified four areas ... which are external, education, the [disabled], environment and arts and culture: There is a fun side to arts and culture. You actually reach the grassroots. People can get out of their poverty trap through arts and culture, that’s one of the reasons why we support it. We were one of the early supporters of Atelier Mozart which teaches music ... **We, on our part, want to go beyond giving money. We want to associate ourselves with people who have projects.**⁸² (emphasis added)

The PFSM of [REDACTED] made a similar point, arguing that ‘[REDACTED] is very much engaged in CSR. In Mauritius, we specifically have two projects that we have a constant relation with. One is SOS Village, and the other is the Mauritian Wildlife Foundation.’⁸³ The MD of [REDACTED] also explained that the company was ‘trying to finance some projects - the Mauritius Wildlife foundation in Rodrigues, [a small island belonging to Mauritius] for example. That’s a good programme and we are helping them ... We have sports as well. [W]e provide about Rs 50 000 a year [to a

⁸⁰ Interview K.

⁸¹ Interview X.

⁸² Interview F.

⁸³ Interview H.

football school].⁸⁴ The Chairman of █████ explained how his company was involved in supporting sports, namely cricket: 'We are going to start it in the north. My company will provide everything. We will provide trainers, we will provide the equipment, we provide transport, etc for beginners to be taken from and to the ground.'⁸⁵ As for the CM of █████, he reported that the group had:

a budget for sponsoring sports, culture and the environment (Mauritian Wildlife Association to help save the Pink Pigeon and the rehabilitation of the Ferney Forest-the latter is a very big long-term project) ... Moreover, we are participating in one of the IRS projects █████ and we have created a Centre of Excellence, the aim of which is to train people so as to employ them at █████ ... In the textiles field, we will be setting up an excellence programme, which will cost tens of millions of rupees to enable low-skilled employees to become more qualified.⁸⁶
(translated from French)

Apart from giving financial help to and setting up various community projects, the company executives interviewed also talked of 'personal involvement'. Thus, the PFSM of █████ asserted that:

█████ encourages its people to be socially active in their social responsibility role by giving them time off from work to perform some social activity. We have a programme █████ where staff go to repaint old peoples' homes [for example]. The staff's participation is much more important than █████ just throwing away money.⁸⁷ (emphasis added)

Moreover, a number of company managers mentioned the Mauritius Chamber of Commerce and Industry (MCCI)⁸⁸ - Zone D'Education Prioritaire (ZEP) initiative. The Administrator of █████ explained that it was a project whereby:

around thirty companies have been sponsoring certain primary schools since 2004. These firms try to also involve NGOs in this partnership as the latter have the appropriate know-how to help students, who are facing certain difficulties... The Joint Economic Council (JEC)⁸⁹ has signed a Memorandum of Association with the Minister of Education to define the

⁸⁴ Interview W.

⁸⁵ Interview U.

⁸⁶ Interview K. For the nature of IRS projects, see previous chapter.

⁸⁷ Interview H.

⁸⁸ The Mauritius Chamber of Commerce and Industry, established in 1850, is the oldest non-profit institution representing the private sector in Mauritius. See its website <<http://www.mcci.org/>> accessed 4 July 2009.

⁸⁹ The Joint Economic Council started the project first.

roles of the various partners and each firm has named a Company Delegate to 'follow' the project with the school it is sponsoring.⁹⁰ (translated from French)

Thus, the MD of [REDACTED] affirmed that:

We're participating in the ZEP Initiative ... The idea is to give schools with the worst results a very good team of teachers to help the pupils. We are very happy with the way we're helping them to work. They are very committed. Our Human Resource Manager participates in all their activities ...⁹¹

The CS of [REDACTED] also explained how the company participated in a number of educational projects: providing hot food to a school as well as setting up a carpentry workshop after school for students in another area. '[T]here are', he argued, 'also a lot of organisations coming to us throughout the year and we try to finance their projects.'⁹²

Foundations

Furthermore, there was clear evidence from the interviews that corporate philanthropy in Mauritius has become more 'institutionalised': a number of groups of companies have set up what are known as 'Foundations', independent entities designed to 'manage' the companies' social (philanthropic) activities. Amongst others, there are the 'Fondation Médine Horizons'⁹³, the FED⁹⁴ and the 'Fondation Nouveau Regard' (FNR).⁹⁵ I managed to speak to the executives involved [REDACTED].

The administrator of [REDACTED] elaborated on how:

[REDACTED] is financing [REDACTED] because [REDACTED] can be viewed as a subset of [REDACTED]. For legal purposes and practical purposes, it has been set up as a separate 'fondation' (sic) but [REDACTED] is regularly putting cash in it, [it] is regularly monitoring [REDACTED]. You have the Finance Director of [REDACTED], who is on the board of [REDACTED], the corporate secretary of [REDACTED] is also on the Board, and so it's not just left to its own devices ... [W]hat the [REDACTED] has been set up to

⁹⁰ --'Budget 2007/08- Réactions' *Le Mauricien* (Port-Louis Mauritius 26 June 2007) <<http://lemauricien.com/mauricien/070626/so.HTM>> accessed 5 December 2007.

⁹¹ Interview W.

⁹² Interview V.

⁹³ Set up by the Médine Group, an indigenous group of companies.

⁹⁴ Already mentioned above.

⁹⁵ Literally, 'Foundation New Look', set up by the CIEL Group.

achieve is that we want to fight exclusion ... and also help people to take care of themselves, help people to help themselves if you want ... we cannot operate – yes, I think that’s the usual rhetoric- [...] we cannot operate in isolation ... But I think very practically, for us it means that we [do] operate [on] our beaches, [in] villages ... [The] █████ managers and human resources managers [I deal with] ... really want to employ people in their immediate environment ... But if ... they want to have employees from this environment, maybe they will need some training because they are not immediately employable and that’s why we have the ‘Projet Employabilité Jeunes’ (literally ‘Youth Employability Project’)(PEJ)⁹⁶... That’s why I’m saying that the █████ cannot operate in isolation, so it’s not just rhetoric but we’re really very practical.⁹⁷ (emphasis added)

He further clarified that █████ did not:

want to be a simple money-giving pump. Hence, on top of our financial engagement, we ask that our partners (NGOs) be ‘useful’ to the 4000 employees of the █████ ... For example, PILS⁹⁸ regularly campaigns for the prevention of AIDS with our employees.⁹⁹ (translated from French)

The CM of █████ explained that the █████ had a long history of CSR in Mauritius:

with a social integration support programme in the sugar industry.¹⁰⁰ In that sector, historically, there has been a long tradition of welfare programmes, social projects and PR activities etc ... This has evolved and we now operate in a more corporate fashion whereby the clusters of the group fund a foundation █████.¹⁰¹ (emphasis added) (translated from French)

Moreover, he added, the █████:

is a foundation based on social sponsoring, that is, we finance activities of NGOs ... We finance the running expenses rather than the building costs of

⁹⁶ According to the Administrator of █████, the PEJ ‘aims at giving [basic] training [...] on social competency skills and so on to youths who have left school for various reasons and then this training is done in collaboration with █████. █████ has its own trainer to do this but also trainers from █████ come and do some training also, and after this, these students if they want to, they are assigned or given assignments, ‘stages’ (internships) and so on in hotels.’ Interview Q.

⁹⁷ Interview Q.

⁹⁸ PILS stands for ‘Prévention, Information et Lutte contre le SIDA’, and is a NGO which campaigns for more information on AIDS to be available to the general public. See its website <<http://www.pils.mu/>> accessed 4 July 2009.

⁹⁹ Erick Brelu-Brelu, ‘Questions à... █████’, “Nous traitons les ONG que nous aidons en partenaires” *L'Express* (Port-Louis, Mauritius 8 January 2005) <http://www.lexpress.mu/print.php?news_id=57319> accessed 30 August 2008.

¹⁰⁰ █████ owns the sugar factory █████. See the previous chapter on self-regulatory CSR in the context of the sugar industry in Mauritius.

¹⁰¹ Interview K.

the NGOs to enable them to function from day to day. ... This is the case in a number of areas such as poverty alleviation, education, formation, disability and health ...¹⁰²

What is striking here is that these foundations undertake tasks that are often carried out elsewhere by NGOs. Whereas in developed countries, NGOs are seen as oppositional organisations which often stand against corporations, in the Mauritian context, these organisations are actually corporate funded. The Project Manager of 'Strengthening the NGO Sector in Mauritius', a joint project between the UNDP and MACOSS¹⁰³, explained that 'Mauritius ... is a small island, [a] little economy, enterprises play a bigger role probably than other parts because civil society here is not really strong ...'¹⁰⁴

In fact, when David Moore, a Programme Director for the International Centre for Non-for-Profit Law¹⁰⁵, was asked how he saw the civil society sector in Mauritius, he replied, 'the NGOs here are quite strong in their role to deliver public services. This area is definitely more developed than the watchdog role for instance.'¹⁰⁶ In this context, it is debatable as to whether the different Foundations (which are corporate creations) or the social projects associated with them (which are therefore corporate funded) actually come under review or criticism in Mauritius: in other words, the fact that the NGO sector has been 'infiltrated' by corporations is a serious problem, so far as their performance of the traditional NGO watchdog role is concerned, and this raises the issue of NGO accountability. In fact, my analysis of the Mauritian media

¹⁰² Interview K.

¹⁰³ See more about the project in the previous chapter. The Project Manager explained the nature of the project: 'In the context of this project, we are trying to focus on the involvement of the private sector in the development process in Mauritius and particularly to assess the relationship between civil society, NGOs and the private sector, their commitment and their relationships towards common development goals. And so [...] we are promoting a study, an appraisal, assessment of corporate social responsibility strategies in major industries in Mauritius in private enterprises on the basis of which we hope to promote better CSR strategies and building a partnership between the NGO sector and the private sector.' See Interview N.

¹⁰⁴ Interview N.

¹⁰⁵ The International Center for Not-For-Profit Law (ICNL) is an international not-for-profit organisation that promotes an enabling legal environment for civil society, freedom of association, and public participation around the world. See the 'About Us' section on its website <<http://www.icnl.org/about/>> accessed 4 July 2009.

¹⁰⁶ Pauline Etienne, 'Interview -David Moore- Changes to the legal framework of NGOs to make them more effective' *L'Express* (Port-Louis Mauritius 10 September 2007)

<http://www.lexpress.mu/print.php?news_id=93619> accessed 30 August 2008.

suggests that the only NGO to criticise a corporation is ViSa, which regularly campaigns against ████████¹⁰⁷

Internal Philanthropy/CSR: Employee Welfare

Finally, it is worth noting that a number of the executives interviewed drew a distinction between what we might call ‘internal’ and ‘external’ CSR. ‘External’ CSR has already been discussed, and was seen by the executives as entailing the provision of ‘help’ (mainly in philanthropic terms) to the wider community. ‘Internal’ CSR, on the other hand, was seen as entailing the provision of help (mainly financial) to the employees of the companies concerned. The interviews suggested that it was mainly the executives of smaller companies who focused on ‘internal’ CSR or philanthropy.

Thus, according to the Executive Director of ████████, examples of internal CSR included:

some loans given for buying [glasses], for weddings [...], some help towards health costs. [To reimburse] [h]ealth costs is not regulated here in MRU ... but we do make some re-investments for some cases ... So these, as I can say, form part of our CSR initiative but it ... is mostly internal. This is not visible to anybody. Our external CSR ... almost does not exist because we don't have such pressure to do it. There are also no regulations that require us to do it.¹⁰⁸

The Executive Director of ████████ explained that:

[w]e give to our employees because they are the ones behind the success of the company rather than to charities so as such, we have no schemes. We attach paramount importance to our employees: we operate on a case-by-case basis- if they need help for educational or medical purposes. We are very open towards them. But otherwise we don't engage in CSR per se, that is, looking at it in terms of a ‘portfolio of schemes’.¹⁰⁹

¹⁰⁷ ViSa (Vie-Santé- literally, ‘Life-Health’) Mauritius is an NGO committed to tobacco control and to promoting a better quality of life for all. See its website <<http://mauritius.globalink.org/index.shtml>> accessed 30 August 2008. See also, Sonia Kalla, ‘Interview avec V Leclézio, directrice de Vie-Santé, “Le tabac pas une industrie de charité car il tue”’ L’Express (Port-Louis, Mauritius 29 August 2004) <http://www.lexpress.mu/display_search_result.php?news_id=25126> accessed 30 October 2008. The President of ViSa in the article states that ‘Tobacco is not a charitable industry as it kills’ (literal translation).

¹⁰⁸ Interview M.

¹⁰⁹ Interview G.

However, internal CSR was not limited only to smaller companies: the Assistant MD of ██████████, for instance, stated that:

[w]e see to it that all our local people get their chance to work within the company and are paid according to the conditions, and we give them the opportunity to grow with the company. So we have supervisors, managers who have worked for the company for many years.¹¹⁰

And the MD of ██████ explained that:

[a]s far as employees are concerned, they are treated as partners. [There is a] minimum that we have to pay for the workers and we are paying above that minimum. We provide transport to and from the working place and we see to it that all our employees work in decent conditions. We have tried as far as possible to provide exceptional working conditions for the workers first and then for management. We have ensured an ergonomic environment by introducing conveyors.¹¹¹

Indeed, ██████'s CSR Policy tells us that:

██████ is committed to make its products under socially and ethically sound conditions. People shall be humanely treated, adequately recompensed and their rights protected. ... ██████ is dedicated to comply with all applicable laws governing the industry and with the ILO conventions that are already embedded in our ethical values. A harmonious rapport between the workers and management coupled with due respect and compliance to environmental regulations are believed essential for a better quality of life for workers and the community.¹¹²

Employee Welfare: Rhetoric or Reality?

These comments and policy statements suggest that employee welfare is high on the list of priorities for many companies. However, in 2007, there was widespread media coverage, both nationally¹¹³ and internationally¹¹⁴, of the ways in which some

¹¹⁰ Interview P.

¹¹¹ Interview J.

¹¹² CSR policy given to me at interview J.

¹¹³ See --'Textile- Grève à ██████- 114 ouvrières sri-lankaises additionnelles rapatriées hier soir' *Le Mauricien* (Port-Louis, Mauritius 10 February 2007)

<<http://lemauricien.com/mauricien/070210/ac.htm>> accessed 21 March 2007; Elwyn Chutel and Bindu Boyjoo, '██████: La révolte sri lankaise' *L'Express* (Port-Louis Mauritius 11 February 2007)

<http://www.lexpress.mu/print.php?news_id=80615> accessed 30 August 2008; --' Les News: Travailleurs étrangers en détresse- Version des Srilankaises: 'Nous avons vécu dans une véritable prison!'' *Week-End* (Port-Louis Mauritius 11 February 2007)

Mauritian companies - most notably, the [REDACTED] and [REDACTED] - were in fact mistreating their employees, in particular foreign ones.¹¹⁵

Many foreign workers are contracted to work in Mauritius, especially in the EPZ sector. They come mainly from China, Bangladesh and Sri Lanka. During the third quarter of 2007, when the misdemeanours were reported, there were 17,870 foreign workers.¹¹⁶ A Special Expatriate Squad was set up in the Ministry of Labour and Industrial Relations in 2001, following intense lobbying by Levi & Strauss¹¹⁷, to look into complaints made against employers, as well as to check their contracts of employment.¹¹⁸ However, a report by the International Confederation of Trade Unions published in 2004 found that there was evidence that many labour inspectors were biased.¹¹⁹

<<http://www.lemauricien.org/weekend/070211/ac.htm>> accessed 30 August 2008; -- 'Main d'oeuvre étrangère – Grève à la [REDACTED]- Ouvrières srilankaises/employeur/SLBFE: le deadlock' *Le Mauricien* (Port-Louis Mauritius 13 February 2007) <<http://lemauricien.com/mauricien/070213/ac.htm>> accessed 21 March 2007; Jean-denis Permal and March Atchiane, 'Grève des employées de la [REDACTED]- La majorité des ouvrières veut rentrer au Sri Lanka' *L'Express* (Port-Louis Mauritius 14 February 2007) <http://www.lexpress.mu/print.php?news_id=80772> accessed 30 August 2008; --'Review of the Week' *L'Express* (Port-Louis Mauritius 16 February 2007)

<http://www.lexpress.mu/display_search_result.php?news_id=80914> accessed 30 August 2008.

¹¹⁴ See Gagani Weerakoon, 'The Mauritius mayhem' *Daily Mirror* (Sri Lanka 14 February 2007) <<http://www.dailymirror.lk/2007/02/14/news/01.asp>> accessed 30 August 2008; Claire Newell and Robert Winnett, 'The billionaire and the sweatshops' *The Sunday Times* (London 12 August 2007) <http://women.timesonline.co.uk/tol/life_and_style/women/fashion/article2241699.ece> accessed 30 August 2008; Claire Newell and Robert Winnett, 'Revealed: Topshop clothes made with 'slave labour'' *The Sunday Times* (London 12 August 2007)

<http://women.timesonline.co.uk/tol/life_and_style/women/fashion/article2241665.ece> accessed 30 August 2008.

¹¹⁵ This was not the first case of this nature. For other incidents relating to foreign workers, see D Lincoln, 'Beyond the plantation: Mauritius in the global division of labour' (2006) 44(1) *Journal of Modern African Studies* 59, 68-69.

¹¹⁶ See Central Statistics Office, *Mauritius – EPZ, 3rd Quarter 2007* (CSO, Mauritius 2007) <<http://www.gov.mu/portal/goc/cso/ei672/toc.htm>> accessed 4 July 2009.

¹¹⁷ Levi & Strauss also suspended their orders from Mauritius in 2001 because their 'Terms of Engagement' had been breached, arising from discrimination against migrant workers. See <<http://www.levistrauss.com/Citizenship/ProductSourcing/OurApproach/TheGovernmentLevel.aspx>> accessed 4 July 2009.

¹¹⁸ See Prime Minister's Office, *Decisions of Cabinet taken on 27 April 2001* (Government of Mauritius 2001)

<http://economicdevelopment.gov.mu/portal/site/=?content_id=54d7534d7bff7010VgnVCM100000ca6a12acRCRD> accessed 4 July 2009.

¹¹⁹ Sarah Perman and others, *Behind the brand names- Working conditions and labour rights in export processing zones* (International Confederation of Free Trade Unions, Brussels 2004) 44.

In February 2007, about four hundred Sri Lankan workers employed by █████ went on strike¹²⁰, complaining about their working hours and their living conditions. As a trade unionist explained:

The terms of their contract have been breached - their salaries should have been US \$200 for 280 hours of work a month. But they are being asked to work for 300, sometimes even 316 hours per month. It's illegal. A Mauritian employee works for 45 hours per week and a Sri Lankan one is expected to work for 70 hours! They work from 7.30 am to 11 pm everyday.¹²¹ (translated from French)

One of the workers also alleged that they:

were put in dormitories – approximately 20ft-30ft, 40-50 workers huddled together in this room. There was no space to move around. For the 985 employees [in the factory] there were only 10 toilets and at least three of them did not work at any time. More often there was no water in the toilets. The food was so bad we could not consume it.¹²²

The workers finally brought their strike to an end when the █████ agreed to give them one day off a week and made the 70-hour week non-compulsory.¹²³

These recent reports seem to show and suggest that despite the unreserved rhetoric employed by some company managers, in reality, employee (in particular foreign employee) welfare, unfortunately, is not a high priority. Arguably, this once again goes back to the question of how far CSR is integrated into core business practices and strategies, as opposed to being seen as an essentially philanthropic add-on, brought into play only after profits have been made. As the Project Manager of the UNDP programme opined:

[CSR in Mauritius appears to be about] giving a good image [of the company] but on the back of it having bad relationships with the workers. ... CSR, comprised of having internal procedures, should be the first thing. You

¹²⁰ Jean-Denis Permal, '██████ des ouvrières sri lankaises en greve' *L'Express* (Port-Louis Mauritius 8 February 2007) <http://www.lexpress.mu/print.php?news_id=80481> accessed 30 August 2008.

¹²¹ -- 'Textile- Travailleurs étrangers- █████: débrayage de 900 ouvrières sri-lankaises' *Le Mauricien* (Port-Louis, Mauritius 8 February 2007) <<http://lemauricien.com/mauricien/070208/ac.htm>> accessed 21 March 2007.

¹²² *Newell and Winnett* (n 113).

¹²³ -- 'Litige direction v/s expatriées à la █████: «La grève est derrière nous»' *Week-End* (Port-Louis Mauritius 18 February 2007) <<http://www.lemauricien.org/weekend/070218/ac.htm>> accessed 30 August 2008.

cannot have a community investment [programme] if you ... don't treat your staff well. Before you pay your staff well, you [should] take locals in your enterprise. Then you can also do community investment [programmes], then you can also try to structure ... your project ... your services on the basis of the needs of the population. Then you can also try to involve yourself in a policy dialogue.¹²⁴

Concluding Remarks

The interviews suggest that the rhetorical commitment to CSR is stronger and more prominent in larger companies, especially Multinational Enterprises (MNEs). This is not perhaps surprising, as the Deloitte Report 2008 concluded that the main reason why companies engaged in CSR in Mauritius was to enhance their image.¹²⁵ This seems to confirm the claims that corporations, especially larger and more visible MNEs, have embraced the concept of CSR to boost their brand image and for reasons of social and political legitimacy.¹²⁶ In Mauritius, a small country, the bigger the company, the more negative media coverage it is likely to receive if it is not seen as 'helping society'. Indeed, as Ramasamy and Ting note in their survey of CSR awareness in Malaysian and Singaporean firms, 'large companies in small economies are relatively more conspicuous and subject to greater scrutiny by government, NGOs, the media, consumers and employees.'¹²⁷ The converse is also true, however. MNEs like BAT, Barclays and HSBC as well as larger indigenous conglomerate groups like CIEL and Rogers, are not only always in the news, but able to use the news media to 'show off' any CSR activities they are engaging in.

Moreover, the interviews suggested that there were many different understandings among executives about the nature of CSR; about what it entails. Managerial understandings of CSR ranged from minimalist conceptions (such as simply obeying the law) to much more grandiose conceptions in which CSR was seen as potentially making an important contribution to development, helping society and the country as a whole. However, when asked for evidence of how their commitment to CSR

¹²⁴ Interview N.

¹²⁵ See the section on the Deloitte Report in the previous chapter.

¹²⁶ See chapter 3 of the thesis.

¹²⁷ B Ramasamy and H W Ting, 'A Comparative Analysis of Corporate Social Responsibility Awareness- Malaysian and Singaporean Firms' (2004) 13 *Journal of Corporate Citizenship* 109, 121.

translated into practice, the majority of company executives either directly equated it with philanthropy and simple charitable donations or saw it in broadly philanthropic terms, as involving community development in the form of staff involvement, the creation of 'Foundations' and employee welfare.

As indicated earlier, the crucial point to be made here is that corporate philanthropy arises only *after* profits have been made. It is not concerned with *how* those profits are made; with whether they have been made in a socially responsible manner or not; with whether, for example, the core business activities of a corporation contribute to sustainable development. A point in case is that of ■■■: the CRA Manager told me about how ■■■:

[had] ... been involved in some capacity-building projects where we've been providing (sic), financing people who don't have jobs and I think today the focus should be on ensuring that jobs are being created because unemployment is rising more and more.¹²⁸

This would suggest that ■■■ would like to show that it was doing more than corporate philanthropy (although there was no evidence as such to suggest that they have done more). In fact, ■■■ is now no longer operating in Mauritius although it is, apparently, continuing its CSR programmes: '■■■ will always remain active in society through its CSR programme' said the same CRA Manager.¹²⁹ Somewhat incongruously, the CRA Manager was talking about creating employment to me in August 2006 when by the end of that same year, ■■■ made seventy of its workers redundant; at the same time the company continued to make charitable donations. This seems, once again, to highlight the fact that corporate philanthropy is concerned with distributing money *after* profits have been made, rather than with the processes through which those profits are generated. In this context, one might want to question how far ■■■ can justifiably claim, as they do, to have adopted 'an integral approach to responsibility.'

Overall, it seems legitimate to conclude that despite the somewhat effusive rhetorical commitment to CSR displayed by some corporate managers in Mauritius, both their

¹²⁸ Interview B.

¹²⁹ Lindsay Prosper, 'Avenir sombre pour l'industrie du ■■■' *L'Express* (Port-Louis, Mauritius 12 November 2006) <http://www.lexpress.mu/print.php?news_id=75833> accessed 30 August 2008.

understandings of CSR and its practical potential are, in fact, rather limited. CSR is not seen as affecting economic imperatives; and it is not seen as significantly affecting the way in which corporate income is generated. It primarily comes into play once the profits have been made. It seems reasonable to conclude, therefore, that CSR is in many ways an adjunct, rather than integral, to the business; that it is something of an afterthought rather than something central to the business models adopted by corporations in Mauritius.

There are also good grounds for concluding that CSR in Mauritius is at the moment equated, above all else, with corporate philanthropy.¹³⁰ Indeed, it could be argued that corporate philanthropy has been 'institutionalised' in Mauritius through the establishment of various 'Foundations'. The Foundations are funded by the companies which set them up and then participate in what one company executive referred to as 'social sponsoring', that is, funding the day-to-day expenses of various NGOs. As indicated above, this raises questions about the latter's effectiveness as watchdogs. Arguably, these particular forms of NGOs are unlikely to be too critical of the hands that feed them in what looks like a case of 'institutional capture'.

When asked about the limits of CSR as corporate philanthropy, a few company executives agreed that 'it was easier to sign a cheque than to [get truly involved]',¹³¹ whilst adding that it was better to give money than do nothing. The CRA Manager of [redacted], for example, commented that:

there are detractors who say, well, you're just giving. At the end of the day, you've got the interest of your company in mind, you want to make more profits so that's why you think by doing social projects, you ensure that you can exist for longer ... My philosophy is that as long as enterprises think they have the resources to help, they should help and they should help more because there's a need in society... No matter what you do, there will always be people trying to create a debate out of it but if you pay attention to those debates then unfortunately ... society, the community and you are not going to benefit and I think they should benefit from the existence of any business.¹³²

¹³⁰ This is not surprising as it is widely acknowledged that CSR in developing countries is generally equated with philanthropy. See, amongst others, W Visser, 'CSR in Developing Countries' in A Crane and others (eds), *The Oxford Handbook of Corporate Social Responsibility* (OUP, Oxford 2008) 473 and Michael Blowfield and Jędrzej George Frynas, 'Setting new agendas: critical perspectives on Corporate Social Responsibility in the developing world' (2005) 81 *International Affairs* 499.

¹³¹ Interview O.

¹³² Interview B.

The Chairman of ■■■ also concluded,

there may be some groups [of companies in Mauritius] which give a lot of money, such as [the Mauritius Commercial Bank] and Rogers ... I say that it would be nice to participate [in on-going social projects], but if [some NGOs just] need money [then they should just] take it, because the money is there, [they should] take it, criticism or no criticism because if people need money, they need money.¹³³

I do not, therefore, think that it would be appropriate or justifiable to completely dismiss the efforts made by some companies in the field.

What is striking in the context of Mauritius, however, is the extent to which the company executives interviewed appeared genuinely to believe that CSR is integrated into their core business practices and strategies; that it is central to the way in which they manage their businesses. Yet when the executives themselves indicated what they thought their CSR activities entailed, their rhetorical commitment to the notion of CSR did not seem to translate into major changes in their business activities. Why this discrepancy?

As explained earlier, contemporary CSR is essentially 'ameliorative' in nature. That is, it is seen as a mechanism for tempering the effects of the corporate pursuit of shareholder value which does not challenge the seemingly inviolable and common-sense principle of shareholder primacy and the political consensus of which it is part. That this is the case is, I believe, particularly clear in places such as Mauritius, where the government has been vigorously pursuing a neo-liberal approach to development, and encouraging companies to be socially responsible.¹³⁴ The interviews provided clear evidence that CSR in Mauritius is very much seen as subordinate to the main business goal of shareholder value or profit-maximisation. As such, the potential of CSR to have a major impact on social welfare and economic development is, inevitably, limited.

This is highlighted by the common association of CSR with corporate philanthropy and with employee welfare, either in terms of financial help or a good working

¹³³ Interview U.

¹³⁴ See the previous chapter.

environment. Although the various company managers talked about looking after their employees, even treating them as partners¹³⁵, in reality, the recent reports about the mistreatment of foreign workers, coupled with essentially philanthropic understandings of CSR, suggest that there is a significant gap between CSR rhetoric and reality. The reports also appear to offer support to the view that CSR in Mauritius is not really integrated into core business practices.

From this perspective, it would be easy to take an entirely pessimistic view of the future of CSR in Mauritius. Just as in India¹³⁶, another developing country:

the guiding philosophy [behind CSR] has been a sense of 'returning [something] to society' rather than making [it] an integral part of corporate strategy through which companies reap its embedded value.¹³⁷

If CSR, in reality, entails little more than corporate philanthropy, can it really be expected to make a significant contribution to sustainable development in developing countries such as Mauritius? It is difficult to escape the conclusion that the answer is, 'no, it cannot'. On the other hand, while it would, therefore, be easy to dismiss, devalue and disparage corporate philanthropy as not 'real CSR', it needs to be recognised that it does make a difference to people's lives, a case in point being the 'Projet Employabilité Jeunes' [redacted].¹³⁸ There is thus a case to be made for encouraging and recognising diverse conceptions of CSR which take into account new themes and approaches that support local needs and integrated approaches to sustainable development.¹³⁹ In this context, the words of Frynas strike a chord:

[w]e may need to develop new ways of assessing the social contribution of business in [developing countries'] societies in order to capture corporate activities that do not conveniently fall under the umbrella of ['mainstream CSR'] criteria. Otherwise, we run the risk of weakening long-established and intrinsic social obligations, which could perhaps provide a more lasting impact on corporate behaviour than externally imposed codes of practice.¹⁴⁰

¹³⁵ Interview J.

¹³⁶ And indeed other developing countries- from the few studies available on them.

¹³⁷ Atul Sood and Bimal Arora, 'The Political Economy of Corporate Responsibility in India' (2006) Technology, Business and Society Programme Paper No.18 (UNRISD, Geneva) 54.

¹³⁸ See above.

¹³⁹ Tom Fox, 'Corporate Social Responsibility and Development: In quest of an agenda' (2004) 47(3) Development 29, 30.

¹⁴⁰ J G Frynas, 'Corporate Social Responsibility in Emerging Economies: Introduction' (2006) 24 Journal of Corporate Citizenship 16, 18.

Conclusion

As we have seen, in recent years CSR has been promoted as a key mechanism for tempering corporate power and shaping corporate behaviour in ways which will contribute to economic and social development, particularly in the developing world. In the words of the UNDP Commission on the Private Sector and Development, quoted earlier:

a coalition [of the major stakeholders, in the private and public sectors] is essential to unleashing the capacity of the private sector, to achieving the Millennium Development Goals and to alleviating poverty.¹ (emphasis added)

When I began the work on this thesis, my goal was to assess the potential of CSR as a tool for development, focusing in particular on my home country, Mauritius. I soon realised, however, that the concept of CSR was far from settled. It clearly meant different things to different people at different times. I decided, therefore, that before I could assess its potential, I needed to clarify the contemporary meaning of CSR. The first part of the thesis thus sought to explore the nature of contemporary ideas about CSR by comparing them with the earlier ideas about the social responsibilities of corporations which emerged in the 1920s and 30s and culminated in the idea of the 'socially responsible corporation' (SRC) in the post-World War II period.

It was argued in that part of the thesis that the idea of the SRC conceptualised the corporation as a social or quasi-social institution in which the traditional principle of shareholder primacy was abandoned, or at least tempered, in favour of a much wider conception of corporate purpose. The managers of these SRCs, it was argued, owed obligations to many different groups and not only to shareholders. The notion of the SRC was thus the precursor to today's stakeholding conceptions of the corporation. The ideas about CSR associated with the SRC were, I have argued, radical and transformative. In sharp contrast, contemporary ideas about CSR - which emerged, paradoxically, after the vigorous reassertion of the principle of shareholder primacy

¹ UNDP Commission on the Private Sector and Development, *Unleashing Entrepreneurship: Making Business Work for the Poor*, Report to the Secretary-General of the UN (UNDP, New York 2004) ii.

and the emergence of the notion of 'shareholder value' in the 1970s and 80s - are ameliorative rather than transformative in aspiration. They do not generally offer a challenge to the 'shareholder value' conception of the corporation. On the contrary, they are rooted in an essentially neo-liberal worldview, which posits the rationality of the market as the key organisational mechanism for economic and social affairs.² To this end, the defining feature of contemporary CSR is its emphasis on the notion of corporate self-regulation, with its 'guidelines', 'principles', 'standards', 'partnerships' and other similar devices. In line with the tenets of neo-liberal policy-making, therefore, contemporary CSR not only does not advocate but is positively hostile towards state-led external regulation. In the words of Shamir, CSR:

neatly fits the neo-liberal principle of private and self-regulation and, moreover, successfully grounds the very notion of moral duty within the rationality of the market: doing good is good for business...³ (emphasis added)

In this context, as we have seen, advocates of ameliorative CSR tend to frame their arguments in terms of the long-term interests of shareholders. They make a 'business case' for CSR, arguing that CSR is good for the financial bottom line of corporations and, indirectly, for society as a whole, since the maximisation of shareholder value ensures productive efficiency. All this serves to highlight the essential conservatism of contemporary CSR. As currently formulated, CSR is, in many ways, an *appendage*, a mere accessory to neo-liberalism and the shareholder value conception of the corporation. It is, therefore, clearly arguable that CSR in its contemporary form has become little more than a device whereby ruthlessly shareholder-oriented corporations seek legitimacy; that it is, in essence, little more than a device for perpetuating the principle of shareholder primacy and for resisting state-led, mandatory corporate regulation.⁴

Having examined the nature of contemporary CSR in the theoretical part of the thesis, the empirical part sought to evaluate the implications of this hypothesis with particular reference to Mauritius. Broadly speaking, my empirical research confirmed

² R Shamir, 'The age of responsabilization: on market-embedded morality' 37(1) *Economy and Society* 1, 6.

³ *Shamir* (n 2) 13.

⁴ As we have seen in chapter 1, CSR has little place in the shareholder-oriented model of the corporation.

the view that contemporary CSR is rather conservative in nature. As we have seen, in recent years, Mauritius has adopted neo-liberal policies and pursued an essentially neo-liberal path to development: the focus has been on opening up the economy in order to attract foreign direct investment. At the same time, considerable weight has been attached by the government to the notion of CSR as a mechanism for fostering sustainable development. In recent years, CSR has become a prominent feature of Mauritian government social policy. In short, it has been firmly entrenched by the government as a development strategy within a broadly neo-liberal worldview. In these circumstances and given its inherent conservatism, the question arises as to whether CSR in its contemporary form can make a meaningful contribution to sustainable development.

In my case-study, I sought to explore the ways in which CSR is understood by key players in Mauritius. As I indicated in the introduction to the thesis, the research was exploratory in nature and was not intended to be a full and rigorous audit of CSR activities in Mauritius. It sought, rather, to paint an impressionistic picture of how CSR is perceived, understood and practised by corporate executives in the country.

I believe that the results of the empirical study largely confirm my claims about the essentially ameliorative, voluntary, self-regulatory and conservative nature of contemporary CSR. The executives interviewed did not see CSR as challenging shareholder primacy. Indeed, most of them indicated that they would not sacrifice the shareholder interest in favour of other groups. Interestingly, and perhaps more significantly, the executives' understanding of how their corporations translated their rhetorical commitment to CSR into practice suggests that they saw CSR in terms of corporate philanthropy – in terms of charitable giving – rather than as an integral part of managerial decision-making. They did not, in other words, see CSR as something which impacted on the goal of the corporation to maximise profits or on the way in which those profits were made. They saw it, rather, as merely impacting on what the corporation did with (some of) those profits once they had been made; as entailing a commitment to making charitable donations of one kind or another. This conclusion echoed the view of a number of commentators about how in the developing world, 'CSR is still seen as synonymous with corporate philanthropy, with little

understanding of the broader, more complex interactions between business and society.’⁵

Moreover, when the executives were not confusing CSR with philanthropy, the case that they made for it was indeed a ‘business case’: ‘doing good’ is good for the corporate bottom-line. The executives thus argued that the pursuit of the shareholder interest required that they build some ‘stakeholding’ elements into their strategy. Once again, this did not entail the abandonment of shareholder primacy. On the contrary, their argument was that the long-term pursuit of the shareholder interest required the interests of other corporate constituencies to be taken into account from time to time.

There is clearly still a long way to go in terms of assessing CSR’s contribution to sustainable development in Mauritius as well as other developing countries. In this context, there is a need for detailed research to be conducted into how the conservative CSR rhetoric that I have identified translates into practice in countries such as Mauritius. Only then will it be possible to properly assess whether my impressionistic view that CSR in its contemporary form can only have a limited role to play in sustainable development is justified. Moreover, in the current climate, where governments in both developed and developing countries appear to be keener to make corporations more socially responsible, future research needs to concentrate less on rhetoric and more on what corporations are actually doing. This thesis has focused primarily on the rhetoric surrounding CSR and on the executive understanding of that rhetoric. Much more research is needed into how CSR rhetoric is actually translated into practice, especially in areas other than philanthropy.

The limitations of CSR as a developmental tool have been commented upon by others.⁶ In the words of Newell and Frynas,

[Contemporary] CSR emerged among leading firms and business schools as a public relations tool, a way to deflect criticism, engage critics and potentially capitalise on emerging business opportunities associated with doing, and

⁵ R Hamann, ‘Can business make decisive contributions to development? Towards a research agenda on corporate citizenship and beyond’ (2006) 23(2) *Development Southern Africa* 175, 179.

⁶ See chapter 4 of the thesis.

being seen to be doing good. This is a far cry, however, from constructing corporate strategies that are aligned with the pressing need to tackle poverty and social exclusion across the majority world.⁷

These limitations have been underlined by the rise of what is now known as the corporate accountability movement. As we have seen, the corporate accountability movement is characterised by its emphasis on corporate obligations and on the imposition of legal liabilities and penalties for non-compliance. As such, it focuses on the ‘hardening’ of the responsibilities of corporations rather than on the voluntary self-regulation which is at the heart of the contemporary CSR movement. It calls for state regulation and, therefore, challenges the prevailing neo-liberal orthodoxy about the limited role that the state should play in the economic sphere. However, as Doreen McBarnet has pointed out, the corporate accountability movement may be asking more of law than law can deliver, for corporations are very adept at circumventing regulatory control and creatively complying with the law. As powerful economic and political actors, they are also very adept at getting progressive legal changes diluted or reversed. As Utting comments, ‘the route to justice through liability is fraught with obstacles...’⁸ Indeed, McBarnet argues that:

the pervasive nature of such an approach to law in business suggests the need for some further, extra-legal driver not only to secure a commitment in business to socially responsible policies *beyond* the law, but to secure business’s responsible compliance *with* the law.⁹ (emphasis in original)

The problem is that, at present, key ‘extra-legal drivers’ actually *prevent* CSR from fulfilling its potential, most notably the emergence of a corporate culture obsessed with maximising shareholder value. As things stand, with financial interests wielding enormous political influence, with shareholders re-concentrated in institutions, in exclusive possession of corporate control rights, and with the managerial focus very much on share prices, the very idea of CSR is, in certain crucial respects, at odds with contemporary corporate culture, however much corporations express a rhetorical

⁷ P Newell and J G Frynas, ‘Beyond CSR? Business, poverty and social justice: an introduction’ (2007) 28(4) *Third World Quarterly* 669,670.

⁸ P Utting, ‘Social and Environmental Liabilities of Transnational Corporations: New Directions, Opportunities and Constraints’ in P Utting and J Clapp (eds), *Corporate Accountability and Sustainable Development* (OUP India, New Delhi 2008) 111.

⁹ Doreen McBarnet, ‘Corporate social responsibility beyond law, through law, for law: the new corporate accountability’ in D McBarnet, A Voiculescu and T Campbell (eds), *The New Corporate Accountability: Corporate Social Responsibility and the Law* (Cambridge University Press, Cambridge 2008) 13.

commitment to it. If CSR is truly to become something that comes from *within* corporations, rather than something which is externally imposed upon them using laws which they will constantly be trying to circumvent, dilute or change, corporate culture needs to be radically reformed.

From this perspective, what is needed is a resurrection of the more transformative reform agendas sketched by the earlier proponents of CSR. It means reforming corporate rights structures, the composition and duties of boards of directors and moving towards new conceptions of corporations as social or quasi-social institutions and of managers as members of a profession, as at least in part public servants, rather than the mere agents of shareholders.¹⁰ Yet demands for these kinds of changes have been seriously lacking in the debates surrounding contemporary CSR. Although some radical proponents of contemporary CSR, especially elements in the corporate accountability movement, have been calling for mandatory state action, it remains to be seen whether, in the absence of major changes to the structures of corporate governance and significant changes to corporate culture, the kind of reforms they are proposing would be enough to secure the changes they would like to see.

Equally significantly, as I write, the world is amidst a very serious financial crisis which has become a serious crisis of corporate profitability which is likely to undermine many CSR activities and programmes. The future of CSR, even in its contemporary ameliorative form, is thus uncertain. It is true that in the UK, for instance, the government is urging corporations - especially banks - to behave in a more socially responsible way. But this is not so much CSR in the traditional sense but evidence of the government's desperation to get corporations to help to minimise the socio-economic impact of the crisis. In the economic downturn, the pressure is on for corporations to restore profitability, an approach which appears to push against any further extensions of the idea of CSR. For instance, for Stefan Stern of the *Financial Times*, '[t]hank goodness, now the recession's here we can forget all that nonsense about [CSR] and get back to trying to make some money.'¹¹ Moreover,

¹⁰ See Rakesh Khurana, *From Higher Aims to Hired Hands: The Social Transformation of American Business Schools and the Unfulfilled Promise of Management as a Profession* (Princeton University Press, Princeton 2007).

¹¹ Stefan Stern, 'The deadliest greenhouse gas? The hot air of CSR' *Financial Times* (London 3 February 2009)

according to Jack and Suzy Welch of *Business Week*, '[...] right now - as always - companies should be putting profitability first. It's the necessity that makes every other necessity possible.'¹² Thus, these views suggest that retrenchments may be the order of the day. In fact, according to *The Economist*, most of these retrenchments have been to corporate philanthropy budgets, which typically fund charities and NGOs. For instance, Citigroup's charitable foundation says it expects to make \$63 million of grants in 2009, down from \$90 million last year. Conversely however, *The Economist* goes on to explain that 'the preliminary results of the CSR stress-test are encouraging. Many firms really do seem to have found ways of making the world better while making money at the same time.'¹³ Indeed, according to Quelch and Jocz of the Harvard Business School, '[h]ard times will tend to flush away CSR [programmes] that are done mainly for show.'¹⁴ It remains to be seen how the conflict between restoring profitability (mandated austerity, downward pressure on wages and jobs, lower public spending, less voluntary CSR in terms of corporate philanthropy and so on), and minimising the social and economic effects (and potential unrest arising out of these) of the crisis will eventually play out.

One aspect of the economic crisis has been a call for the reform of the banking sector to redraw, what Paul Tucker, the deputy governor of the Bank of England, has called a 'social contract' between banks and the public.¹⁵ Richard Posner, a 'longtime proponent of deregulation'¹⁶, now appears to be emphasising the importance of

<http://www.ft.com/cms/s/0/c4d25c8a-f13d-11dd-8790-0000779fd2ac.s01=1.html?nclick_check=1> accessed 10 July 2009.

¹² Jack and Suzy Welch, 'Corporate Social Responsibility in a Recession: Struggling companies have no choice but to recalibrate their philanthropy' *BusinessWeek* (New York 20 May 2009) <http://www.businessweek.com/magazine/content/09_22/b4133000801325.htm> accessed 10 July 2009.

¹³ -- 'A stress test for good intentions: The recession is a test of companies' commitments to doing good' *The Economist* (London 14 May 2009)

<http://www.economist.com/businessfinance/displayStory.cfm?story_id=13648978> accessed 10 July 2009. The article cites examples of Mars and Cadbury, which have separately announced plans to increase the amount of cocoa they source from sustainable sources because they are both concerned about future shortages if production practices do not change.

¹⁴ John A Quelch and Katherine E Jocz, 'Can Corporate Social Responsibility survive recession?' (2009) 53 *Leader to Leader* 37, 38.

¹⁵ Philip Aldrick, 'Banks face a new social contract' *The Daily Telegraph* (London 30 June 2009) <<http://www.telegraph.co.uk/finance/newsbysector/banksandfinance/5701859/Banks-face-a-new-social-contract.html>> accessed 10 July 2009.

¹⁶ Marcus Baram, 'Judge Richard Posner questions his free-market faith in "A Failure of Capitalism"' *The Huffington Post* (20 April 2009) <http://www.huffingtonpost.com/2009/04/20/judge-richard-posner-disc_n_188950.html> accessed 10 July 2009.

government regulation. In an interview with Marcus Baram of the *Huffington Post*, he was critical of government bailouts because they did not seem to have served their purpose: banks are not lending but rather hoarding the billions.¹⁷ Yet, the very fact that the UK government has declined to turn banks into public utilities, despite their de facto nationalisation, suggests that they remain wedded to the 'private enterprise' conception of the corporation and a limited role for the state. The recent rumours about Tesco being linked to the early sale of Northern Rock¹⁸ seem to confirm in the words of Philip Inman of *The Guardian*, '[the] widespread perception that ministers want to offload state-owned banks at the earliest opportunity'.¹⁹ All this seems to suggest neo-liberalism is far from dead.

In the context of CSR and development, the recent literature has emphasised the need for a critical research agenda²⁰: the need to go beyond 'one size fits all' approaches towards a much more 'contextualised' understanding of what CSR can and does mean for poor and marginalised groups in the global South.²¹ This has led Idemudia to propose that case-studies of developing countries should focus not only on what companies are doing or failing to do, but seek also to ascertain what the communities and governments are doing, or failing to do, to facilitate the community development efforts of corporations, and to examine how stakeholder relationships might be facilitating or inhibiting the impact of CSR initiatives and what role local socio-cultural factors play in mediating outcomes.²²

Contextual analyses of this sort would, I think, assist our understanding of CSR in developing countries, especially when viewed together with the roles of the various actors in these economies in the development process. What my research demonstrates, however, is the need to locate that particular context within a wider one,

¹⁷ Baram (n 16).

¹⁸ --, 'Tesco linked to early sale of Northern Rock' *The Times* (London 1 July 2009) <http://business.timesonline.co.uk/tol/business/industry_sectors/banking_and_finance/article6613502.ece> accessed 10 July 2009.

¹⁹ Philip Inman, 'Bailing out UK plc' *The Guardian* (London 1 July 2009) <<http://www.guardian.co.uk/commentisfree/2009/jul/01/tesco-northern-rock-buy>> accessed 10 July 2009.

²⁰ See Michael Blowfield and Jędrzej George Frynas, 'Setting new agendas: critical perspectives on Corporate Social Responsibility in the developing world' (2005) 81 *International Affairs* 499.

²¹ Marina Prieto-Carron and others, 'Critical Perspectives on CSR and development: what we know, what we don't know, and what we need to know' (2006) 82 *International Affairs* 977, 986.

²² U Idemudia, 'Conceptualising the CSR and Development Debate - Bridging Existing Analytical Gaps' (2008) 29 *Journal of Corporate Citizenship* 91, 102.

moving from the local to the global in effect. The locomotive behind the neo-liberal agenda being pursued by IFIs and international development agencies in developing countries is pushing hard for the reform of corporate governance systems. The favoured model is the Anglo-American one, with its shareholder-orientation and goal of shareholder value maximisation. The conception of the corporation which is being promoted is one in which CSR is necessarily little more than an adjunct, something which does not form an integral part of the business, despite rhetoric to the contrary. From this perspective, future research needs to appreciate the vital corporate governance dimensions of CSR. Both the CSR and corporate accountability movements need to be informed by the corporate governance element of the neo-liberal development agenda currently being pursued in developing countries, and case-studies need to take that into account. It may be that for even the modest, ameliorative goals of the contemporary CSR movement to be realised, radical reform is required.

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Please note that all identifiers and sensitive information have been redacted apart from the information relating to Interview N.

Appendix A

LIST OF INTERVIEWEES AND DATES

- A. 03/08/06- Ex- Deputy Secretary General, [REDACTED]
- B. 09/08/06- Corporate and Regulatory Affairs Manager, [REDACTED]
- C. 10/08/06- Director, [REDACTED]
- D. 10/08/06- Chairman, [REDACTED]
- E. 10/08/06- Managing Director (MD), [REDACTED]
- F. 10/08/06- CEO at the time of interview, retired since then, [REDACTED]
- G. 14/08/06- Executive Director, [REDACTED]
- H. 17/08/06- Personal Financial Services Manager, [REDACTED]
- I. 18/08/06- Executive Director, [REDACTED]
- J. 22/08/06- MD, [REDACTED]
- K. 22/08/06- Communications Manager, [REDACTED]
- L. 23/08/06- Country Representative, [REDACTED]
- M. 23/08/06- Executive Director, [REDACTED]
- N. 24/08/06- Project Coordinator, UNDP Project on 'Strengthening the NGO Sector in Mauritius'
- O. 25/08/06- Personnel Manager, [REDACTED]
- P. 25/08/06- Assistant MD, [REDACTED]
- Q. 25/08/06 + 01/09/06- Administrator, [REDACTED]
- R. 29/08/06- Human Resources Manager, [REDACTED]
- S. 01/09/06- HR Manager, [REDACTED]

T. 04/09/06- Chairperson on CSR Programme, [REDACTED]

U. 04/09/06- Chairman, [REDACTED]

V. 04/09/06- Company Secretary, [REDACTED]

W. 05/09/06- MD, [REDACTED]

X. 05/09/06- Finance Division Manager, [REDACTED]

Appendix B

CONSENT FORM FOR INTERVIEW

Agreement to participate in a Corporate Social Responsibility survey

Renginee G. Pillay

This research project is being conducted as a component of a thesis for a doctoral degree. The purpose of the project is to determine how the concept of Corporate Social Responsibility is perceived and practised in Mauritius.

Participation in this research project is completely voluntary. You will not be paid for your participation. If you feel uncomfortable in any way during the interview session, you have the right to decline to answer the question or to end the interview. Withdrawing from the project will not result in any negative consequences to you.

Participation in the project will require answering questions from a survey and will take approximately 15-20 minutes of your time. Interviews will be audio recorded for the purpose of transcription. Notes may also be written. The audiotape and the interview notes will be destroyed within one year of the completion of the project.

Your answers may be reported by your status but individual names will not be included in the analysis unless permission is given. Please initial here ____ if you agree to be named.

Essentially, your participation poses no risk to you.

If you have questions about the project, you may contact Professor P. Ireland at the Kent Law School, The University of Kent, Canterbury, Kent CT2 7NS, UK, email address: P.W.Ireland@kent.ac.uk.

Do you wish to participate? Please initial here ____ if you agree to the audio-recording of the interview. You are free to stop the audio-recording at any time during the interview.

Participant:

I have read and understand the above information, and agree to participate in this research project. I will be given a copy of this form.

Name (printed)

Signature

Date

Appendix C

QUESTIONNAIRE FOR CORPORATE MANAGERS

1. Is your company a private or public company?
2. Does your company consider its main objective to be profit maximisation for the shareholders?
3. How high does social responsibility rank in your company's list of main objectives?
4. What is your understanding of Corporate Social Responsibility (CSR)?
5. Does your company engage in CSR? Please give reasons for your answer and, where possible, cite examples.
6. Does your company recognise trade unions on behalf of any of your employees?
7. Does your company encourage trade union membership?
8. What kind of benefits does your company provide for the employees?
9. Does your company have any safety committee in respect of work conditions and equipment?
10. Has your company introduced any form of industrial democracy or worker participation within the company?
11. Does your company operate any disclosure provisions to keep staff informed of the company's policies?
12. How would you rate the awareness and practice of CSR in Mauritius?
13. In your opinion, what should be the main 5 priorities to be pursued by companies in Mauritius as CSR at the moment?
14. Is CSR necessary in the Mauritian business environment? Please give reasons for your answer.
15. Some commentators have mentioned that CSR in the developing world is mainly seen as corporate philanthropy, what is your view on this?
16. Do you think a commitment to CSR impinges- even if only a little - upon the goal of maximising shareholder value? Is this justifiable/legitimate?

Appendix D

QUESTIONNAIRE FOR REPRESENTATIVES OF GOVERNMENT AND NON-GOVERNMENTAL ORGANISATIONS

1. What is your understanding of Corporate Social Responsibility (CSR)?
2. How would you rate the awareness and practice of CSR in Mauritius?
3. What do you think are or could be the main drivers of (reasons for) CSR in Mauritius?
4. Please give some examples of CSR activities in Mauritius and what they are meant to address.
5. In your opinion, what should be the main 5 priorities to be pursued by firms in Mauritius as CSR at the moment?
6. Is CSR necessary in the Mauritian business environment? Please give reasons for your answer.
7. Some commentators have mentioned that CSR in the developing world is mainly seen as corporate philanthropy, what is your view on this?
8. Do you think a commitment to CSR impinges –even if only a little - upon the goal of maximising shareholder value? Is this justifiable/legitimate?

Appendix E

INTERVIEW A – 03/08/06

(Note: this transcript is incomplete as the audio file got corrupted)

Q. What is your understanding of CSR?

A. First of all, I must say that the whole concept of CSR in Mauritius is fairly recent. Even talking about CSR goes back to only ten years or so. The private sector in Mauritius did not call it by those terms. The sugar sector, for example, had always been providing housing to their workers. Unfortunately, in many instances, this was done by the law. It was not thus a voluntary act by management.

Q. So for you CSR has to be voluntary?

A. This is how we look at it. We should either do it or go through the stakeholders. In fact it is basically looking beyond maximising profits, taking a longer term view of business development or the role of business in society. But it's a new concept in Mauritius which does not go back to more than ten years. Since some five years now, there has been a national committee on good governance and this has been shared by many companies. The larger companies have since some time been implementing and really taking the view that it should be done and taking their place in society. It takes the shape of scholarships that being offered to students. It takes the shape of a company wanting it to take care of the environment and their surroundings. So there has been some movement in that direction, especially during the last years.

Q. And how would you rate the awareness and practice of CSR in Mauritius?

A. Awareness is quite high. If I would put a figure, I would say that 80% are aware and for practice, it would be 50%.

Q. And what do you think are the main drivers?

A. I think that the business environment is changing. They had been used to their old set ways, but now with globalisation, and we want to be a competitive nation, companies look at CSR in terms of being competitive. I think it is a very interesting concept for Mauritius at this particular juncture. It's not because companies were already competitive and they have to make a choice between maximisation of profits and reducing the profits that used to go to their shareholders and directing it elsewhere. Today the hard core competitiveness is to get better return on the investment. We have to consider economic efficiency and the social pattern has a lot to do with it and today when the companies have to engage with the population in the way that they deem necessary, this is the context in which CSR is happening. And this is a very interesting concept. So the driver is competitiveness.

Q. Going back to competitiveness, do you think it is used as a PR tool?

A. Honestly, some companies might be doing it as a PR exercise, but I think that most of them are doing it for the right reason.

INTERVIEW B- 09/08/06

Q. Does your company consider its main objective to be profit maximisation for the shareholders?

A. Well, this is quite tricky, its main objective, yes... Well, it's got other objectives... It's not at any cost. We do want to maximise profits for our shareholders but not at any cost. As one of our beliefs, good corporate conduct, states, we will not compromise on our standards. It's important to make profits but while being responsible and respecting our high standards of conduct.

Q. How high does social responsibility rank in your company's list of main objectives?

A. We have four core objectives at [REDACTED] – Growth, Productivity, Responsibility and Winning Environment. They have equal importance...it's a four-pronged long-term objective of [REDACTED].

Q. What is your understanding of Corporate Social Responsibility (CSR)?

A. I think that, I have already answered. (Off the record)

Q. Does your company engage in CSR? Please give reasons for your answer and, where possible, cite examples.

A. Yes. One of our core objectives is to be seen as a responsible company especially as we are in a controversial industry. There's so much controversy around our products (we don't want), and it's not going to help the business if added to this there's more controversy about the way we manage the business. We think that tobacco is already controversial enough for it not to land in the hands of easy traders, for example, and that it should be managed by responsible companies like [REDACTED], and it's only in the interest of everybody concerned- smokers, the government, the company and all the stakeholders that it's managed in this way otherwise... So for these reasons, we have to be socially responsible.

Q. Does your company recognise trade unions on behalf of any of your employees?

A. Yes.

Q. Does your company encourage trade union membership?

A. Er...encourage... Well, we had an in-house union for a long, long time. I think we are amongst the first companies which established a collective item for the union. And we have bargaining forums, working groups, etc already well- established at [REDACTED] so it's part of the way we do things. Whether we encourage or not you know, I won't disagree with it. Personally, I think there's value to be gained if we can collaborate with the workforce.

Q. What kind of benefits does your company provide for the employees?

A. I'll give you examples which probably don't exist elsewhere. Maybe since [REDACTED] established here, we give free meals to all employees, I mean every meal, not only refreshments, tea, etc. In the morning people come to work, they get their bread, tea, jam, butter etc. During the day, we get a full meal and in the afternoon, we get tea. I don't know many companies who give this and freely and since we established here in 1956. I mean established in MRU for 80 years and here in this location since 1956. I

don't know how it was before but there's a canteen, there's a kitchen, there's everything and this is part of the type of benefit that we give. The rest is, I mean, normal probably that people get car, medical benefits. Free medical benefits to all employees and some categories get for their families as well. Overseas tickets all employees at least one time need to benefit- so they get one ticket to the UK and leave. Of course, there's different sets or levels of benefits for managers etc but if I take the meals and the overseas tickets, I don't know of many companies which give these benefits to ALL employees. The rest is basic.

Q. Does your company have any safety committee in respect of work conditions and equipment?

A. Yes, too much. You've seen the fire drills. You've been walking around, you've seen that you even have to cross at particular sections.

Q. Has your company introduced any form of industrial democracy or worker participation within the company?

A. We have so many committees which involve different employees. From the canteen committee, everyone has a reputation on it, to find out what's happening and giving feedback and influencing etc... We have a Uniforms Committee, Safety Committee, where you all have representatives of employee and the union. Depending on the level of the committee, we have representatives. We do have representation from the floor on the different committees. The rest of the committees are involvement at the higher level so maybe not the floor workers but staff officers and management so sales, planning and operations committees, monthly planning and cycle planning meetings etc. At that level, it's more functional committees. We do also have some post-functional and then of course, strategy and all the other meetings that we have at a higher level. I mean, yes, in a sense we do. We do have plenty of forums where people can participate and can influence the decisions of the company. We have a specific one which is more important- every employee gets to input it's at the beginning of the year where we have what we call 'line of sight' where we bring all employees together. We start setting objectives and cascading objectives so all employees are together. We talk to them about the broad objectives of the company and then through a specific process that we use, we involve them in setting objectives for their departments, for their sections, and for themselves. As we cascade it down, they're involved throughout the whole process. So from the company's objectives, they get to reflect on first of all, the environment etc, then these are the objectives and how we're going to break down those objectives for our function, then for our section, then for ourselves. It's not that we set the objectives and tell them these are the objectives for you but let's think and set the objectives together. We have that as a company objective, do you think your function has an input into this, how can we influence and improve that? What should we be doing? We start from scratch so more of a bottom up approach. The management knows pretty well what they want and how they want to achieve that but just getting that involvement from the employees and setting that objective. Amongst all the rest I have mentioned, this one is more about company objectives and decision-making.

Q. Does your company operate any disclosure provisions to keep staff informed of the company's policies?

A. When you talk of disclosure provisions, disclosure itself something else when we link it to keeping staff informed of company's objectives. I thought disclosure was

more to do with our interpretation of disclosure when we link it to social responsibility is more, do you have a mechanism where employees can voice out their grievances or if there's anything that's not going properly in the company, they can bring it up, disclose anything which is not in accordance with your set of standards. We have a specific procedure which deals with disclosure. So we do have a policy that talks about what are the standards that we should meet- what sort of behaviour is allowed, is not allowed etc. Anyone who notices anything or thinks that anyone is breaching rules and wants to talk about it or bring it to the attention of the company, to use this mechanism, this procedure to follow and how you disclose it and we give security under that policy to the employee who is disclosing. It's kind of whistle blowing procedure. As for keeping staff informed of company policies, we have various means in the company from the company handbook, from the procedures in the electronic database, which they have access to regular notices, to monthly communication meetings taking place. All employees monthly together, talking to them about the business progress and anything else going on in the company, our newsletters. So there are various platforms that we use to keep employees informed not only of policies but also what's happening in the company.

Q. OK, moving on to more general questions now. How would you rate the awareness and practice of CSR in Mauritius?

A. There are two things! Awareness and practice. First of all, CSR, I think the way it's viewed in MRU, it's just the philanthropy part. It's just the setting up of social projects and helping society. It's that part that is known and that is practised more and more. I mean practice more and more because [REDACTED] is probably one of the pioneers of such activities in MRU. And more and more is being done by other companies probably mostly like multinationals like Shell, Barclays and HSBC. But there are local banks joining in now. And to some extent now, the hotel groups and chains are being part of it but understandably so, less from the small companies. There is an increasing awareness that there is a need for companies in MRU to be involved in CSR. There's been a survey which has been done by the Mauritius Employers' Federation. I don't have the results so I don't know whether they published it or not. I would be keen to know from the survey what exactly the state of things is. I'm just talking from what I think is going on. But I think, I don't know to what extent, companies view CSR as being an integral approach to responsibility. There are things that have been happening in big banks, for instance, which is totally irresponsible so one should start by putting one's house in order first. We have to take care all the time that our house is in order.

Q. In your opinion, what should be the main 5 priorities to be pursued by companies in Mauritius as CSR at the moment?

A. You're just talking about the social engagements basically? (Q: Yes, anything you consider as CSR) If I need to talk about the totality of it then it's good corporate conduct, the way you treat your employees and all other stakeholders is also a priority and the other one is giving value to the community. But within those there are probably some priorities. If you want me to talk about the community, I think there are many things that could be done in MRU but the one key one that we should really focus on and bring, you know a level of step-change is education and poverty. I think these go hand in hand and there's a big, great need to make sure that people have access to education. I think they do have, certain people have the potential, have aspirations which can give access to more education but then also poverty. I think

things should be done to empower people, build capacity so that they can fend for themselves because their situation is quite difficult.

Q. And how do you see companies helping there?

A. Er...see, we have ourselves in the past been involved in some capacity-building projects where we've been providing, financing people who don't have jobs and I think today the focus should be on ensuring that jobs are being created because unemployment is rising more and more. There is a basic need to provide employment to people, if that cannot be catered for, then we're going down the drain, so to speak. So before giving the training, I think we should help in creating jobs. So assisting where companies want to invest in the society, can assist in starting up projects, giving those people who think they have a worthwhile project, giving them a kick-off so that they can start their own enterprise and give jobs to people at the same time. We are currently thinking along those lines besides the projects we've been doing. There is something that is going on, not finalised yet, we've done all the paperwork, probably within the next quarter, it will be kicked off.

Q. Is CSR necessary in the Mauritian business environment? Please give reasons for your answer.

A. In the broader sense, CSR, yes. I think it is necessary because generally, the Mauritian environment had got some problems and it's easy for businesses to just toe the line along the problems that there are instead of taking an active role- so taking a stand backwards and saying these are the problems, we're not playing along with these rules etc. We have our own set of rules and we want to be like this. In that sense, yes, CSR is required because we think that everyone should be given a chance, equal opportunity for one to work, to set up a business, it's not therefore you know X, Y, Z that should get some business for the company. Things like that which are more related to standards, to ethics, to professionalism and anything else. In that sense, yes, CSR is needed in the business environment, and in the sense of giving back to society, what society has helped you in creating, yes, I think there should be sharing. But there are detractors who say, well, you're just giving. At the end of the day, you've got the interest of your company in mind, you want to make more profits so that's why you think by doing social projects, you ensure that you can exist for longer. So, I mean, this is a way of thinking and for whatever reasons corporates (companies) are being socially engaged and giving back to society, it's helping the society. My philosophy is that as long as enterprises think they have the resources to help, they should help and they should help more because there's a need in society, who need assistance, who need to be conscious and who need to be really keen on developing the societies and communities where we are operating, not just be keen on making profits for ourselves, and if we are doing it so much the better because if we don't do it, then we'll be criticised. There's so much pain around and no one is bothering and these big companies are just making profits for themselves. So we do it but we're criticised for doing it because we want to make more money so yes, it's a vicious circle. No matter what you do, there will always be people trying to create a debate out of it but if you pay attention to those debates then unfortunately, the society, the community and you are not going to benefit and I think they should benefit from the existence of any business.

Q. Do you think a commitment to CSR impinges- even if only a little - upon the goal of maximising shareholder value? Is this justifiable/legitimate?

A. We know that more and more the companies which are keen on delivering high profits at the same time as taking care of the society, are socially and environmentally conscious, are creating higher value for themselves. There are some societies, there are some brokers who assess the value of companies, not just based on profits but also long-term sustainability. But if as you're going along, you're killing the environment, you're making use of child labour etc, then it's not a long term viability for your business so they assess the value of a company based on those criteria. And it's important that these are taken into account. And companies who want long-term viability have to be conscious of those. And yes, companies have to be given the licence to operate if they are not doing harm to the rest of society whilst they are doing business. Otherwise they should not be given licence to operate. I mean those companies which are just there to make profits at the detriment of everything, should not be allowed to operate. If they are, not for long. So, it's a vicious circle. Where do you start? I want to operate on a longer term, then I need to take care of what's happening and me because I want to exist in the longer term. I want to continue to make profits. So you're taking care of the environment, you're taking care of the society because at the end of the day, you want to exist for longer. What's wrong with that? There's nothing wrong. I mean, I would prefer that this would be openly accepted as a competition, if I do not do that, others will get an edge over me that anybody ignoring that responsibility and just try to maximise profits. I think it's a fair platform and I don't see any harm. It is like this. I mean, it's not a blame, it's not a reproach that's being made but I think there's some justification in the comment.

INTERVIEW C- 10/08/06

Q. What is your understanding of CSR in Mauritius?

A. My understanding is, (and it is also after discussions with our constituent members who are the business community), that it is involvement in community development and to what extent a company, a corporate body, would show interest in the development of the community over and above its main objective of running a business. It is fair to say that more and more companies are interested and getting involved in CSR.

Q. How would you rate the level of awareness and practice of CSR in Mauritius?

A. I think that there is a first level awareness in the sense that companies are aware that there is something to be done at the level of CSR and very often it is non-systemic. What I mean is that it is not being done in an organised manner. It is very ad hoc, and therefore not optimizing results. There is a first level awareness in things to be done. There is some action in terms of activities with relation to CSR but it is very often ad hoc and not systemic except now, for some companies which are being organised for that, for example Beachcomber, Rogers and Barclays Bank.

Some of the international companies have systems. But only a few have systems which are structured in order to get the needs structured and implementation optimised. But this has still to gather momentum. So it is in the making for companies to be structured, organised and be systemic in their involvement in CSR. As a result of that there are issues such as lack of coordination, lack of coherence, and we have been trying to push that.

Q. What are the reasons for CSR? Why should there be a push?

A. If you look at the economic model of Mauritius, we are a mixed economy whereby the role of social responsibility was always assigned to the state, to government, and the private sector was to run businesses, create jobs. But now the situation is getting blurred and businesses have not only to run businesses and CSR is part of the solution of a right business environment. This today, I think, is gathering momentum and therefore we are moving away from this mindset of dichotomy between state and business where the state has social responsibility and business is understanding that doing some sort of social responsibility is part of corporate progress, of corporate performance and it has a positive impact on business. I think it is tied up to our political economic history which is changing very much.

Q. A number of commentators have suggested that a number of businesses, especially in the developing world, have taken up CSR because of their competitors, feeling that "they are doing it and we should do it".

A. It is not only because of competitors. It's also some companies looking at environment, looking at education, some involvement in law and order. By looking at values, the immediate environment of the companies changes. I think the involvement in environment has shown very clear results. And building on that, a business can quantify results in terms of competitiveness and this is having a positive impact in terms of quality of human resources. It's in some form more than pure corporate training, it's training in terms of values. For example, we are involved [REDACTED], with a number of companies, supporting the ZEP schools, whereby those companies accompany the children in those areas looking at food, looking at the problems at

home, discussing with the school head teachers. These accompanying measures have an impact on the kids, but also the kids on the parents, and the parents on the company. We haven't measured that, but corporate social responsibility isn't just giving money. It is much more the commitment. Very often it has to be systemic. It has to be involvement. It is much more than the financial aspect. It is the emotional involvement. Our involvement with some companies in the ZEP schools has shown how complex it is because we are looking at some of the areas which are extremely exposed and where the sense of results are very interesting. If I were to say in terms of pure competitiveness, it's yes plus greater social results. Mauritius being a small country, I think that if we can replicate and multiply, we'll have a higher multiplier effect.

Q. Another criticism is that, in the developing world, CSR mainly takes the form of philanthropy. What are your views, in relation to Mauritius?

A. Yes and no. Sometimes the easy way is simple philanthropy, but I think that we learn very quickly and we see that philanthropy is not sufficient but today the learning is quite fast and there are companies moving from simple support to more structured systems.

Q. Can you give me some examples of CSR in Mauritius?

A. It would be good if we take two or three models. We have first Beachcomber, [...], which shows how a company is structured in a big way and we are working together. And it would be good to speak also to a small company and the person is [...] CEO of Mauritius Oil Refineries. There is also an international company. It is Barclays which is doing a very good job and working also with us in the ZEP project. One other person who also works on our team is [...] the HR manager of the Currimjee group who is very much involved in getting the system to give optimum result

Q. In your opinion, what would be the main 5 priorities to be pursued by companies in Mauritius in CSR?

A. I think what is important in CSR is the concept of sustainability and this can be applied to environment. I think also that civic education as an important component and it brings values and values. One area which could be a corollary of civic education is the 'engagement citoyenne', let's call it citizen involvement as a result of corporate social responsibility leading to this concept. And it is interesting because, at the government level, it is very national, then at the company level, there is a sense of involvement which will trickle down to the citizen. We're trying to do this in the fight against chikungunya. It is each one taking care of a little terrain. So if companies show corporate social responsibility by being involved in chikungunya, we are all involved. At the level of the sugar estates, they are involved and what happened was that each worker who was involved, did it in their own village. So let's call it a demonstration effect. So these are the things that are important, environment, education and civic involvement, which would also be part of corporate social responsibility. One thing which has not come here is developing some sense of entrepreneurship through outsourcing. Well, this is not corporate social responsibility, it is a by-effect. This is a part of outsourcing which develops a sort of business sense at the grass root level and as more and more will go to outsourcing with the villages, be it in Mexico, in India, in Brazil, it is in a way tied to corporate social responsibility by empowerment. This is done in a systemic manner. It is eventual empowerment. So it is corporate responsibility leading to enhanced grassroots capitalism. That is an area

of research. I am trying to get people to do some research in it. It is going to be a mix of economics and social empowerment. This is a thing that can be canvassed. This is a result that can come out but has not been substantiated adequately

Q. Is CSR necessary in the Mauritian business environment?

A. Yes for all the reasons I explained. I think it makes good business sense. It makes good social sense. It makes more empowerment sense. It brings a business model by itself, a model of integration in the community. It is like moving from mechanical physics to quantum physics. Everything is related. A company can't do business and the rest is in a vacuum. It is the integration which is important which to my mind is tied to the ideal model. Every thing is connected. This is a dimension which you have to explore but which I can only mention.

Q. Does CSR impinge, if only a little, upon the goal of maximising shareholder profits?

A. No. I think it has been more than substantiated that it has not. If you make only a financial measurement, may be, but if you make an economic measurement, it is not. That is why I say we have to move from the simple approach to something which is more integrated and it would be interesting to put those concepts in your final analysis. In any country you have to know what is the cost of corruption, what is the cost of environment, what is the cost of law and order, the cost of education. One of the major societal problems is that in a region people who are good leave and that region is always depleted and there is no role model and where there is no role model, there is no peer pressure and there is no aspiration in that region. If you can create a role model and if that couple stays in that region, somebody is bound to follow. It is quite minimal in a way but it's long term impact is reasonable and it will be an advantage to the shareholder even in this short term because that company will reap the benefit from the community. For example the involvement of the sugar industry in the community has been tremendous but they have got it back in terms of stability. I'm convinced of that.

INTERVIEW D- 10/08/06

Q. Is your company a private or public company?

A. It's a public company.

Q. Does your company consider its main objective is maximisation of profits for its shareholders?

A. Not at all, because we are [REDACTED] and we have to make people [REDACTED] and we have a lot of schemes, on the one hand to encourage people to [REDACTED] more and on the other hand to offer facilities, for instance to people who are handicapped, people who have financial difficulties, those who have to [REDACTED], to students and people who bring added value to the country in terms of culture and education. We do have a social role.

Q. How high does social responsibility rank among the main objectives of your company?

A. It also includes a socio religious aspect. In fact we receive requests, day in day out, which we entertain more or less favourably, but we do have certain guidelines. Obviously there is some amount of discretion so that there is no abuse. Also it cannot be said that we are favouring one group at the expense of another. You must understand the intricacies of Mauritian society also.

Q. What is your understanding of CSR?

A. My understanding is that, [REDACTED], which has as its main shareholder, [REDACTED], and it is a private company for the purpose of the Companies Act, and a public company for the purpose of the Stock Exchange, there is an onus that we should be going that extra mile [REDACTED]. So this is a reality at [...].

[REDACTED] So we must adapt ourselves. We cannot just sit and comfort ourselves by saying that, well, we are a profit making company and we can't entertain such requests or proclaim ourselves to be socially responsible. That's a self-defeating attitude. I think that the company has tried over the years to strike a right balance between on the one hand, being overtly profit oriented and on the other hand being a totally charitable institution. Only yesterday, I had a request from a religious organisation to see how we can assist in one of the socio cultural events which they were organising and [REDACTED]. I don't intend it as a criticism. I don't want to be cynical, but if you understand the perception that people have of [...], then you will be able to comprehend why these people find it all too natural to make such requests which they wouldn't be doing with [REDACTED].

Q. So does your company engage in CSR?

A. Oh yes, we do. We do a lot. The recent events have shown how we have been promoting socio cultural events with major concerts by artists coming from many parts of the world, from India, from France, from countries such as Madagascar. There was recently the Zee TV Awards. It was a mega-worldwide event which was transmitted live in many countries. We provided a lot of inputs into that event. We get a lot of requests of that level or another. Of course, we must see where we can strike the right balance. We don't look only at big companies but we look also to events that

can bring us some visibility internationally. It can be sports events or other events. If it is religious, it must transcend one community or the other. So I would say yes.

Q. Why do you think it is important to have CSR?

A. It's important because people must be made to feel that [REDACTED]. May be there is a natural inclination for them to do so. May be there can be some abuse. But I would rather have some abuse which we can curtail rather than there is no such feeling of association on the part of the public.

Q. You said that you were also looking at it from the point of view of visibility and the idea that it can be commercially viable, so do you think that there can be some kind of tension, if you want, between social responsibility on the one hand and ...

A. Obviously. There is bound to be because there will have to be a value judgment somewhere and you are never sure whether you are right or wrong. [REDACTED]

[REDACTED] We turn down also and it's a value judgement and this is where we can trust our people from the commercial division, who have been there for years and they know where there is a cut point, where we can stretch ourselves and where we will have to forego maybe the purely commercial gain. You're right. There are competing interests and somewhere, some one has to take a decision. But I must add that this is an administrative matter and as Chairman, I do not interfere. This is a matter which is decided by the Managing Director and his officers.

I must also say that, we are in Mauritius and invariably the requests are made to me, because people don't know the difference between the two functions and I would have to refer the matter to management. Most of the time also, the request is made to the Managing Director and copied to the Chairman. Although I don't want to influence the outcome, I also share in the decision because it is the company's image.

Q. Has your company introduced some sort of industrial democracy or worker's participation?

A. [REDACTED] has a history of trade unions. They are entirely free to express themselves. We have two unions for the [REDACTED], one for the Mauritians and the other for the [REDACTED], we have [REDACTED], we have other unions as well. There are lots of on-going disputes and I can tell you that since I have come here, I have seen to it that those disputes are resolved and. I think that it is healthy that they don't feel threatened or insecure.

Q. Does your company operate any disclosure provisions that keep staff informed of its policies?

A. We do. I have just instructed the HR to go ahead with a company journal. We have [REDACTED], but this is not what I am talking about. I believe it is a great lacuna and we should go forward with the company in-house publication.

Q. How would you rate the awareness and practice of CSR in Mauritius?

A. I think there is a long way to go. In spite of the fact that the code of good corporate governance has been adopted, I think that it hasn't trickled down. I think it has

remained at a level where many companies have not given themselves the trouble of explaining it to their employees. For instance, how many employees know the difference between a chairman and a managing director? How many also know the role of each one and where there is the demarcation line? I think also that many do not realise the social responsibility of the company. Is it a charity to look at the particular perception of a community, is it just to work hand in hand with the social security department of the country? Is it to see the immediate concern of the neighbourhood? Is it to appease the immediate surrounding to ensure there is no social unrest?

This is where, [REDACTED], we are very keen not to give the perception that we are doing things for particular interests. Once people become suspicious, then it shows that you are using them to promote your own agenda. It's a very delicate balance here, because, [REDACTED], we must transcend petty considerations, we must show that we are not favouring those persons who are referred to you by this government, because this government is in power.

That is why I say there should be a sense of continuity, irrespective of the political dimension, irrespective of the profit status of the company. In good or bad times you have to extend whatever you have proclaimed yourself to be, to the needy ones.

At the moment, I am satisfied that [REDACTED] is doing it, but I am necessarily not satisfied that there is an awareness in the public that this is the case. That is why communication is very important. Communication is important because we can share ideas and we can explain to the public the criteria that we apply and that is where I believe that discretion can be a good or a bad thing.

Q. In your opinion, what should be the five main priorities of companies in Mauritius in terms of CSR?

A. First one is, I believe, equal opportunity employment and [REDACTED] promotes it. People need to be comforted to know that [REDACTED] is not Mauritius. This is the kind of comfort which you have to procure. You should not only enunciate it but also put it in practice and I believe there has been no criticism about it. Secondly, you have to show that you are totally transparent and this is where I have adopted the practice of declaring my assets. In fact only members of the National Assembly have to abide by this declaration, but this is voluntary and I have done it. This is where you offer yourself to scrutiny. I think you must send the signal that, as head of this company, you are subject to scrutiny. I believe that you must give to the onlooker a comfort that [REDACTED], any shareholder or non shareholder or an employee or a client that this company is being well managed, that it is above corruption. The person should also feel that, when it comes to the social responsibility of the company, you are equally transparent. You are, in whatever some may call privileges, or favours, you are doing it on a very egalitarian basis and that it is very transparent and uniform. Now let me give you an example. [REDACTED]

[REDACTED] So we have this foundation which caters for education and training. Now we don't wish to see ourselves as a charitable institution because we are doing a lot to transform people who are in need. It is a huge amount of money we have to forego. It is a huge number of tickets that we are dishing out. We don't want to be pretentious. [REDACTED] What is the danger? If you are profitable this year and you cannot do it next year. What will happen? People

would not commend you for doing it. People will criticise you for having stopped doing it.

[REDACTED]. People are criticising us for that. They say this is gambling. Why should we do such things when we have so much other important things to do? Now we have the important festivals, Maha Shivaratree, Pilgrimage of Father Laval, where we are asked to provide such things as T-shirts, hats etc

Now if we concentrate on what we are doing now, if we have socio cultural events which are bringing a plus to the community and to the country, and there is something we can do and let's keep it at that. We have some parameters. We also give some big remissions to those who want to bring in religious items etc.

Q. Do you think CSR is necessary in the Mauritius business environment?

A. We have a public vocation and it is in line with this that we are projecting ourselves. When you are projecting yourself [REDACTED], people naturally come to you whether it is abusive or not. You just have to be able to canalise these demands. We have our limitations also.

Q. Do you think CSR impinges, even a little, on the goal of maximising shareholder value?

A. In strict terms, it does, because the amount of time, not to say money, and shortfall that it entails to entertain all these requests, is really a lot. But on the other hand, when you consider what it brings in terms of satisfaction for those needy people, what it brings also in terms of good will to the company I think it far outweighs all its financial and time losses.

INTERVIEW E – 11/08/06

Q: Could you please state your position for the purposes of the tape?

A: I am the Managing Director of [REDACTED].

Q: Thank you for taking the time to see me [...] for this interview on the concept of Corporate Social Responsibility, which I will refer to as CSR throughout the interview. So, firstly, is your company a private or public company?

A: It's a private company.

Q: Does your company consider its main objective to be profit maximisation for the shareholders?

A: We believe in meeting the requirements of all the stakeholders in our business. Whether it's shareholders, employees, customers. So it's not a single ... Of course the purpose of the business is to make money but we are very conscious of the interest and need to satisfy the interest of all the stakeholders.

Q: How high does social responsibility rank in your company's list of main objectives?

A: We have a very clear policy... Tape is stopped as interviewee shows interviewer the notices on the walls of the corridor dealing with their policy statements (on file with interviewer).

Q: Now, what is your understanding of CSR?

A: As I said earlier, basically as an organisation of a global company- the company has a turnover of about US\$ 1.2 bn, we are represented in about a hundred countries worldwide and have manufacturing facilities in 37, so basically, we are operating in different economies, different cultures, different countries, different social mixes. We are therefore very aware of the need to operate in each country abiding by the laws of these countries. Abiding by the laws is the basic most common denominator and whatever we can do better in terms of whether it's environment, whether it's in terms of employment practices, then we do better than that. The business reason for doing that is that unless we pay our employees competitively, we will not be able to attract the right talent. So that is a business reason for doing it. But we're also aware of the fact that we have to offer growth opportunities, we have to look after career aspirations, we have to encourage training and develop all human resources and by generating employment itself, we satisfy the first goal of social responsibility: we employ something like 37 000 people worldwide. But that means we balance business realities in the sense that unless the business delivers the required financial performance, we will not be able to do what we'd like to do for these employees.

Similarly, in the area of interaction with the community, I would say that I don't think we do, we don't rank very high amongst companies perhaps who are doing much more in terms of community assistance or community help programmes. I don't think we're very active except maybe in a few countries more based on individual initiative rather than being a centrally driven initiative. There are some companies in some countries which are doing a lot in that direction. I can immediately think of countries like Indonesia, India, which I know of- they have a formal community assistance programme under the heading of GAP. And they do a lot, like about 10 villages and

things of that kind. Again, not very high profile. Tends to be kept fairly low profile but very effective. And quite a lot of the managers in their own way try to help people because of their professional qualifications. There are poor people who can't afford a lawyer for example, then they'll try to help them by giving them advice on certain legal matters so it's things like that. As I say, it varies from country to country in which we operate and it's not centrally driven.

Q: What about in Mauritius (MRU)?

A: In MRU, very little actually because again, the reason is very simple. We are not a profit-making company at all. Because of the economic situation in MRU, we've been making losses for the past 4-5 years. So this has definitely retarded our ability to be able to do anything on other fronts. To an extent, this may sound like an excuse or an alibi for not doing this but clearly I see that if we are able to progress the way we have planned to over the next year or two, then certainly this dimension of our responsibility will get attention.

Q: OK, the next few questions relate to internal CSR, if you want. Does your company recognise trade unions on behalf of any of your employees?

A: We don't have an organised union as such for our employees but what is encouraged is what we call representatives so within each section or each department, they're free to nominate a representative and it's done by rotation- they change representatives from time to time. But it's not a formal union. And I'm happy to say that we've never had any industrial relations issue in the history of our company here.

Q: What kind of benefits does your company provide for the employees?

A: All the benefits that are governed by law in MRU- which personally I think are excellent in the sense that it protects the employees' basic requirements in terms of wages, the annual increments are also a matter which is decided by the government. A minimum increase is decided by the government. Things like transportation are covered, then people who work on the night shifts- we make arrangements for their transport and also pay them a meal allowance. So all these basic requirements are met and as I said, we'll go beyond that specifically in two ways: one is that good performances are rewarded, then training and development is another way- we sponsor them for external training programmes, sometimes they're sent overseas to our other larger units for training and development. So this kind of encouragement is given to them which goes beyond what is prescribed under law. And as I said again, business realities will dictate that we need to keep our remuneration packages comprehensive if we want to attract talent. So this is a self-correcting mechanism. If you don't pay enough or reward well enough, the staff turnover rate is going to be high. We're going to lose people and particularly good people and we won't be able to attract the right talent. So over a period of time, there's a self-correcting mechanism that takes place.

Q: Does your company have any safety committee in respect of work conditions and equipment?

A: Yeah, absolutely. Health and Safety (H&S) is a very high interest area for our company. We do a lot in terms of H&S. This again is a global policy and we have very clearly enunciated policies on H&S, and we have internal bench-marking so any incident, whether it's a small injury or a mishap on the shop floor, or even if somebody slips on the staircase, you know, all these are matters that are investigated

and corrective actions taken. And there's an internal monthly reporting system on any incident that takes place and this is consolidated globally. So, if there's any particular country where there's a higher incident rate compared to others then these are matters which are investigated. And this is done on a monthly basis. We have a safety officer who's nominated for this purpose so we have very clear guidelines on what we need to do in terms of H&S.

Q: Has your company introduced any form of industrial democracy or worker participation within the company?

A: (Pause) Well there is the usual suggestion scheme you know, for example but of more value than that is that the atmosphere is quite an open environment. People are encouraged to express their views. I have meetings with all my employees at least once a quarter and sessions so that they can ask whatever they want. So they're encouraged to be open and come out with their suggestions and quite often we do implement some of the suggestions that they've made.

Q: Do you comply with any international standards relating to CSR?

A: Not really, I mean we are an ISO company so in that sense the quality standards and quality management systems are maintained but I don't think it goes specifically into CSR. As I said, there's nothing formal of that kind.

Q: Now onto more general questions. Is CSR necessary in the Mauritian business environment? Please give reasons for your answer.

A: Yes, I think in every country, it's not just MRU but every country, I think that industry has to play its own role rather than saying that's an aspect that needs to be taken care of by government because there are more social implications of that. But I believe that a good corporate citizen also has an undeniable responsibility towards CSR and I think there are shiny examples of a lot of leading organisations in the world who do this very actively and effectively and I think these are the examples that all of us need to look up to and emulate in some form or the other. It's a matter of time and actually, it's a misnomer that all this is going to cost a lot of money. Sometimes it does and maybe we need to have a budget for it but quite often what we can do doesn't cost much. So I don't think business should be put off by the cost element of this but being conscious of what they can afford to spend. Specifically for MRU, I think there are a lot of things that corporates can do because of the violent economic situation that there is here at the moment. I mean the few main pillars of the Mauritian economy historically have been sugar, textiles, tourism, and IT slowly trying to come up. Basically, the skills set of the employable people in this country needs to be rapidly changed because there will be demands made on them to be more flexible, more multi-skilled, more multi-tasking, They need to change and develop themselves for the new vocations that have come up. And here, I think organisations can play a part, so it's in the 'soft' part of development, by changing mind-sets that I think a role can be played. And if not by organisations formally, then certainly business leaders on their own initiative can do certain things in this direction maybe by visiting colleges, schools because what I find here is that you have a situation where you have unemployment on one side and yet, you've got 35 000 expatriate workers on the other. So it's a contradiction in terms. So how do you explain this and how do you create the shift for people who are unemployed to join the stream of working again or taking up jobs? So people have to understand that they have to be more flexible. Also, the socio-economic conditions in MRU is basically a society that

has depended on the government to bail them out at every single opportunity so perhaps they feel that everything has to be sorted out by the government and this 'fire in the belly' that's required to make things change, to make things happen and to better their lifestyles as a result of their own effort instead of somebody else doling out charity- this has to change and this requires a mindset change. A lot of education is required, a lot of communication is required. So this is a process in which I believe industry can play a role.

Q: So you think that would be a main priority in terms of CSR: educate people?

A: Absolutely. That's the number one priority. Because you know, you can invest money and create the scope for employment e.g. if I advertise for a job in India, I'll get 1000 applications. In MRU, I get four, two turn up for interview, one joins and leaves after 5 days! I can't run a company like that. This is not only my experience, I share this experience with others. There is this general frustration on the part of the employers that you know, we can bring in money, we can bring in machines, we can bring in all of that but if we're expected to bring in people as well, then this is not wealth creation for the people of MRU. Wealth creation comes when the people of that country work and better their living standards. Expatriate workers will spend the minimum here and repatriate their savings back home. So that wealth is not being retained in MRU. So these are some of the concerns that need to be addressed.

Q: And you feel that the corporate world can help...

A: Yes, because the corporate world has done all that's required in terms of bringing in the money and the machines in so we have to bridge that gap. So the government definitely needs to play an active role in that and the corporate sector in its own interest also should do something more. They're probably doing something but I don't think it's having this sense of urgency that needs to be had.

Q: Do you think a commitment to CSR impinges- even if only a little - upon the goal of maximising shareholder value? Is this justifiable/legitimate?

A: I don't think at all because there are many number of examples of corporations worldwide which have been 'successful' that have created enormous damage on communities that lived near their production facilities or whatever. Ultimately, the companies have to close down. So I don't think any wise or intelligent large corporation can say that they can ignore this aspect of their responsibility. They have to put back into society part of what they're getting out of it. So payback time is there. It's just a question of how quickly they realise this and qualitatively how they respond to it. It's not things to make headlines you know in the sense of cheap publicity in terms of 'we're doing this, we're doing that'. Qualitatively, it's more important than quantitatively in the sense that it's not what you do but how you do it...

Q: Can I just pick up on a point here? Because one criticism mainly in the developing world is that these companies tend to give a lot of money so it's mainly seen as corporate philanthropy rather than anything else. What is your view on this?

A: Yeah because the problem is very simple. Making out a cheque takes 10 seconds. Doing anything different takes time. And in today's highly competitive, global environment, time is the most expensive commodity. Senior executives, blue-level executives are all hard-pressed for time and people are working long hours, even spilling over into week-ends. So it's a question of not money, it's a question of time. And once we're able to devote time and when we're able to define qualitatively how

you want that time to be utilised for this goal, then that's a beginning. But time is the biggest enemy today actually. It's probably the biggest enemy of corporates- which is why they're not doing enough. Time.

INTERVIEW F- 10/08/06

Q. Is your company a private or public company?

A. It's a public company.

Q. Does your company consider profit maximisation for its shareholders as its main objective?

A. We have a stakeholder concept and we understand that the shareholders, well, they are not the only stakeholders, because our stakeholders are the employees, the customers and the public, the Mauritian society in general. Having said that, one of our prime stakeholders are our shareholders and clearly they do expect profits and they do expect dividends.

Q. How high does social responsibility rank in the list of your company's main objectives?

A. We don't really have a list of objectives, but it is something we take seriously and we have taken seriously for a number of years. We have a number of programmes but we also get our staff involved. It's not only money, it's people and it's the way how we do things?

Q. What is your understanding of CSR?

A. I think in every society, I think it may be different, but in Mauritius, where there is a lot of need, a lot of poor people, we have to get involved. Obviously our main business is business and making money. But we also look after our employees, one of our prime stakeholders. We also rely on the Mauritian society and we can only operate if the society works well and there are many needs in the society but obviously a programme of corporate social responsibility can only cater for those we can, for we cannot solve all the problems of Mauritius. Having said that, we focus on things over time, we have set up programmes and we have identified four areas apart from in service types, which are external, education, the handicapped, environment and arts and culture.

Q. Does your company encourage trade unions on behalf of any of your employees?

A. We have 5 000 employees and we have a number of unions within [REDACTED], but generally speaking, our staff is not unionised and if there is a demand for recognition, we will go through it, obviously, and if the process is successful, we would recognise it.

Q. So you would encourage trade union membership then?

A. Not necessarily. We would prefer to dialogue with them without the trade union, but if they believe the trade union should be involved, we will respect that.

Q. What kinds of benefits does your company provide to the employees?

A. First there is the pension for all employees and it includes the blue collar as well as the white collar. Then we have the provident fund for all employees which pays for all medical bills and also for after-retirement until they die. In fact both schemes are contributory but the company puts in a lot more money than the employees. And then we have a number of social functions which are team-building exercises. The end of

the year party is one of them, but we have some 50-60 such parties. Then we have fun days, sports days. We do a lot actually for motivation.

Q. Does your company have any safety committee in respect of work conditions?

A. Yes, we have health and safety committees. We have laws about health and safety and we have a coordination structure which looks after health and safety.

Q. Has your company introduced any form of industrial democracy or worker participation?

A. Does that mean share ownership or board membership?

Q. Yes. Both.

A. The short answer to this is no. Some 8 to 10 years ago, we made a share offer to all our employees and a number of them took them up, but that was long ago.

Q. Does your company operate any disclosure provisions to keep staff informed of the company's policies?

A. Yes. We have two things. We have [REDACTED] which is posted on our website and on our notice boards and we have [REDACTED]. It comes out six times a year. And we have a communications network. All my directors, I have fixed days to see them, either individually or together. They also have their own meetings. We have a formalised communication network where face to face meetings between bosses and their subordinates.

Q. How would you rank the level of awareness and practice of CSR in Mauritius?

A. Poor. We do try to communicate, but not enough. What is being done is not fully understood and enough because I firmly believe we need a formal system. You just can't allow your guys to get along with it. If that happens, nothing possibly happens. So each company has to set up its programme of CSR.

Q. What should be the five priorities which should be pursued by companies in Mauritius as far as CSR is concerned?

A. I think it should be up to them, I think it's important for them to see what the needs are. For me, we saw the need for education, for the disabled. I think environment is very important, so therefore is it as important as poverty alleviation which is also very important. And then there is arts and culture. There is a fun side to arts and culture. You actually reach the grassroots. People can get out of their poverty trap through arts and culture, that's one of the reasons why we support it. We were one of the early supporters of Atelier Mozart which teaches music. We have deliberately not gone into sports. I do not say that it is not important. In fact there are tons to do and people must choose what they do.

Q. Is CSR necessary in the Mauritius business environment and why?

A. Yes, I believe so. It's Mauritius at "deux vitesses". It's Mauritius plugged in the modern world where people live as they do in European and Asian countries and then there is Mauritius of the Third World where there are poor people. Mauritius is to be unified if it does not want to have a social problem. It's very important to lift the people who are living out and bring them into the first world society which we are aspiring to and I think corporations have to help in this and we can't obviously do it on our own. The government has a role. The people have a role as well. You can only help people who want to be helped. You can't help people who don't to be helped.

But I think it is very important to get out of the “Maurice a deux vitesses”. We must have the same speed, the same aspirations. I must tell you that education is the key to it.

Q. One of the criticisms about CSR is that in developing countries particularly, CSR tend to take the form of corporate philanthropy. What are your views on that?

A. What do you mean by corporate philanthropy?

Q. Basically just giving money, after making profits, no matter how you make the profit.

A. We believe in ethics. Each one has his own set of ethics. We have our set of ethics. We would like to think that we make money ethically. As you will understand, money, you use for resources, including human resources. We, on our part, want to go beyond giving money. We want to associate ourselves with people who have projects.

Q. Do you think that CSR impinges, if only a little, on the goal of maximising shareholder value?

A. We actually spend some four million plus if you take the internal pensions many more millions. I don't think that the shareholder is being, in any way done out, of what they should be having. They are making very good returns on the investment they made and if that is to be sustained over time, Mauritius must be a good place to do business which is safe. Obviously, poverty is a very big problem for us business people, and if there is riot in the streets, you remember Kaya? You can see that the border between modern chaos is a relatively thin line. The more people have to lose, the more you get the Kaya-like situation. I believe that as responsible citizens, we have to help.

INTERVIEW G – 14/08/06

Q. Can you tell me about your company- whether it's a private or public one and the nature of the shareholding?

A. It's a private limited company. 100% wholly-owned and we deal with 100% exports.

Q. Does your company consider its main objective to be profit maximisation for the shareholders?

A. No. We consider social responsibly to be the well-being of employees. But there have been various ups and downs recently.

Q. How high does social responsibility rank in your company's list of main objectives?

A. Fairly high up. But the main criteria for us to be able to be socially responsible is that we need to be profitable.

Q. What is your understanding of Corporate Social Responsibility (CSR)?

A. Give back to society what you get.

Q. Does your company engage in CSR? Please give reasons for your answer and, where possible, cite examples.

A. We give to our employees because they are the ones behind the success of the company rather than to charities so as such, we have no schemes. We attach paramount importance to our employees: we operate on a case-by-case basis- if they need help for educational or medical purposes. We are very open towards them. But otherwise we don't engage in CSR per se, i.e. looking at it in terms of a 'portfolio of schemes'.

Q. Ok, moving on to what is commonly referred to as 'internal CSR' questions. Does your company recognise trade unions on behalf of any of your employees?

A. No, but we recognise the principles of collective bargaining.

Q. Does your company encourage trade union membership?

A. No.

Q. Does your company encourage trade union membership?

A. No.

Q. What kind of benefits does your company provide for the employees?

A. We give bonuses linked to attendance and productivity. We also happily accede to any requests made by the employees as long as they are reasonable of course. So, for example, we will give loans on medical grounds and sometimes we even contribute 50 per cent of the costs. We advance loans to expatriates from India, working in the factory.

Q. Does your company have any safety committee in respect of work conditions and equipment?

A. Yes.

Q. Has your company introduced any form of industrial democracy or worker participation within the company?

A. Not as of now in the sense of participating in the decision-making of the company. There are limited spheres in which workers can have their say, for example, productivity and recreation. We do have a general meeting every three months, where presentations and suggestions are made. In any case, there is open and constant dialogue between management and employees.

Q. Does your company operate any disclosure provisions to keep staff informed of the company's policies?

A. As I said, there is constant dialogue with the employees. Notices are also put up regularly to inform them of anything happening. The meetings also provide a good platform for information.

Q. Now, onto more general questions: how would you rate the awareness and practice of CSR in Mauritius?

A. Practice is more than awareness in relation to [the big] companies in MRU. These companies take it seriously but the smaller companies don't practise it on such a large scale.

Q. In your opinion, what should be the main 5 priorities to be pursued by companies in Mauritius as CSR at the moment?

A. Firstly, employee welfare, they are at the core of the company. Employees are the ones who 'make' the company so to speak so their interests are of paramount importance. Secondly, the immediate environment, for instance, here, we are near a temple, so we pay for the gardener to tend the trees, etc. We also take care that no toxic fluids pollute the environment. Thirdly, legitimate government dues, so companies should help with the infrastructure of the country.

Q. Is CSR necessary in the Mauritian business environment? Please give reasons for your answer.

A. MRU is very small. So, yes, there must be CSR. More awareness is required, and then convert that awareness into practice. It's not going to be easy. Companies seem to be waiting to be approached by government when they should take more initiative but then again, a budget is required.

Q. Some commentators have mentioned that CSR in the developing world is mainly seen as corporate philanthropy, what is your view on this?

A. Yes, it is a perception. Which corporation will be benevolent before making profits? They will take the maximum mileage they're going to get. At the moment, companies are simply doing what is required of them to do by law, nothing more.

Q. Do you think a commitment to CSR impinges- even if only a little - upon the goal of maximising shareholder value? Is this justifiable/legitimate?

A. Not at all. Maximising shareholder value goes hand in hand with CSR. If we have a happy set of people, then automatically, there is money for shareholders and stakeholders. I don't think anybody would complain.

INTERVIEW H – 17/08/06

Q. Is your company a private or public company?

A. It is a public company, but in Mauritius it is a branch of [REDACTED].

Q. Does your company consider its main objective to be profit maximisation for its shareholders?

A. Definite that's one of the objectives that the bank has, otherwise we won't be in the business. Not at all cost, I would add.

Q. So how high does social responsibility rank among the main objectives of your company?

A. Very high. It starts from the bottom and goes all the way up. Even if you make fantastic profits, if you do not participate in the community, your performance will not be as complete. Talking specifically about Mauritius, the bank encourages its people to be socially active in their social responsibility role by giving them time off from work to perform some social activity. We have a programme [REDACTED] where staff go to repaint old peoples' homes. The staff's participation is much more important than the bank just throwing away money. If they feel strongly about it, the bank will of course help. In addition to that, the bank undertakes other projects. The latest project [REDACTED] concerned a convent. The staff of [REDACTED] delivered a television and a refrigerator as gifts and spent a day there with the people. Through our risk manager, we also had a donation box [REDACTED] and through these donations, the [REDACTED] was able to buy a refrigerator. Now we have a few conditions about what we provide help for: it has to benefit the community as a whole; it cannot be about a specific community. We believe that our responsibility extends to all segments of the society.

Q. What is your understanding of CSR?

A. The [REDACTED] believes in personal involvement. It starts with you, you feel strongly about certain projects and get involved and the [REDACTED] will facilitate you wherever it can. The [REDACTED]'s focus is on education and environment. These are two sides that [REDACTED] has decided to get heavily involved in. CSR is very close to what a person should feel.

Q. Does your company engage in CSR?

A. [REDACTED] is very much engaged in CSR. In Mauritius, we specifically have two projects that we have a constant relation with. One is SOS Village, and the other is the Mauritian Wildlife Foundation. We have also worked on smaller projects but these are the main projects where we try to be innovative and imaginative. For SOS Village, we offered our customers the chance to donate their points to the organisation, and this was a very great success in Mauritius. We also collaborated with MasterCard in a promotion where customers spent their credit cards and for every rupee spent, there is a certain percentage that is put aside for SOS Village. This involves participation from the staff, the community, and the [REDACTED]. As an organisation, we receive a lot of requests but the resources are not unlimited. So we have to prioritise about what we can and cannot do. We encourage the staff to do what they can, we give them time off to undertake projects.

Q. And do you abide by any certification? Do you have a specific system or follow international monitoring programmes?

A. Not really. We monitor the staff so that we can know what is going on but we don't do any bows and whistles about it.

Q. Does your company recognise trade unions on behalf of your employees?

A. We deal with them and but we have no particular issue. We engage in constructive dialogue and I think that's what best for HR.

Q. Does your company encourage trade union membership?

A. We don't discourage it.

Q. What kind of benefits does your company provide for the employees?

A. I think we provide them with an experience. It's not the same experience that you get in other branches. In Mauritius, if you work for [REDACTED], you are very highly valued by the market, and we are providers of good quality middle and senior management to other companies, [REDACTED]. This is because the company has a very interesting culture that people will learn not only their jobs, [REDACTED]. So we have well-rounded people who are not afraid to take a decision and who know the procedures very well. They also have certain values. They get professional training, in terms of professional, personal and ethical skills. Ethical skills are in fact part of CSR. They also get used to the productivity levels. The CEO has an open door, knows the names of all the staff; there is a lot of personal involvement.

Q. Does your company have a safety committee, and follow certain work condition rules?

A. We have about twenty manuals which cover safety etc. Every employee follows an induction programme about fire, safety, etc. It is a top priority.

Q. Has your company introduced any form of industrial democracy or worker participation in the company?

A. We have HR meetings which are held once a month. We have bi-annual attitude surveys which cover all the staff globally. These are used as feedbacks. We also have departmental meetings, but we do not have a determined model.

Q. Does your company provide any disclosure provisions to inform staff of any policy?

A. We have regular feedbacks to staff. I meet with my management team once a week and the minutes of this meeting are then published to all branches. Also, any news is circulated to all staff. The [REDACTED] is as open as it can be. As a [REDACTED] we have a lot of confidentiality, but we are as clear as we can be and make announcements where required.

Q. How would you rate the awareness and practice of CSR in Mauritius?

A. It depends on the circles you are moving in. It also depends on the age bracket. People seem to be very well aware in circles. There are a lot of organisations working in Mauritius and they seem to be fairly successful but there is a lot which is not really considered as CSR. The Mauritian community mix is such that there is a lot of within-community help that does not get the press of CSR when it actually is a form of CSR.

There are a lot of small donations to different communities from small companies. It depends on your definition of CSR. I would say there is not much awareness.

Q. In your opinion, what would be the five main priorities to be pursued in Mauritius as CSR?

A. One is education. I'm a great believer in everyone having a manual skill. This kind of skill is very important. It is also important to maintain a language advantage. Mauritians are blessed to be fluent in both English and French.

Number two is sports, especially group sports. In Mauritius, sporting activities are not spread across all communities and this is very important as it gets the children off the street. Awareness about HIV among the younger generation is also very important. Animals are relatively well treated in Mauritius according to me, so it is not as pressing.

Q. Is CSR necessary in the Mauritian business environment and why do you think so?

A. Putting international institutions aside, companies are built on image and if you are not involved with community, you will lose market share. So it is important to have CSR as itself, but also to attract customers in the long run. There is change in Mauritius and to be good to your staff, to be good to the community and to customers will become more and more important. Sometimes events dictate CSR, for example, the chikungunya case in Mauritius.

Q. A number of commentators have mentioned that in the developing world, CSR mainly takes the form of corporate philanthropy. What is your view about it?

A. Excluding [REDACTED], there might be a bit of it. The situation is changing. Once the ego goes out, there will be more consideration to what the community needs instead of what organisations want to give. For example, running a school costs much more than building one.

Q. Do you think involvement in CSR infringes, if only a little, on the goal of maximising shareholder value?

A. Not really. We spend more and more and the profit increases every year. Part of the value of the share is to CSR activities. It is not only about profit. A more holistic approach should be taken.

INTERVIEW I -18/08/06

Q. Is your company a private or public company?

A. It's a private company

Q. How many people do you employ?

A. 203 in total

Q. Is your company's main objective profit maximisation for its shareholders?

A. Yes

Q. How high does social responsibility rank in the list of objectives of your company, if it does?

A. It's not very high.

Q. So what is your understanding of corporate social responsibility?

A. Well, for me it is that we have the responsibility to see if we can help the government to help the poor.

Q. And when it comes to your employees?

A. I consider my employees, since they are already earning a living here, indirectly they are participating in some sort of social responsibility towards our country.

Q. Does your company engage in CSR?

A. In a certain way, yes, if you take it from that point.

Q. Can you give some examples?

A. Well, we have invested in our company and we are providing jobs for 200 families. Before, it was 500, in the course of time, it has gone down to 200, because employees, they moved and they changes jobs and then it's difficult for us to find new work because people do not want to work for the textile factories. But we provide jobs for 200 families and we are helping the country to grow. We are participating in the economic life of the country.

Q. Does your company recognise trade unions on behalf of any of your employees?

A. Up to now, the employees have not made any demand and if they want to, there is no problem for us to recognise any trade union.

Q. So, would you encourage trade union membership?

A. We won't encourage, but if they want to, we won't have any objection

Q. What kind of benefits does your company provide to the employees?

A. We give them some medical assistance if they need any specialised assistance or consulting. Apart from that, they get production bonus. They get all the benefits that the law entitles them to.

Q. Does your company have any safety committee in respect of work equipment?

A. Yes, we have regular meetings. We have a Health and Safety Officer who regularly comes for checks.

Q. Is he from the government or private?

A. He is employed by us.

Q. Does your company introduce any form of industrial democracy or worker participation within the company?

A. It depends on what kind of decision. If it concerns management, I discuss with my assistants. If it is something to do with the workers, I will try to talk with them, discuss with them, try to get their feedback.

Q. Does your company operate any form of disclosure provisions that keeps staff informed of the company's policies?

A. Yes, we are quite open. If there are things that they need to know.

Q. How would you go telling them about that?

A. For example, I meet and discuss with the merchandisers, with the administrative staff. In the factory, there are the supervisors. I discuss with them.

Q. And are they happy about this?

A. Yes, they are happy.

Q. How would you rate the awareness and practice of CSR in Mauritius?

A. I think it is quite new. Myself, in my mind, I have always reflected that, OK, to provide jobs for them is already our share of what we can do for our country. And now we are hearing more about it. It is in the newspapers about how companies are becoming more aware about it. But it is mostly the big companies. You have quite some important groups which are helping the poor and financing a lot of projects.

Q. If you have to give an indication of awareness and practice over 100% how would you rate them?

A. Awareness and practice, I would say 15%. But awareness only, I would rate about 70%.

Q. In your opinion, what would be the five main priorities of CSR in Mauritius?

A. Helping the poor, helping to upgrade the environment, helping in the education sector, assist more in the prisons.

Q. How do you think that would work?

A. In social work and helping the government to solve the problems in these areas.

Q. Do you think CSR is necessary in the Mauritius business environment? And why?

A. Yes. Because it is a sector which has the means to do something.

Q. And do you think they have to work with government?

A. Yes, I think they have to.

Q. Do you think a commitment to CSR impinges, even a little, on the goal of maximising shareholder value?

A. No. I don't think so. It should form part of the policy, it should form part of the purpose of the company. Apart from making profits, there should be a share to help the country to improve.

INTERVIEW J – 22/08/06

Q. Is your company a private or public company?

A. The company is private. We are on the secondary market.

Q. Does your company consider that its main objective is profit maximisation for its shareholders?

A. I think that shareholders have put money in the company and they have to get the maximum out of their investment. But in practice it is different. Before we come to that end, to that bottom line, there is a long way. And this means that you must have a good company, with a good work environment, where employees are content. We have been very lucky to start with only 20 employees and we have learnt the business by participating. This has been a wonderful experience and we now have 8 000 people. The very essence of our business today is people. It's only when you treat your people well that business goes well. Doing business is not the bottom line for shareholders. It is partnership today, long term trust, ethics to customers, etc. We have to treat all our suppliers and customers in the same way. At the end of the day, there are a lot of obligations like good relations and transparency, which make the company a good company and that is what earns profits.

Q. How high does corporate social responsibility rank on the list of the objectives of your company?

A. We can have books and books of compliance and ISO qualifications but the important factor is to put it in practice. We are in a trade which is very highly criticised throughout the world with issues like child labour and working hours. The most highly criticised is Asia, but in Mauritius, it is not a big issue. Along the year we are subject to social audits and we have to adhere to the norms and cascade down the social responsibility to suppliers. After many years, we have drafted our own social responsibility programme. Partnerships are reviewed according to these social audits. The textile sector is export oriented and it is one of the most highly regulated sectors in Mauritius.

Q. So what is your understanding of corporate social responsibility?

A. It is how you manage the business. The main issues are corruption, dirty money, and ill-treating people (hire and fire). It is also the relationship between employees and managers. There is also the issue of pollution. CSR encompasses us not to affect other parties adversely.

Q. Does your company engage in corporate social responsibility?

A. As far as employees are concerned, they are treated as partners. People are not unionised because they don't feel the need to be unionised. In an occasion, more than 95% of employees in a certain department chose not to be unionised. I think that the company is properly managed. I do not believe in personal managers. What we have been doing since our inception is that they have to be their own personal manager. They have to help each other to overcome their problems. I do not think having this middle man is an effective way of managing people.

Q. Why do you think there is a need for you to be socially responsible?

A. We have a minimum that we have to pay for the workers and we are paying above that minimum. We provide transport to and from the working place and we see to it that all our employees work in decent conditions. We have tried as far as possible to provide exceptional working conditions for the workers first and then for management. We have ensured an ergonomic environment by introducing conveyors. Every single operator has got a chair. We have provided tiles everywhere. Today, we cannot monetise all our investments but we have an exceptional place of work and it pays off. I think that first and foremost, the working environment should be good. There should be team spirit and belongingness. We have had ups and downs, for example, we once had a big fire. The resilience of the company is very important in these situations and it is the people who build this resilience.

Q. Does your company have any safety committee in respect of work conditions and equipment?

A. We have full time and part time health and safety officers. Safety is the most important factor, though it is tricky. For example, in the cutting section, we provide stainless steel gloves and we check whether the employees are wearing them or not. They have cost around Rs 35 000. It's good to have a checklist and ensure safety compliance.

Q. Has your company introduced any form of industrial democracy or worker participation within the company?

A. Not really. And I don't know how much it is workable. Every week we have performance meetings for all business units where we assess how well they have been doing and their respective profits are attributed to them. A fund is also set up where a share of profits is deposited and employees can claim the money at retirement. It is a kind of pension fund with an appointed fund manager.

Q. Does your company operate any disclosure provision to keep staff informed of what is happening?

A. We have a permanent communication wave. We have journals, magazines and notice boards. We have also instituted a morning meeting where we have a group of at least twenty people at all levels. There will be a complete review of yesterday's performance but also an assessment of expectations. We cascade down all information, even strategic decisions, during these meetings. Every employee at every level is aware of strategic plans. We give a brief of what we are doing to everyone concerned. The more you inform the people, the better the understanding people will have. We have to share both the good information and the bad information.

Q. How would you rate the awareness level of corporate social responsibility in Mauritius?

A. Since the start of the Independent Commission against Corruption (ICAC), there is much more awareness and incentives to adhere to social responsibility. Now, we are much more open to the outside world. At least once a year, we are visited by specialists concerning CSR.

Q. In your opinion what should be the 5 priorities to be followed by companies in Mauritius as CSR?

A. We have to continue on an awareness programme and make social responsibility higher on our agenda. The issue of corporate governance should be cascaded down to everyone. Operators should be aware of their social responsibility; they should be sensitised about their responsibility. This is what I mean by cascading. An example is pollution. The way we treat people is also very important and we have to be more direct in our style of management. In Mauritius, the only resource we have is people and we have to make the most of this resource.

Q. Is CSR necessary in the Mauritius business environment?

A. Absolutely. Compliance to norms builds an image and this is very important. It is not a choice and we have to comply at a very high level.

Q. One of the criticisms commonly made is that CSR in developing countries is a sort of philanthropy. Do you agree?

A. Yes and no. Every company has to participate in the environment where it is found. It should help out by giving donations, helping schools, etc. However, it is not well organised and some companies give money only to please people. But they are not well organised. There should be more control. They are not necessarily achieving the type of help that is required. With time, Mauritian companies will be much more generous. For example, there is a company in Germany, Montfort, which has set up an investment trust to help out schools and other organisations in its immediate environment and it has done a wonderful job.

Q. Do you think that commitment to CSR impinges, even if only a little, upon the goal of maximising shareholder value?

A. I don't think so. I think good corporate governance causes things to be much more transparent and there will be less confusion in the business. Good corporate governance will protect everyone.

INTERVIEW K – 22/08/06

Q. Is your company a private or public company?

A. It's a private company

Q. What is the nature of the shareholding? Is it 100% Mauritian?

A. [REDACTED] n'est pas une seule compagnie. Ce sont trois groupes avec trois conseils d'administration. Il y a [REDACTED]
[REDACTED] L'actionnariat est 100% mauricien dans les trois cas.

Q. Does your company consider its main objective to be profit maximisation for its shareholders?

A. Bien sûr. Le but de toute entreprise privée est de créer des profits, mais avec le respect de nombreuses valeurs.

Q. How high does social responsibility rank in your company's objectives?

A. C'est très important avec une histoire de soutien d'intégration sociale qui débute avec un peu l'histoire du groupe et qui commence avec l'industrie sucrière avec [REDACTED]
[REDACTED]. Dans le secteur sucre, il y a eu toujours l'habitude de welfare, de PR activities etc, qui sont très traditionnelles à ce secteur, de soutien aux villages des alentours, des projets sociaux. Ça a évolué avec tout un style et aujourd'hui il y a une façon plus corporate de fonctionner puisque, comme les clusters cotisent dans une fondation, [REDACTED] où chacun continue à faire ce qu'il veut mais le gros du travail de soutien est sous la fondation. C'est une fondation principalement basé sur le sponsoring social c.a.dire le soutien financier aux activités des ONG, des groupes, des forces vives. La fondation ne finance pas les building costs, mais plutôt les running expenses des ONG pour les permettre de fonctionner au day to day. C'est la spécialité de [REDACTED] et elle œuvre dans les domaines assez variés comme la lutte contre la pauvreté, l'éducation, la formation, le handicap, la santé.

Par ailleurs, on a un budget de sponsoring pour le sport, pour la culture, pour l'environnement. Maintenant on a des actions qui sont un peu plus épisodiques, plus spécifiques, ça peut être un coup de cœur, ça peut être un besoin très précis. Par exemple je vous donne deux exemples de ce qui se passe aujourd'hui. Il y a au niveau environnement, une très grosse action qui se fait par le groupe [REDACTED] au niveau de la sauvegarde du Pink pigeon à Maurice. C'est un budget assez important, Rs 3.5 sur trois ans pour financer les activités de la Mauritian Wildlife pour le monitoring, le suivi et la reproduction du Pink Pigeon à Maurice. Ce travail est un exemple mondial de la sauvegarde des espèces en danger, un travail de la Wild Life qui est un travail exemplaire puisqu'il ne restait que 7 oiseaux à Maurice et le fait de se trouver aujourd'hui avec plusieurs centaines est un travail assez extraordinaire. Donc il faut continuer à financer les activités comme ça. C'est un très gros financement en fait pour rester précis.

Par ailleurs, on a actuellement un très gros projet de la Wildlife au niveau de la Vallée de Ferney qui sont les terres qui nous appartiennent. La vallée de Ferney a été également un sujet qui a intéressé beaucoup de personnes à cause du projet d'autoroute. Maintenant que le projet d'autoroute a été cancelled, il y a beaucoup

d'attente de la part de visiteurs à Maurice comme à l'étranger pour visiter la vallée et la forêt. Donc on va dépenser encore peut être R 15 millions pour la réhabilitation de la forêt et la réintroduction dans la forêt de plusieurs espèces endémiques d'oiseaux, pas seulement le pink pigeon mais aussi le merle cuisinier, le cateau vert, le coq de bois, toutes les espèces qui avaient quitté la forêt. C'est leur habitat naturel, les forêts endémiques de Maurice, donc on a décidé de financer entièrement l'introduction de ces oiseaux dans la vallée et la réhabilitation de la forêt c.-à-d. enlever toutes les espèces exotiques qui ont envahi la forêt. Donc il faut enlever et couper tous les espèces qui ne sont pas endémiques. C'est un travail très long terme qui sera un ongoing process. On s'occupe du côté du financement. Le partenariat se fait avec le Wildlife, les ONGs, le gouvernement, le département des Bois et Forêts, le ministère de l'Agriculture. Nous, on apporte le financement, le plus difficile à trouver. Il suffit de demander à la Wildlife les difficultés qu'ils ont tous les ans de trouver le financement. A l'étranger, il y a beaucoup de financiers qui souhaitent responsabiliser les entreprises mauriciennes. Ils ne veulent pas financer à 100% pour que l'ONG mauricien ne dépende pas à 100% sur l'étranger.

Ils financent à 50% et c'est à vous de trouver le reste. Ça responsabilise beaucoup plus les ONG mauriciens vis à vis des organisations internationales sur la biodiversité. Le modèle de la Wildlife est un bon exemple et c'est quelque chose qui nous tient à cœur.

Un autre exemple est lié à la création d'une activité, par exemple. le projet [REDACTED], qui est un projet IRS, développement de villas et d'un hôtel, [REDACTED]. C'est un peu un des prérogatives des projets IRS à Maurice d'avoir un projet intégré. C'est faire en sorte que le développement de la richesse que le développement des villas ait une répercussion socio économique sur la zone où le projet est implanté. Il est vrai que c'est une consigne du gouvernement. C'est n'est pas encore finalisé, je crois que le ministre Sithanen devrait le formaliser en termes de donation mais nous, on est allé de l'avant et la première ambition d'[REDACTED] c'est d'être un créateur d'emplois surtout dans la région sud-est où il y a des poches de pauvreté, beaucoup de chômage parce qu'ils sont très éloignés des zones industrielles de Maurice. Il n'est pas obligatoire, mais quasi obligatoire de prendre des gens de la région et de les former. On a créé le [REDACTED] qui va rendre la population qui est autour [REDACTED] employable. Parce que quand [REDACTED] va sortir, il doit y avoir un personnel qualifié au niveau de la qualité qui est top et idem pour les villas qui sont vendus entre 800 000 et 2 millions de dollars. Il faut que ce soit des top quality services. Donc le but c'est également de former les personnes, et ensuite de les employer dans les différentes services [REDACTED].

Q. Est-ce qu'il y a une garantie de les employer?

A. Non, quand on forme quelqu'un, il n'y pas de garantie les employer. Mais si on lancé un cours de formation, il est clair que le but à atteindre est d'employer la personne car on a dépensé de l'argent pour sa formation.

Mais il y a également un volet purement social, par exemple, au niveau de la formation et les contributions sociales parce que c'est aussi une affaire d'état d'esprit aussi. Par exemple, il y a la maîtrise des langues étrangères, l'anglais, le français, et l'alphabétisation parce que même si vous bossez comme jardiner ou bonne, il faut travailler l'alphabétisation. Et puis il y a toute l'intégration sociale. Il y aura la création d'un fonds d'aide qui sera parallèle à la Fondation Nouveau Regard spécialement pour [REDACTED]. Le slogan qu'on a donné à [REDACTED] c'est [REDACTED].

■. C'est parce que ■, très isolé en terme de développement porte un peu cette région en termes développement d'infrastructure. Il y aura donc une amélioration de l'environnement, la création de crèches pour permettre aux femmes de travailler parce qu'il y a un gros problème de jeunes mères de 18 -20 ans qui ne sont même pas enregistrées comme chômeuses. Elles ne sont même pas demandeuses d'emploi mais quand on parle avec elles, elles auraient aimé travailler. Donc la création des crèches va permettre à ces jeunes mères de travailler.

Il y a aussi la réhabilitation du lagon, l'environnement, la construction de routes, la sécurité, la création de dispensaires. ■ va apporter beaucoup de ressources à l'amélioration globale du niveau de vie entre Trou D'eau Douce, Bel Air, Deux Frères et Quatre Sœurs.

Q. Qu'elle est la situation avec les pêcheurs qui disaient qu'on a tout pris, ils ne peuvent pêcher dans le lagon et tout ça?

A. Par rapport aux pêcheurs, notre position était très claire, et c'est d'ailleurs celle du gouvernement. Les questions d'ordre écologique ou environnemental, on les discute avec les représentants du ministère de l'Environnement. Le ministère de l'Environnement est l'institution de tutelle qui vient garantir qu'il n'y pas de problème, qu'il n'y a pas d'impact négatif et que, s'il y impact, qu'il soit corrigé, les travaux soient modifiés ou qu'il y ait des mitigating measures. Par exemple, quand on doit enlever quelques mangroves, on prend l'engagement de replanter le double dans d'autres endroits. La question est travaillée avec le ministère de l'Environnement. La question des pêcheurs est beaucoup plus compliquée. Il y a une tradition à Maurice de demander des compensations où on utilise le prétexte écologique pour obtenir des compensations un peu facile. Nous, notre choix était de reconnaître que le secteur de la pêche artisanale vit un peu une mort lente et qu'il faut comprendre un peu la motivation des pêcheurs parce que ce sont des gens qui vivent dans des situations extrêmement difficiles. Mais sans tomber dans la compensation qui, selon nous, n'est pas justifié. Une compensation est justifiée s'il y a litige et les pêcheurs n'ont jamais été capables de prouver le moindre litige mais par contre, nous nous sommes venus de l'avant avec des propositions sociales. On a soumis des propositions au ministère de l'Agriculture qui supervisait la discussion entre les pêcheurs et ■. On est venu proposer un grand nombre de mesures sociales, pour les pêcheurs, les enfants des pêcheurs, pour le lagon, pour l'aide à la pêche hauturière, pour différentes choses pour permettre aux pêcheurs, soit de se recycler soit d'avoir une assistance financière. On a finalement créé un fonds qui est le ■ qui était à Rs 5 millions et après discussion, a passé à Rs 6 millions. C'est un fond d'assistance aux pêcheurs pour les aider dans l'acquisition de matériel de pêche, des bateaux, l'achat des moteurs etc. Et en discutant avec eux, on a élargi ça à toutes les dépenses courantes du pêcheur c- a -d des dépenses de la famille, l'achat d'électroménager, la construction de maisons. Il y avait des pêcheurs qui n'avaient pas de bateau et qui travaillaient sur des bateaux appartenant à d'autres personnes. Il y avait peu de dépenses de ce type là, mais il y avait d'autres besoins chez eux dans leur quotidien, donc on a décidé d'élargir la destination du fonds. Donc c'est plus une action sociale qu'une compensation qu'on a voulu faire.

Q. What is your understanding of corporate social responsibility?

A. Pour nous c'est définitivement une question de lien intrinsèque avec une société, c- a- d que ■ a la particularité d'être une société vraiment mauricienne. Et qui a accompagné le développement de Maurice. C'est une société qui est sorti du sucre qui

est un secteur qui a une histoire, qui a une particularité pour accompagner le développement à Maurice. Par exemple, on a été le précurseur du secteur textile à Maurice dans les années 70. Grâce à ça, il y a eu création d'emploi, création de richesse, nouveau pôle de vie etc. Ensuite c'était l'investissement au niveau du secteur touristique. On est aussi le précurseur au niveau de l'IRS, on est également au niveau des secteurs BPO, on le devient au niveau de equity investment au niveau de l'Afrique. On est donc le promoteur du développement à Maurice et on a une sorte de responsabilité à Maurice. Donc, définitivement, la première responsabilité c'est l'emploi, c'est vraiment important. [REDACTED] est un groupe qui emploie 22 000 personnes à Maurice et à l'étranger. Donc, c'est une énorme responsabilité en terme de welfare, en terme de condition de travail, en terme de niveau de vie etc et puis, évidemment, en terme de soutien aux activités locales. Je crois qu'on a une obligation que le niveau de développement de [REDACTED] soit partagé non seulement avec ses employés mais aussi avec l'île Maurice entière, avec la société, avec les ONG, avec le gouvernement.

Q. Does your company engage in CSR and why ?

A. Pour prendre l'exemple de la fondation qui est un peu la vitrine même de notre action, la fondation existe depuis 2004. C'est un choix, le choix c'est de professionnaliser notre action. Il y a beaucoup de compagnies qui font du sponsoring mais pas beaucoup de suivi. Ils reçoivent dans leur bureau des gens, signent un chèque pour ne plus être embêté. Notre choix c'est pas du tout le même, D'ailleurs, c'est un choix de se mettre dans le social plutôt que dans le sport ou la culture par exemple. Il y a déjà la particularité de considérer comme prioritaire les questions humanitaires. Ensuite on a décidé de recruter une personne qui est [REDACTED] qui a un full time job, qui fait le suivi avec tous les ONG qui nous contactent. Donc le but de ce travail est différencier les ONG, d'aller vers ces personnes, les aider à formuler leurs demandes, les aider à travailler leurs budgets. Elle peut aider les ONG à préparer les budgets et mettre l'argent là où il faut, C'est un vrai travail de suivi, c'est un travail day to day avec eux. Je crois qu'il n'y pas beaucoup de fondations à Maurice qui font un travail comme ça. Il y a la FED par exemple, il y a Beachcomber, il y a également une fondation qui s'appelle Lagesse. Il y a très peu d'exemples de fondation aussi structurée que ça, qui apporte un soutien permanent aux ONG. Je crois que c'est une très bonne structure. Toutes les compagnies de [REDACTED] cotisent dans ce fonds. Il y a un comité de fonctionnement qui supervise un peu le travail. Tout ce qu'il fait d'autre c'est de répondre à des urgences. Une urgence où a répondu c'est le chikungunya où on a dépensé plus d'un million de roupies dans la région en donnant des produits répulsifs aux habitants. Tout le monde, à travers le district council, ont reçu les produits. On a fait de grosses campagnes de nettoyage aussi. C'est un exemple concret de répondre à une urgence.

Donc il y a une structure, puis il y a des actions ponctuelles comme le chikungunya ou autre chose. On identifie les besoins et on prend notre responsabilité. Ça peut être aussi la formation. Là, avec [REDACTED], il y a le textile également. Il y aura un excellence programme qui va coûter plusieurs dizaines de millions de roupies qui sera fait pour permettre aux employés du bas de l'échelle devenir plus qualifiés. A Maurice bizarrement, malgré le chômage, c'est très dur de trouver des gens qualifiés. Il y a d'autres également qui le font, comme la CMT qui a investi une vingtaine de millions de roupies pour monter des cours avec l'université de Maurice. C'est la même motivation. On veut les embaucher, ceux qui travaillent à Maurice, augmenter le nombre de Mauriciens et diminuer le nombre d'étrangers.

C'est aussi une forme d'engagement social. Dans le secteur textile aussi il y a des compagnies étrangères qui ont eu des gros problèmes. Ils ont mis la clé sous la porte et ils sont partis ailleurs. Toutes les compagnies mauriciennes sont restées et elles ont toutes réussi. C'est une grande satisfaction. En ayant la responsabilité sociale, malgré tout, on peut réussir. Ça c'est extrêmement important. Ça motive et montre que le profit n'est pas forcément opposé à la responsabilité sociale. Au contraire. C'est un effet qui amène la cause.

Q. Does your company recognize trade unions on behalf of any of your employees?

A. Bien sûr.

Q. Does it encourage trade union membership?

A. Je connais très mal cette partie, mais on ne décourage pas.

Q. What kind of benefits does your company give to its employees?

A. Encore une fois, c'est très difficile de dire car chaque compagnie le fait différemment.

Q. Does your company have any safety committee in respect of work conditions and equipment?

A. Ça, il faut le demander à chaque HR manager.

Q. Has your company introduced any form of worker participation or industrial democracy?

A. Ici, notre mode de fonctionner est très horizontale car les managers sont toujours disponibles, mais je ne sais pas trop comment ça fonctionne dans les autres compagnies du secteur industriel ou sucrier. Je pense que c'est un peu différent. En fait, chaque secteur est différent. Chacun a son conseil d'administration, chacun a son CEO. Nous ici, au [REDACTED], nous sommes un secteur de service qui aide les services dans les trois clusters. Mais ils ont une liberté dans leur management, c'est clair.

Q. Does your company operate any disclosure provisions to keep staff informed of the company's policies?

A. Encore une fois, chaque compagnie le fait séparément. C'est un peu la politique de [REDACTED], c'est la décentralisation. On ne veut pas un genre de mastodonte, un head office très lourd. C'est extrêmement décentralisé.

Q. How would you rate the awareness and practice of CSR in Mauritius?

A. Je crois que globalement au niveau de très grosses compagnies, il y a une vraie prise de conscience. Par exemple, des compagnies comme la Barclays, comme la MCB, Beachcomber, ils ont de très grosses actions. Maintenant, je ne sais pas trop au niveau de plus petites compagnies, je ne sais pas quelle est leur niveau de participation, notamment au niveau de leur safety, mais je dirais qu'il y a un énorme besoin. Si on prend quelque chose de très clair, celle de la culture, ou le sport, qui sont un peu les parents pauvres au niveau du gouvernement. En fait, sans les sponsors, il n'y a rien qui se passe. Ils ont une part extrêmement importante dans le développement de ces activités. Oui, il y a une très forte dépendance des entreprises privées dans plusieurs niveaux du développement socio culturelle et environnementale

Q. Et comment se place cette awareness and practice sur une échelle?

A. Je pense qu'au niveau des groupes, [REDACTED] est dans les top cinq compagnies de Maurice. En termes de profits, [REDACTED]. On atteint plusieurs dizaines de millions de roupies en termes de contribution sociale. On doit ajouter la formation qui est de plusieurs dizaines de millions de roupies. Il y a également les choses qu'on fait en interne. Je crois que globalement, en termes de CSR, [REDACTED] est dans le groupe des top ten ou top five.

Q. In your opinion, what should be the five main priorities of CSR for companies in Mauritius?

A. Je crois que c'est d'abord l'emploi, développer l'emploi, encourager le plus grand nombre de Mauriciens à travailler pour les compagnies. Je crois que, deuxièmement, en interne, les employés soient bien payés, bien traités, avoir de bonnes conditions de travail, travailler dans des lieux ergonomiques. Ensuite, je dirais que l'environnement des entreprises est important. Les villages, villes qui entourent les entreprises sont importants. Chacun doit pouvoir améliorer l'environnement, les conditions de vie qui sont autour de soi. Et puis, il y a les enjeux nationaux et internationaux. Il y a des enjeux à tous les niveaux social, environnemental. L'environnement est très important.

Q. Is CSR necessary in the Mauritius business environment and why?

A. Définitivement. Je crois qu'aujourd'hui on ne peut faire autrement. On ne peut pas se terrer dans un tour d'ivoire. Je dirais même que dans beaucoup de pays dans le monde, parce que les CEOs ont été cohérents avec eux-mêmes. Par exemple les produits verts. Il y a des gens à la tête des multinationales, qui ont décidé d'être eco-friendly jusqu'au bout, et sincèrement, jusqu'à donner une partie de leurs profits à des organisations non gouvernementales. Et commercialement ça marche, ça touche les gens de savoir que les compagnies ont une politique de CSR importante. Ça marche par exemple dans le recrutement, pour avoir de meilleures personnes. Des personnes compétentes ont un sentiment d'appartenance au pays. Beaucoup de jeunes cadres, de jeunes managers ont cette ambition et ne veulent pas travailler dans des compagnies qui ont mauvaise réputation et qui sont des exploitants. Au niveau même du recrutement, c'est important. Au niveau des relations et du gouvernement, c'est important. C'est important pour une entreprise de cette taille d'avoir un partenariat avec le gouvernement, de soutenir les autorités gouvernementales dans leur action. C'est la même chose avec les autres leaders d'opinion, les ONGs et les journalistes, Les ONGs et les journalistes sont aujourd'hui les audiences prioritaires des compagnies. On ne peut pas ne pas travailler avec ces gens là aujourd'hui. Une compagnie qui ne le fait pas va avoir des problèmes. Mais avant tout il faut être sincère. Dans beaucoup de compagnies aujourd'hui, on le fait parcequ'on a vraiment envie de le faire. Ça apporte des choses à nous aussi, ça apporte des choses aux employés, ça apporte des choses au pays. C'est un tout, et on a le sentiment de bien être au niveau du management, beaucoup plus que si on était des exploitants, des escrocs, qui n'avaient aucune envie de traiter l'environnement autour d'eux. Je crois qu'aujourd'hui ce sont des choses que les boards comprennent, parce que bien souvent ils sont eux-mêmes des managers dans d'autres compagnies, qui ont eu un passé dans l'opérationnel. Donc, je crois que c'est important et pour nous, parce que nous sommes 100 pour 100 Mauricien, c'est comme ça. Peut être pour une compagnie à capitaux étrangers, c'est peut être plus difficile, car il y a moins de pression. Et puis,

les membres de nos trois bocards ont l'habitude de ces choses et partagent les mêmes valeurs.

Q. A number of commentators have said that CSR, in developing countries particularly, takes the form of corporate philanthropy. They are, in a way giving away money without taking care of how it is used. What are your views on that?

A. Oui, je pense que ça peut arriver, mais ici la façon dont on fonctionne, c'est justement pour éviter ce genre de choses. C'est un peu triste quand ça passe comme ça car effectivement, il peut avoir beaucoup d'abus. La façon dont on fonctionne c'est de faire tout sauf ça. Notre système de fonctionnement, c'est à l'opposé de ça. A [REDACTED], c'est une relation constante avec les village councils, avec les centres communautaires, avec les gens qui y travaillent. Pour vous donner un autre exemple, nous avons été contacté par des gens qui travaillent avec l'Union Européenne, le decentralized programme de l'Union Européenne qui a un budget de Rs 57 millions et qui nous ont demandé de les aider au niveau des ONG, au niveau du networking. Donc, même si c'est quelque chose qui ne nous concerne pas, on a pris la décision d'aider les ONG de profiter de ces fonds. Dans le sud est, on va essayer d'aider les gens à passer la barrière administrative de l'Union Européenne, pour remplir les dossiers etc pour pouvoir bénéficier de cet argent. On est juste comme un genre de médiateur entre les ONG qui sont là et l'Union. Il y a un gap, vous voyez. Il faut remplir les dossiers etc, ce n'est pas tout le monde qui peut le faire. Ce genre de chose montre qu'il y a une vraie relation avec les élus locaux, les centres communautaires. Ces gens là ont une énorme attente. C'est incroyable, l'attente de la population, l'attente des collectivités locales, donc il faut répondre à cette attente là. Quelque part, on a vraiment un sens de responsabilité dans une région comme ça. Dans le textile, dans les Plaines Wilhems, il y a peut être autre chose, mais dans l'est, on se sent vraiment responsables. Si on ne réussit pas à aller avec le projet, ce serait une catastrophe.

Q. Il ya une distinction donc entre les compagnies mauriciennes et les étrangères ?

A. Ça peut être le cas. Il y a des fonds d'investissement dans les compagnies ailleurs qui ne sont pas intéressés a savoir ce que fait la compagnie au niveau social. On sait que ça existe. Mais il ya également des compagnies à 100 pour 100 mauriciennes qui veulent rester dans leur tour d'ivoire. Mais, c'est plus difficile, je crois, car en général, on a un sentiment d'appartenance dans ce pays qui nous responsabilise, mais pour les fonds étrangers, tout est possible. Il ya des fonds étrangers qui sont très responsables et d'autres pas du tout. On ne peut pas généraliser.

Q. Do you think a commitment to CSR infringes, if only a little, on the goal of maximising shareholder value?

A. Non, c'est totalement lié pour moi. Ça permet une meilleure intégration de la compagnie dans la société et si on prend l'exemple pur du textile, aujourd'hui, les grandes marques européennes ou américaines, ils ont une exigence là-dessus. Ils ne vont pas accepter qu'on travaille dans les locaux pourris ou qu'on ne traite pas bien les employés ou qu'on fait travailler des enfants par exemple. Ce sont des choses inacceptables pour des clients comme ça. Economiquement, c'est capital. Je viens de vous dire que, dans le domaine du textile, le client impose qu'on ait des excellentes conditions de travail, que ce soit au niveau économique, dans l'environnement. Donc, c'est lié. Il y a une responsabilité.

INTERVIEW L- 23/08/06

Q. Is your company a private or public company?

A. It's a private company.

Q. Does your company consider its main objective to be profit maximisation for the shareholders?

A. It's not profit-maximisation for shareholders. Our vision, first of all, is to be the global energy company most admired for its people, partnership and performance. So you see, the vision is to be the most admired for three things: people, partnership and performance. So profitability is there but there are two other items as well.

Q. How high does social responsibility rank in your company's list of main objectives?

A. Social responsibility. We are a multinational [REDACTED] company so [REDACTED], so social responsibility is one of our culture. We have got a corporate culture and social responsibility forms part there with our, as we said you know, we want to be, our vision is to be admired for our partnerships as well so partnership means government, customers, stakeholders, authorities, it can be anything surrounding our business. So we want to have partners there and to play a social role as well so it is a vision of the company as well.

Q. What is your understanding of Corporate Social Responsibility (CSR)?

A. Corporate social responsibility? We operate in the world, 180 countries, so social responsibility (SR) is, we are in the [REDACTED] business, it is something that is very vital for generating wealth in the country, so when we talk about SR, we run [REDACTED], there can be incidents, there can be accidents. We serve the customers. When we say SR is we need to play our social role towards the communities where we are, we protect the people, we protect the environment and we take care of all our stakeholders. So this is our SR and also to participate in programmes, we participate in sponsorship, to participate in the well-being, like we have got in other countries, you know, operating in refineries. We sponsor villages, we sponsor towns. So there are our social roles where we are as a corporation.

Q. Which leads us nicely to the next question: does your company engage in CSR? Please give reasons for your answer and, where possible, cite examples.

A. I just give you one example. We are in [REDACTED]. We do [REDACTED] there. When we go into [REDACTED]. When you go to [REDACTED], [REDACTED] so whatever is there has been developed by [REDACTED] you get the hospitals, you get schools, you get loads of infrastructures, you get everything that goes with the development of the town and villages nearby. They form part of the corporation you see. That's just an example of how we engage.

Q. What about in MRU?

A. In MRU, we do mainly. We're not fully... Last year, we have been quite inactive, we have been waiting because we form part of an Africa- Pakistan region, so we are looking at having something which is more regional, so regional initiatives, you see, we have got to make it into regional initiatives because we are a global corporation.

We are not just forming part of one organisation or one group in MRU. So we develop one mainly there. For the past two years, we have been trying to sponsor SOS Village or other environmental things. Now, we are looking at it again to see how we're going to optimise to get the image that [REDACTED] you see, is sponsoring and is very visible so we try to select things, you know, to play our role there.

Q. Does your company recognise trade unions on behalf of any of your employees?

A. Ah, you know, we have got our manual compliance. Our business BCEC, which is Business Code and Ethics Code and according to this, we have got to recognise union rights. So recognising union rights, we have got our programmes, whenever we say, wherever you operate, whichever company you operate, you have to respect local rules. And then, when we talk about trade unions regarding how do you say environment in the office, office environment, it is part of our organisation you know, culture of the organisation to create a well, a friendly which is an incentive towards people working in a good environment, performing better as well and then respect for others, diversity, respect for diversity. This forms part of all this.

Q. Does your company encourage trade union membership?

A. You know we don't ... if you say we encourage, I can't tell you because here our people are not unionised, and we don't tell them not to be unionised. It's up to them to decide. It is just to the people to decide what is in their best interests.

Q. What kind of benefits does your company provide for the employees?

A. What do you mean by the term 'benefits'?

Q. Well, something like medical benefits e.g. apart from salaries of course.

A. Basically, whatever most of the companies ..., we have got our own incentives, how do you say? Benefits for employees, we have to see what's happening locally here- if a company car is needed in certain jobs, then we benchmark and we give the company car. Then we have got our own as well. Sometimes our organisation makes a bigger profit you know so we give a bonus. And then people travel a lot, so travelling on an annual basis.

Q. And does that trickle down at all levels?

A. Yeah, yeah sure.

Q. Does your company have any safety committee in respect of work conditions and equipment?

A. Oh my god. We talk about safety all the time. Right now, we have got someone who came for safety training yesterday for MRU. Safety forms part of our culture. You know there's something that is known as the [REDACTED] culture. The [REDACTED] culture, there is something which is operational excellence. Operational excellence starts with safety, environment, health, you see, so we talk about it everyday. We start all our meetings with a safety moment. We need to talk about our safety moment. If you go anywhere in the office here, you'll see tenets about safety, safety tenets. We are in the [REDACTED] industry and this forms part of our culture as well. We say safety is not optional in the office- someone doing something unsafely we give a first warning, second warning, the person is gone, just on safety issues. This is part of our culture.

Q. Has your company introduced any form of industrial democracy or worker participation within the company?

A. What does it mean?

Q. Well, involving workers in the decision-making processes of the company.

A. No. We have got a Board like all private companies. We don't open it. On the Board, we have got only two directors here and the remaining ones are based elsewhere, in Cape Town.

Q. So you won't say that you confer with employees at all.

A. No, we don't say we don't confer. It's just that we operate according to private company regulations. We go according to local regulations, what we need to do as a private company and in our Boards, that's what we do. Now, there are some companies who may enlarge it to bring, say, people from, say if they got 'comites d'entreprises' and all. In MRU, it's not done definitely. Not in Reunion as well.

Q. Does your company operate any disclosure provisions to keep staff informed of the company's policies?

A. We have got an employee handbook. Whoever joins the company will receive the company handbook. It goes through all the policies of the organisation regarding first, HR. They know exactly how we administer our payroll, they know exactly what their salary bracket is. They know exactly the rights of the organisation. They all go for training, a module training on the [REDACTED] website where they are informed of all their rights of HR. They go through an anti-harassment training. Anti-harassment is, can be against anything, you know, your supervisor. It can be anywhere, anything. You just go through there and you acknowledge it. And whoever, they have got a right just go through a hotline and it goes overseas. It's a very transparent process.

Q. So, if there were any change in policies, how is it communicated?

A. It's communicated immediately.

Q. How?

A. Cascaded through the organisation. They have got a JVC. Once you get it, it is your role just to cascade it to everyone. HR makes it happen or I make it happen. So all the changes in policy are communicated to the employees.

Q. How would you rate the awareness and practice of CSR in Mauritius?

A. Corporate Social Responsibility- maybe the big companies are engaged in it. May be amongst the top 30-40. Definitely. They are socially responsible. Then going down, we need to do more.

Q. So both awareness and practice is as much?

A. I won't say they are aware as we are because we are a multinational. It's enforced on us as well. It's a culture of our organisation. So maybe they are aware at different levels.

Q. And practice?

A. I think so. They try to engage. To what level? You can see when you read the papers the people who are working on it. They try to make it happen more now I believe and over the years, it's improving I believe.

Q. In your opinion, what should be the main 5 priorities to be pursued by companies in Mauritius as CSR at the moment?

A. The top five would be – first of all- for any company you mean?

Q. Yes.

A. I would just look at our organisation here, first, you know we have to protect the people in the environment. This is the first thing because we deal with people. I'm looking at what we are. And this actually impacts on others I believe, if we go to textiles and tourism. This is impacting the environment which is a big thing. I think protecting people first, protecting the environment, then you try to assist in the... you give assistance to 'les organismes vulnérables'. How you engage again? You try to, you know, you can talk about responsibilities towards sponsoring. I'm talking about SOS Village and all this and secondly, participating in programmes like we are, you know in, they can just select one programme, you know where they can work with government, work with other people like motor vehicle safety, which is a big problem in MRU with the number of road accidents we have. So participating in these types of programmes to bring awareness. So it can be divided into two: sponsoring of the 'vulnérables' and secondly, select one programme, it can be environment, it can be anything. In MRU, we can see there are shortcomings to create awareness, so we have to work with government.

Q. So you see it as a partnership?

A. Yes, it's a partnership. It is part of our responsibility.

Q. Anything else?

A. Protecting the environment and protecting the people are two different things. And the third one is sponsoring and the fourth one is creating partnerships to help with problems facing the country- it can be alcohol, it can be motor vehicle safety. It can be anything. We select one and we work with government on it. And the other thing...Different items, like environment, if you look at our terminal, we work with some people to make it 'green', to create green awareness, you see. And again, what we work against is pollution, and ours is pollution, again, protecting the environment. We have got so many programmes here as well, we work with government, we work with other stakeholders, we work with the Coast Guard.

Q. You mean here?

A. Yes, yes, in MRU. We have got an Emergency Response Plan. This is a type of partnership. This is our SR. Emergency Response Plan for the country where we help link up with the government- emergency response plan in case of pollution inland or at sea. It can be that we are not responsible, it can be a tanker passing by and causes pollution, we will assist. So this is part of our SR.

Q. Is CSR necessary in the Mauritian business environment? Please give reasons for your answer.

A. If it is necessary? Yes. Let's forget about our corporation, for us, it is very obvious. Maybe if we look at other companies. As we said, with profits, you see, what you do with it, how you do it. In an organisation, it's not only you achieve the results but how you achieve it. Not only making profits but how? In what way you achieve it? You have to achieve it in a way where in the country you are operating, you respect the regulations, you respect the law, you respect the people, you protect the people, you protect the environment, you create awareness, you work with the authorities. It's not

only our organisation, it can be any organisation in MRU because finally, when you are going to ask for business, I think the people have to say, what do you do apart from business? How are you involved? How do you...not just make profits but how do you protect the people of MRU as well? For us, it forms part of our culture. That's where maybe I think it's good for the others as well and we will create a better... finally, everyone is aware of CSR and engaging in CSR. What you will see is MRU where the environment, can be the business environment, it is the environment itself, you find it better because people will participate in making their country safer, cleaner, respecting the people. So everything forms part of that big environment where we want to be you know. A better MRU.

Q. Some commentators have mentioned that CSR in the developing world is mainly seen as corporate philanthropy, what is your view on this?

A. If you talk about mainly multinationals and the big companies, I don't think it can apply because in multinationals, it forms part of the culture, it forms part of the way we operate. So I think there, it just does not apply. Because as Country Chairman for MRU, I'm not paid to do that. The vision and culture are different. And I've got to respect it. I can't do it, you see. All multinationals in MRU or elsewhere in Third World countries, they just behave like us. So they have got a social aspect. They won't just give a cheque and see what's not happening. The big companies in MRU, I think, they have understood as well and in other countries, in Africa, as I go mainly to Africa, they do the same again. They don't just make profits for the sake of making profits because they have also developed a culture.

Q. So you don't think they are just giving money away. They are engaged in more than that?

A. They are all engaging in more. But maybe not of course all companies would do it but according to me, multinationals and big companies operating in the Third World, they have got a system of corporate compliance. They have got their own culture and their own culture includes CSR there. Now, if you go to smaller companies, definitely, it's a different story. We need to create more awareness there.

Q. Do you think a commitment to CSR impinges- even if only a little- upon the goal of maximising shareholder value? Is this justifiable/legitimate?

A. Impinges, what do you mean? ...No, definitely not. In our culture actually, when we do our plan, it is already there. And actually, we have got our own PR, it is managed from Cape Town. So just to tell you that the people are engaged really, PR, government affairs, public advertising and all these, it is just there. You have got a budget and you have got to spend it. You need to spend it. So, you see, it's not maximising profits, it's not cutting costs. And this forms part of this, they want us to be physical.

Q. So does this mean therefore it's a PR exercise?

A. PR exercise as well, sure.

Q. So you think it's just a PR exercise or PR but at the same time, it does help the community? Because some critics argue that's it's all about making the share prices of the company go up.

A. No, no, no. Actually, it's not just PR. You know, we try to engage, we want to be visible, we want to show what we are doing, we want to show our concern, our care

and this is our vision again. It's not only PR because PR is very easy you know. That's why I'm saying, we select programmes like SOS Village. Maybe people don't know what we are doing sometimes. Of course, we try to get PR out of there, we try to be visible, maybe in newspapers but that's not all that matters.

INTERVIEW M –23/08/06

Q. Firstly, can you tell me a bit about your company?

A. It is a 100% private company owned by [REDACTED]. We have 135 employees.

Q. Does your company consider its main objective to be profit maximisation for the shareholders?

A. Not necessarily. We are here only as a production organisation, meaning that we are supplied all our raw materials from Italy, from our parent company. We just produce the finished goods here, and we send them back partly finished because we don't have the capacity to completely finish the products here. They have the capacity and technology also over there. So they can allow themselves to re-import it in Italy, finish it over there and make all the distribution. That is why it is not necessary for us to completely profit-maximise. We cannot say also that we allow ourselves to not be profitable but it's not important. Profits are not important. More efficiency than profitability.

Q. How high does social responsibility rank in your company's list of main objectives?

A. From 1 to 5?

Q. OK, let's say yes.

A. OK, it could be 1. 1 meaning less important.

Q. Now, what is your understanding of CSR?

A. CSR, personally, what we experience it here in Mauritius (MRU) is something that is visible to the inhabitants of the local environment where the companies and also by future investors and responsible organisations meaning government agencies etc. So what I would say is some kind of help towards society. This is how it is perceived here. Help towards society. It is not necessarily like big projects, can be small projects of Rs 500-1000 or it can be like big organisations here in MRU have done about Rs 1-2 million because their size allows them to be able to contribute that much amount. Here it's not necessarily obligatory for organisations to be part of a CSR initiative but sometimes, in certain parts of the country, it is well seen by the inhabitants and also some government agencies that organisations do participate or do initiate some CSR responsibility (sic).

Q. Does your company engage in CSR?

A. Yes. As we have previously discussed (off the record), CSR for us can be internal and also external. We are a medium-sized company so we don't have that much money or resources to engage in external CSR. But since we are here in 1989, more than 17 years now, we have been engaged in internal CSR towards our employees, e.g. some loans given for buying spectacles, for weddings etc, some help towards health costs. Health costs is not regulatory here in MRU, to reimburse health costs but we do make some re-investments for some cases. Just recently, there was a supervisor who had a near heart stroke, so he was at home mostly for one month, we paid all his wages, almost all his health costs, we took him ourselves to the doctor's by taxi etc. So we reimbursed for quite some months all his personal expenses, almost complete

salary, not full and most of the health costs also- medical fees. So these, as I can say, form part of our CSR initiative but for others, this is mostly internal. This is not visible to anybody. Our external CSR, I can say, almost does not exist because we don't have such pressure to do it. There are also no regulations that require us to do it.

Q. So if there were, then you would do it. Because you'd be forced to.

A. Yes, our motto here is to be always compliant. Since I'm here at a post of responsibility, since 1995, I joined in 1994, my responsibility started in 1995 and after 1997, we have seen some major changes in the company at the most top level, meaning that almost every year, we were changing managing directors. This had some impact in the administration of the company, that is why I took it upon myself to ensure that the company is always compliant vis-à-vis regulatory bodies in MRU. So even if there were some transition period between MDs, I was taking care that everything was done properly, as per regulations and this still stands today, meaning that we are always compliant. We should be always compliant. Even if I'm not here physically, instructions are given to be always compliant. So any regulations as per CSR activities or initiatives would be complied with. Even if there were implications about money or resources in use, we would participate.

Q. You've mentioned engaging in internal CSR, what would be your main reasons for doing this?

A. Yes, because like I said, in CSR, the social part is in the middle, so we consider our employees to be central to our organisation. Without them, there is no organisation. Without them, we are nothing, so our internal CSR initiative is to help motivate them and also tell them that we are caring but not more. I don't say there is a limit to everything but we are here, we should also respect some engagements taken towards our parent company. Going above a certain limit even if there is no limit would be to say that we are uncaring towards our parent company so there is again this balance to be made towards the parent company and the employees. The balance should be made. That is why I said the social part is central, the employees are the procrum so we should take care of them but until it is balanced and counter-balanced. Everybody is satisfied, the balance is made. If someone is not satisfied, we should re-balance it so that the other party is satisfied, neither some other party is unsatisfied. It is a delicate matter, which management should take care of.

Q. OK, the next few questions relate to internal CSR, if you want... Does your company recognise trade unions on behalf of any of your employees?

A. Yes, it is the PEEU, the Private Enterprises Employees Union.

Q. Does your company encourage trade union membership?

A. No, we did not encourage them but at a certain point as I said, there was some transition between Managing Directors, there happened to be some imbalance between some information going to and from employees and management. I put it very diplomatically. The matter was more serious than that. Anyway, the employees found someone who would be in a better position to relate with management, to make the 'liaison'.

Q. What kind of benefits does your company provide for the employees?

A. It depends on the cases. It is on a case-by-case basis. We do not say that we link benefits with the performance of the company. By benefits, this is personal benefit,

personal to the employees, not related to work. Many organisations are tempted to link these kinds of outside benefits to the productivity. They are good performers so they get substantial outside benefits, they are not good performers, they don't get any. We do not say we act like this but sometimes there is a need to, just to make the balance, just to give some message that we cannot do everything for everybody. There is some limit so we go case by case. We see exactly the needs, we see effectively if there is cooperation from the other side, not saying good performance or bad performance but cooperation, then we can go along for any kinds of benefits, not car benefits however. (Laughs)

Q. Does your company have any safety committee in respect of work conditions and equipment?

A. Yes. This is the regulation here. But even then, even if there were no health and safety regulations, we do indeed have maintenance people who, I will say, ensure everyday that the organisation, the structure and resources are well maintained. Even without the health and safety directives.

Q. Has your company introduced any form of industrial democracy or worker participation within the company?

A. Apart from the trade union, we can say that there is some informal communication with management. There are supervisors but there are no team leaders appropriately here, team leader meaning employees choosing some section leader for the sake of going to management for their demands, communiqués they want to share...but most of their needs for sharing information are done through their supervisors, who have direct access to management to share information, etc. Any kind of information, be it personal or work-related. Management will then decide as per the situation what to do.

Q. Does your company operate any disclosure provisions to keep staff informed of the company's policies?

A. It can be both informal and formal. Formal through some direct meetings with supervisors and employees. Formal can be also through information printed and posted on the information board to all sections. The informal is by word of mouth. We want to share something but we don't want to print it sometimes because it is not well seen by regulatory bodies that some companies are doing certain things. This is not going against the regulations but just some internal rules, internal procedures, what I call standing orders. We do need some standing orders inside an organisation, just to put everything in place, everything working properly. Everybody has some rules and regulations to follow. So this is internal and we choose some informal means through word of mouth also to share those kinds of information. So there is the informal part and the formal part. The communication can be also formal or informal but the door is open right from opening time in the morning to closing time in the afternoon for anybody to come and share some views or share some needs.

Q. So management is very accessible.

A. Yes.

Q. Now onto more general questions about CSR. How would you rate the awareness and practice of CSR in Mauritius?

A. Awareness, very little but the awareness also can be formal and informal. Formal meaning companies publishing their information in the newspaper, on radio, television, some press conferences also. Formal in the sense it is visible also. So we make all the village get together at some place so this is the visible part again. Informal meaning through word of mouth. Many employees saying to future employees that 'in my organisation, they do like this, they take me to picnics etc'. It is informal, it is not visible, nobody is aware. I would say that the informal part meaning the word of mouth works better than the visible part because the people who work in the textile industry are not very much concerned about news on radio or on television because some do not understand properly the language, technical language. When we talk about CSR, it's very technical, complex, high-level language. Usually, just to please, so to please higher-level people, who have the decision-making or opinion-making ability, so just to please them, we use some technical language. Is your initiative driven for the lower-level people, the employees, the environment, the inhabitants of the environment or just to please the other agencies, organisations? It depends but if you are doing CSR to attract employees, you should use lower-level language, it should be less technical, more down to earth. If you are doing this to please investors, OK for technical language, OK for higher-level information. But here, in MRU, we mostly use some technical, complex information to share CSR information. The informal part is by word of mouth to attract employees etc but as far as I can see, the rest is very complex.

Q. What about the practice of CSR then?

A. The practice is more and more professional but still it depends on who is the audience, who you want to please because here in MRU, CSR is for pleasing only, not to attract.

Q. If you were to put on a scale of 1-5, how would you rate awareness and practice?

A. That also for lower-level people, the common people, it will be a 2 but it would be for higher-level people who know what CSR is then it will be 4 because they understand the technical language, they understand what kind of information they are sharing but the destination of the message, the target audience, they don't understand that kind of information, it should be less technical, less complex, more social because there is a social part inside CSR, to come back to it again. So you should be more social, less complex.

Q. In your opinion, what should be the main 5 priorities to be pursued by companies in Mauritius as CSR at the moment?

A. OK, we are talking about textile companies which are mostly preoccupied now about their survival. They would not be preoccupied about any CSR initiatives, just at present where they are now in the cycle of the industry. At the start of the cycle, like we said before, there were such initiatives by themselves not only to please but also to attract employees, to please the society more. They were doing that by themselves. Now, for example, the government would like to see textile companies to do right, they would have to put some regulations of course. So there is less scope now at the part of the cycle we are in, we are in the 'down' cycle now, China and India are growing, we are in the 'down' point.

Q. Is CSR necessary in the Mauritian business environment? Please give reasons for your answer.

A. Yes and no. Yes, to attract employees because CSR, from my point of view, is to be attractive to employees and to be attractive to investors also because I need employees to run the machines, I need investors for putting capital for growing the company. So I need growth. So I need the visible part and the invisible part. I need the internal and external CSR but I also need to please both sides. So I would say that it is driven by the type of management. The more level the management has, the more educated and the more aware they are of what's happening in the management field, the more they will know about doing such initiatives. I feel like this because when you are more educated in your management field, you are better able to derive profits, to bring the company to more efficiency. The more efficient, the more profitable. The more profitable you are able to bring about any kind of initiative be it CSR or other because now we are talking about corporate social responsibility, now we are also talking about environmental responsibility. This is another sector we should be talking about also. If we are talking only about social I say yes, but it depends also on management. People are here to work but if you, as manager, are not able to make them work efficiently, they won't be able to work efficiently by themselves. Leadership, management type drives CSR. It is related for me. But now we are seeing better managers in MRU, for example, myself, I am in my second year of MBA so I can say that I have been aware of other things happening in the academic field of management and I am still learning but I am better able to see some things that are not working properly, how they should be working and how to make them work properly or even try to make it work properly with better tools, better resources etc. So, leadership, better management, knowledge will drive more efficiency, more profitability and allow resources for better CSR initiatives. So I think it is linked because we have seen most of the companies, which are quite involved in CSR initiatives in MRU are the most efficient, most productive companies also. Why they are most productive? It's not because only of their employees but also their leadership and management. Management has been able to able to derive most efficiency from their resources, their organisation, better profitability and better CSR initiatives also.

Q. You mentioned that it's also not necessary. So, why not?

A. No because it depends on the vision of the company. If we are here only to make money, so I don't need to please anybody, just to please myself.

Q. But do you think nowadays you can get away with saying that 'we're here to make money and that's it'?

A. Yes because we are in the 'down' cycle so there is less option now for driving maximum profitability, maximum efficiency, costs are increasing, sometimes we do not get enough raw materials etc, so we have less efficiency, less profitability. So most of the textile organisations are having difficulties so they are concentrating more on survival so now they don't need to concentrate on CSR but like I said, some organisations which have better management, so they are able to continue their CSR initiatives. So depends on management. So no for those who are not able to cope even if there is better management but they are not able to cope. There won't be any CSR initiatives from their part but others who think their vision is to stay until the next possible crisis, they are here to fight, they are bringing in better managers so they are providing more training to employees to derive more efficiency, more profitability and they can still continue their CSR initiatives.

Q. So how do you see your company then?

A. We are in the 'down' part so we are concentrating on survival.

Q. Do you think a commitment to CSR impinges- even if only a little - upon the goal of maximising shareholder value?

A. No. Management has responsibility to provide shareholders some benefits. But if on top of the percentage, let's say they are supposed to share with shareholders, they are able to get some part also for some initiatives because they are managers of the companies, they will know the implications of CSR on their activities. If it's going to boost up their activities, if it is going to sustain their activities even if there are problems or sometimes go against. So if they see that in their situation, in their environment, they need CSR initiatives even if shareholders are asking for let's say 10% and they provide 7%, they can always say we are going to give 1% for CSR initiatives because this is going to enable us to sustain our activities.

Q. Some commentators have mentioned that CSR in the developing world is mainly seen as corporate philanthropy, what is your view on this?

A. That is how it was at first when the textile industry was in the 'up' cycle. So let's say there was enough money, enough profitability to take some share for the employees, for the environment, the inhabitants in the local environment of the company. Now we are seeing that when we arrive at the level of the cycle, MRU had some labour problems. There was full employment everywhere but they had to 'fight' for employees, everyone 'stealing' employees from every factory, even we did it. We tried to do it sometimes and we succeeded and at other times, we didn't, it depends on how much you are able to finance. So then there was some war going on for labour, for employees. So many pushed up CSR initiatives, benefits to attract- this worked properly for many employers and companies succeeded in surviving. So this is sometimes a means for attracting employees but [only if the circumstances demand it]. So we can see it now: before it was philanthropy, we did not expect anything because there was sufficient amount of money to pay but then there was a need to survive and succeed to stay and maintain the growth. So they use the same philosophy to attract. Maybe they increase the quantity, the period they were doing such activities. Before it was once, then twice, every month even, for example every month go on a picnic. So, they use it as a means to attract employees. Then there was the 'down' cycle. During the 'down' cycle, profits were maximised, there was a decrease in CSR initiatives but at the same time, there was a need to maintain them because people saw textile companies on a negative side meaning like in 2003-2004, there were many closures of factories in MRU so people viewed textile companies as a good investment or not proper to work over there. So, CSR initiatives continued but at a lower scale. Again to continue attracting new employees etc and also to please the government because the government was going towards the companies, telling them not to close their factories etc. Some organisations continued with their CSR initiatives to give them a good image also. It can be said that philanthropy continued for some. During certain phases, it changed appearance, it became a means to attract because the salary was not enough maybe but every month, going on a picnic was attractive, maybe some free medical expenses, which is attractive. Transport, this is not CSR but in MRU, transport is a big problem in getting to factories. It's not social but it can be attractive. It is costly also. All this package became part of some initiative but incorporated with others also to attract employees. Philanthropy continued but at one moment, it changed appearance, to become some means to

attract. Now that we are going in the 'down' cycle again, so philanthropy will be here until it dies out. Nobody will be or want to continue spending some money, maybe the employers personally will want to go on doing philanthropy but that will not be on the part of the organisation so it depends on the cycle of the company. CSR can be used as a tool, we've witnessed it in MRU, but the appearance has changed.

INTERVIEW N – 24/08/06

'Strengthening the NGO Sector in Mauritius' was a joint project between the UNDP and MACOSS. This interview was conducted at the very beginning of the project.

Q. Can you tell me a bit more about this project?

A. In the context of this project, we are trying to focus on the involvement of the private sector in the development process in MRU and particularly to assess the relationship between civil society, NGOs and the private sector, their commitment and their relationships towards common development goals. And so, in this context, we are promoting a study, an appraisal, assessment of corporate social responsibility strategies in major industries in MRU in private enterprises on the basis of which we hope to promote better CSR strategies and building a partnership between the NGO sector and the private sector.

Q. And how long will the study last?

A. It will last a few months. Probably starting next month and finishing February- March. I don't know, it depends on the composition. A few months, the right time to do a good work, also taking into account the project has 2-3 assessments, particularly the main one is the civil society appraisal that we're starting now, we're doing with the University of MRU, that will be the basis on which we will work.

Q. OK, so, what is your understanding of Corporate Social Responsibility (CSR)?

A. My understanding of CSR? Well, I don't have a big knowledge in CSR, not yet, in a few months, probably. (Laughs) But CSR, I agree with somebody that says that CSR should be ... the enterprise in this difficult context, with all the different transformations if the last decades should be much more committed to the achievement of social and developmental goals and not only the shareholder goals. So they have a mission that could integrate, say, all the goals and the social and development goals. They cannot just go and do whatever they want in the name of money, of gain, but in a certain way, they are an actor of the civil society, we take it as constituting of persons that are part and citizens of countries in a global context. So they should commit to it. And CSR, I agree with some critics that CSR is just washing their hands and saying we do good things and on the other hand, polluting and contaminating the environment and so on, bad contracts with the staff. So it's difficult really, I think it should be like a new contract, a social contract between the enterprise and the society as a whole.

Q. How would you rate the awareness and practice of CSR in Mauritius?

A. In MRU, I'm getting to know it but I don't know, in a few months you can come back and ask.

Q. But from what you've seen so far?

A. From what I've seen, it's really basic. The enterprise is much more powerful than society and probably the government. So they do what they want. They want people to know that they are committed to community development so they put foundations to

finance and support some social activities. That's really my first feeling but really I have to see more.

Q. What do you think are or could be the main drivers of (reasons for) CSR in Mauritius?

A. MRU, as I understand, is passing through a phase of economic problems. So there's a big share of the population that is unemployed, there are social problems arising. Before I think they said, they told me that there weren't really problems here, more or less all the population could live according to their expectations. But now probably, MRU is facing new challenges and the economic policies until now didn't really look to, have long-term vision and so there's a need of some change of economic policies and the enterprise is the same and so there should be, I think, much more commitment, national industry to this social problem arising and so try not only to put the foundations there, to mitigate the effects of this problems but try to build up partnerships, to be an actor, an important proper actor in promoting new policies towards and dealing with, to find out solutions to problems, so be an effective actor to build up policies towards solutions and only looking inside and then giving something back. I know also the government is opening up the economy and giving many benefits to enterprises, there is not really a good strategy if you just open up and get international companies and international staff, they should be a commitment, either mandatory or voluntary.

Q. Please give some examples of CSR activities in Mauritius and what they are meant to address.

A. I only know of the 'Federation Espoir et Developpement', Eric Bell, but just a little bit. I know they finance some projects and support activities of some NGOs but not more than that.

Q. In your opinion, what should be the main 5 priorities to be pursued by firms in Mauritius as CSR at the moment?

A. Five? I don't really know the reality of MRU as well as to give five priorities but possibly one to give support to civil society because civil society is acquiring a bigger role in MRU. There's a need of involvement of civil society in the development process. And civil society is very important because it's in itself a safety net for all this marginal population that is getting bigger and bigger. So civil society is an active actor with the marginal groups and they can mitigate effects and also promote solutions, starting from the grassroots. And so, this could be one of the priorities.

Q. Is CSR necessary in the Mauritian business environment? Please give reasons for your answer.

A. It's necessary everywhere probably. In MRU, it's a small island, little economy, enterprises play a bigger role probably than other parts because civil society here is not really strong. That's why we have this project. It's not really strong, it's voluntary-based. And probably because before MRU didn't have to deal with many big social problems and there wasn't really a need for a much stronger civil society. Now it's growing so... Yes. CSR is necessary because the private sector has an important role to play, civil society is weak, the government is weaker than before, the private sector seems more strong and so there is a need.

Q. Some commentators have mentioned that CSR in the developing world is mainly seen as corporate philanthropy, what is your view on this?

A. Yeah, it's the problem. Giving some money not really with the long-term prospects but just, from what I saw, just really short-term activities, just some support to communities but yes, that's a big problem. One of the critics that I read said, giving a good image but on the back of it having bad relationships with the workers. It's CSR, comprised of having internal procedures and transparent and that should be the first thing. You cannot have a community investment if you, take a stupid example, don't treat your staff well. Before you pay well your staff, you take locals in your enterprise. Then you can also do community investment, then you can also try to structure your mission, your project, I don't know, your services on the basis of the needs of the population. Then you can also try to involve yourself in a policy dialogue. There are steps you know. Sometimes community investment or philanthropic activities are just...I think if an enterprise does only this, it's just to have a good image but if they are really committed, so they won't internally and externally with the community.

Q. Finally, do you think a commitment to CSR impinges –even if only a little - upon the goal of maximising shareholder value? Is this justifiable/legitimate?

A. Yes. I think there are businesses, they are producing services and products. The margin of population is growing and growing in developing countries so the needs grow and they are satisfied by products. There's a market. In America, you can find Chinese products everything- not really quality but they are functional.

INTERVIEW O – 25/08/06

Q. Can you tell me a bit about your company and its shareholding?

A. Shareholding je ne sais pas. Comme je vous dis ca vient d'être acheté par des Hong- Kongais donc dans quelle proportion, j'en sais rien. C'est un groupe Hong-Kongais qui est propriétaire de la compagnie. C'est une compagnie privée, autant que je sache.

Q. Does your company consider its main objective to be profit maximisation for the shareholders?

A. La aussi, je pense que oui. C'est encore mon opinion évidemment. Mon opinion personnelle.

Q. How high does social responsibility rank in your company's list of main objectives?

A. Je ne sais pas. (Q: Pas du tout ?) Moyennement, disons mais pas trop. Peut-être qu'il faudrait demander l'avis du directeur. Moi, mon opinion average disons. Si on peut dire.

Q. What is your understanding of Corporate Social Responsibility (CSR)?

A. Comment la compagnie se sent vis-à-vis de la société, vis-à-vis de la société civile, pas seulement de ses employés mais vis-à-vis du monde extérieur. Euh... des voisins, des organisations qui demandent, qui ont besoin plus d'aide dans certaines domaines pour aider un peu, la pauvreté, des trucs comme ca. Je ne sais pas. Je n'ai pas une idée très, très précise, de comment définir ca exactement. Ca dépend vraiment des cas... Par exemple, y'a des grandes entreprises, je sais pas si vous avez été a Beachcomber, ce fameux fond, la Fédération Espoir et Développement qu'ils ont, ce genre de truc la mais avec des entreprises qui ont de gros moyens qui financent par exemple, toutes sortes de projets pour aider a combattre la pauvreté, l'analphabétisation etc, etc. Ce sera un peu ca. C'est à une grande échelle. Nous, on est quand même beaucoup plus petit. C'est un peu je pense dans cet esprit la...

Q. Does your company engage in CSR? Please give reasons for your answer and, where possible, cite examples.

A. Non pas vraiment. Pas vraiment. On aide de temps en temps de p'tites, je ne sais pas, quand on a des demandes pour aider je ne sais pas moi, un truc, un fundraising quelconque mais c'est très rare. Surtout ces dernières années en plus, la situation n'était pas fameux, fameux. La situation financière. Des aides financières étaient bien limitées mais si de temps en temps on reçoit des demandes pour- vis-à-vis y'a la cite- s'ils font des trucs, des fêtes, ou des trucs pour les vieux, on donne, on aide un p'tit peu. Mais c'est assez limite, hein. On donne des gâteaux, des cocas, des trucs comme ca. Mais c'est à peu près tout.

Q. Et vis-à-vis des employés ?

A. Nos employés ? Non, pas vraiment. Oui, on aide nos employés oui mais ce n'est pas tout à fait le même truc que l'aide extérieure si vous voulez. Donc, pour moi, ce n'est pas tout à fait la même chose. On donne un peu dans le welfare ici dans la compagnie et des aides à l'extérieur, des associations, des trucs comme ca. Pour les employés, je ne sais pas ce qu'on pourrait dire. Qu'est-ce qu'on fait vraiment euh... par exemple, des bourses d'études comme les grosses compagnies, ca y'a pas chez

nous. Je ne vois pas trop qu'est-ce qu'on fait vis-à-vis des employés. L'aide financière, c'est négligeable. Si quelqu'un a besoin d'un loan, ce n'est pas vraiment la même chose.

Q. Does your company recognise trade unions on behalf of any of your employees?

A. Non, nos employés ne sont pas unionised...pour l'instant. Plus tard, je ne sais pas.

Q. Does your company encourage trade union membership?

A. Non, pas vraiment. Pas du tout encourage.

Q. Mais pas discourage aussi ? S'ils ont des problèmes, par exemple, et veulent un trade union ?

A. Ben, on ne va pas les empêcher. On ne va pas non plus les encourager. On ne va pas faire beaucoup s'ils veulent à tout prix mais on aura à l'accepter. Mais l n'y a pas eu de problèmes et je ne vois pas trop l'utilité des trade unions chez nous, une petite entreprise, 300 personnes.

Q. What kind of benefits does your company provide for the employees?

A. Bon, pour certains employés, y'a un medical scheme, qui est très limite, 15-20 personnes. (Q : Pourquoi limite ?) Ben pour l'instant on n'a pas étendu ça à tout le monde parce que ça coute quand même assez cher, donc il faut payer tant par mois par personne. Donc, on n'a pas fait encore pour les autres. Peut-être que ça viendra.

Sinon, qu'est-ce qu'il y a comme d'autres bénéfices ? Bon, des trucs assez courants : fête à la fin de l'année, party, un bus pour les pique-niques, pour aller à la mer. Qu'est-ce qu'il y a d'autre ? Assez limite la aussi, bon après à la fin de l'année, si on peut appeler ça des bénéfices vraiment, des prix pour les gens qui se sont les moins absentes. Qu'est-ce qu'il y a d'autre ? Ah ben oui, y'a un kindergarden, enfin une petite garderie pour 12-15 enfants à peu près. Qu'est-ce qu'il y a d'autre ? On donne du pain gratuitement. Je crois qu'on est peut-être un des ... y'en a pas tellement ici qui font ça, du pain gratuitement. Un pain, la confiture, des trucs, du lait, du the... enfin pas cocas, gâteaux. Qu'est-ce qu'il y a d'autre ? C'est tout je crois. Y'a des trucs qui m'échappent.

Q. Does your company have any safety committee in respect of work conditions and equipment?

A. Oui. Enfin, ça c'est obligatoire d'après la loi, on le fait. Pour vous dire franchement, si on n'était pas obligé de le faire, je ne crois pas trop pourquoi est-ce qu'on l'aurait fait vraiment. La aussi on ne manipule pas des trucs dangereux, des substances dangereuses. La loi vous oblige à le faire donc on le fait et puis c'est tout. C'est tout les deux mois.

Q. Has your company introduced any form of industrial democracy or worker participation within the company? So, if you want to have their input on certain policies?

A. Non, ce n'est pas trop formal mais on demande leur avis mais pas sur tout.

Q. Sur quoi, par exemple ?

A. Ah, je ne sais pas... Les congés de fin d'année, par exemple, des trucs comme ça, pas sur la stratégie de la compagnie. Je crois qu'on avait un genre de Workers' Council qu'on faisait tous les mois ou tous les deux mois. C'est un peu les délégués, les représentants des travailleurs donc on leur demande leur avis des fois pour

certaines choses mais ca n'a rien de vraiment officiel. Et ils viennent s'ils ont des trucs à demander.

Q. Donc la porte est toujours ouverte.

A. Oui, bien sur. D'ailleurs, ca m'étonne qu'il n'y ait personne qui soit venu la pendant cet entretien. Ca défile toute la journée, les gens défilent dans le bureau.

Q. Does your company operate any disclosure provisions to keep staff informed of the company's policies?

A. Non, pas vraiment. S'il y a un nouveau management, non. Enfin, il y a des réunions des fois avec tout le staff mais on ne met pas nécessairement sur le noticeboard. Des fois, si le directeur va parler, on rassemble tout le monde dans la cantine pour informer certaines choses.

Q. So how many times a year would this happen?

A. Ben, ca dépend. Ca peut être trois, quatre, cinq fois par an. Ca dépend...du besoin, de l'urgence, l'importance de la chose.

Q. How would you rate the awareness and practice of CSR in Mauritius?

A. Si on voit de grosses entreprises comme des Beachcomber (BC), des Rogers et tout, on voit que c'est assez élevé mais si vous prenez les petites compagnies, 10-20-30 personnes, presque zéro. Ces exemples qu'on vient citer, la MCB (Mauritius Commercial Bank), donc ces grandes compagnies la, c'est bien différent d'une compagnie a une autre. Dans ces compagnies la, je crois que c'est assez fort. Bien faible dans les petites compagnies.

Q. Et vous pensez que c'est à cause des moyens ?

A. Non, je ne crois pas. C'est un peu une question d'image. Bon, BC, MCB, tout le monde connaît. Mais le petit magasin de machin, qui fabrique... ou une petite usine qui emploie 25-50 personnes, que personne ne connaît donc non...

Q. In your opinion, what should be the main 5 priorities to be pursued by companies in Mauritius as CSR at the moment?

A. Le premier c'est toujours la fameuse lutte contre la pauvreté et l'exclusion. Comment on appelle ca ? Depuis les fameuses émeutes en 1999, tous les Trust Funds qu'on a mis pour les défavorisés.

Q. Comment vous voyez les entreprises aider la ?

A. Ben, la toujours les fameuses entreprises, BC, on voit dans les journaux, c'est des projets quand même bien concrets, bien faits, bien suivis. Des gens sérieux qui suivent ca et ca je crois que ca donne des résultats. Les projets dans les villages ou les hôtels se sont implantés, je crois que c'est bien fait. C'est sérieux, c'est structure. Mais pas donner de l'argent a n'importe quel ONG, ca je crois que ca va aider...Qu'est-ce qu'on disait au fait ? Le premier, la pauvreté. D'autres, l'analphabétisation par exemple. Campagne contre le sida. Evidemment, on en parle beaucoup et la ou les compagnies interviennent pas mal. Ces trois points la et puis la sante en général. Tous les problèmes comme le diabète qu'on voit tout le temps. C'est à peu près ca.

Q. Is CSR necessary in the Mauritian business environment? Please give reasons for your answer.

A. Ben oui, bien sur. Ben, why ? Why ? Parce qu'il faut bien aider son prochain si on a les moyens et il faut essayer, chacun comme il peut, aider à combattre la pauvreté. On fait des millions, des milliards de profits, c'est un peu normal qu'on essaie d'aider les gens qui ont à peine de quoi manger. Pas pour se faire de la publicité. Bon, y'en a peut-être, c'est un peu les deux aussi, je ne sais pas. On ne peut pas parler à leur place.

Q. Some commentators have mentioned that CSR in the developing world is mainly seen as corporate philanthropy, what is your view on this?

A. C'est peut-être un peu vrai oui. Enfin, je ne sais pas moi, dans le monde entier, je n'en sais rien. On parle a Maurice, oui surement un peu. Faire un cheque, surtout quand on a beaucoup d'argent, faire un cheque de X mille roupies, ce n'est pas bien complique. Par contre, c'est plus complique de participer et de faire des projets avancer concrètement, ca c'est autre chose, oui. Se donner bonne conscience, comme on dit. Bon, j'aide mais je ne vais pas aller marcher moi. Faire ces fameuses marches de solidarité, c'est plus facile de signer un cheque que de consacrer son dimanche à marcher jusqu'à je ne sais pas ou.

Q. Last question, do you think a commitment to CSR impinges- even if only a little upon the goal of maximising shareholder value? Is this justifiable/legitimate?

A. Non, je ne pense pas. De toutes les façons, les gens ne vont pas passer tout leur temps à faire ca et surtout pas tout leur argent à faire ce genre de travail. Ca va occuper une partie de leur temps mais ca va pas les empêcher de faire des profits- la partie de l'argent qu'il consacre a ca c'est bien minime, je suppose. C'est autant de pourcentage du profit de la compagnie. Ils ne vont pas mettre 50% des profits dans des projets comme ca. La oui.

Q. Oui, mais s'il n'y a pas assez de profits, est-ce que ces compagnies la, vous pensez, vont se livrer a la responsabilité sociale ?

A. Ah ben, ca, je ne sais pas. Ca, il faudrait leur demander. De toute façon, c'est un pourcentage, 1 million de profits, ce sera toujours 1, 2,3%, je ne sais pas combien elles font ces grosses boites.

INTERVIEW P -25/08/06

Q. Is your company a private or public company?

A. It's a private company.

Q. Does your company consider that its main objective is profit maximization for its shareholders?

A. One of the objectives is to maximize profits. But at the same time, we don't neglect other factors. We have the [REDACTED] culture, where there is ethics, environment, exploration, excellence and education. We want to be good citizens and good employer, explore and engage into innovative solutions, reduce wastage through functional excellence. So this is our culture and you will see that the first one is ethics and we do this from the top, that is, the corporate office to our manufacturing floor. We train our people also, not only at management level but at the grassroots level.

Q. I think you have already answered the next question which is how high do you rate CSR in the list of your objectives.

A. In fact, being given that we export to the US market, one of the conditions that is very important is that we have to be socially compliant. This is at least to get the buyers to have confidence in us. But at the same time, it is to be seen that we are socially responsible employers. Since four years, we have got the WRAP certification and it is renewed on a yearly basis. In fact, we were the first one in Mauritius to get the certification. In our group also, the [REDACTED], we were the first one.

All the buyers want to see whether we have the WRAP certificate. Besides, they have their own code of conduct. Then we have working conditions, whether we have child labour or forced labour, discrimination policy or other harassment. Forced labour is when we force people to work overtime for example. Child labour is when you employ under-age. We have put into place a prohibition of harassment policy. At our management level, we see to it that all these conditions are adhered to. In Mauritius, one area on which we have to focus is middle management, because the reflection of the whole company is often focused on middle management.

Q. What is your understanding corporate social responsibility?

A. We have been here since the last 34 years. We are part of the society. We will continue looking for jobs. Jobs for the local people, and when we can't get them, we have to import foreign labour. We see to it that all our local people get their chance to work within the company and are paid according to the conditions, and we give them the opportunity to grow with the company. So we have supervisors, managers who have worked for the company for many years. And we are also working in a way that we are not polluting the environment. We have collected the sewerage, we have the ISO 9000 and the ISO 14 001 certification. So within our society we are not being a polluter, we are following all the laws. So in the difficult condition in which the country is, we try to see how we can create jobs. What we do is we go to the rural areas and recruit people. In this factory, we have 200 workers, and in the years to come, we will see how we can create more jobs.

I will remark here that most of the Hong Kong based companies have already left Mauritius. We are the only one which has remained and we are doing well, thanks to the AGOA (African Growth and Opportunity Act) which is helping us. We have stability and I think this is very important because we do not intend to leave from

here. We are stable and the AGOA will stay until 2015. We have the people, we have a trained work force, we are investing in the training of our people. I think we are on the right track. The only thing is to be competitive. Within the society we are contributing in terms of employment, in terms of foreign exchange earnings, last year we exported to the tune of Rs 1.6 million.

Q. Does your company engage in CSR?

A. We are doing that and I mentioned we got the WRAP certification and it is a reference to all other companies in Mauritius. Even the MEPZA (the Mauritius Export Processing Zones Association) said that other companies should get it and I think the other companies are also trying to get it.

Q. Does your company recognise trade unions on behalf of any of your employees?

A. Yes we do. But fortunately or unfortunately we don't have any trade union within our company. We have our own in-house union. We call it a joint consultative council, we have the management, we have the workers. The delegates are chosen by the workers themselves. So we have an in-house union, we don't have a trade union. We have monthly meetings. We have a communication channel and we discuss all the issues of the work place, welfare, sports. We do have this forum where we discuss all issues.

Q. Does your company encourage trade union membership?

A. It's a tricky question. Let's say, we encourage people to be honest. We have our in-house council on which we have been working since some years. I am not promoting trade unions, to be fair.

Q. What kind of benefits does your company provide to its employees?

A. We have transport, we have medical care, we have medical practitioners coming, we have a nursing room. It applies both to Mauritians and foreign workers. We provide free medicine. We have social activities. On top of what is legally provided, we have schemes, such as production bonus schemes, regularity bonus schemes which are to enhance the pay packet and to motivate them to work regularly, increase the productivity also. It's a win-win situation.

Q. Does your company have any safety committee in respect of work conditions and equipment?

A. Yes. We have a health and safety committee which is chaired by the management, myself or the Human resource manager. We have a part time health and safety officer. It is very important. We review it regularly and we send reports to Hong Kong. We identify weak areas where we have accidents or incidents and we try to improve the logistics and the equipment. We train the people also. We carry out regular fire drills in the factory. We invest in safety, because safety is very important for us.

Q. Has your company introduced any form of industrial democracy or worker participation in the company?

A. No, we don't have that. It's not participation as such, but we enhance the benefits of the workers but it's not participation in shares or such things.

Q. Does your company operate any disclosure provisions to keep staff informed of its policies?

A. All our policies are transparent and there is nothing to hide. We communicate our policies. We have e-mails, notice boards so that they can follow what we are doing. We have a network system here, an internal IT system, handouts, meetings etc.

Q. How would you rate the awareness and practice of CSR in Mauritius?

A. I think since the past five years, it is a notion which is taking root and now many companies are investing in that direction. I think they are aware that it is not only something to make profits but also to put into place these socially compliant conditions which help towards creating a stable force. We have the dignity, we have respect for people. But it has still along way to go. It's not only a few companies but Mauritius as a whole. But the larger companies are already implementing that concept.

Q. So you think that there is a difference between the larger and smaller companies?

A. Yes. The larger companies are definitely working toward that. They have to. But I think the next step would be for the medium sized companies to join in and the smaller ones also because they don't think in that way. So this is a national awareness we have to create.

Q. In your opinion, what should be the five main priorities to be pursued in Mauritius as far as CSR is concerned?

A. I think one of the areas is to treat our employees in a fair manner, in terms of payment, but at the same time the working hours are very important. I think some companies are working excessively. Some are even working on Sundays. We don't work on Sundays. We don't allow anyone one to enter the premises on Sundays. I think companies should have a good planning, work with the buyers so that we can improve the working conditions, because we are importing about 15 000 foreign workers in Mauritius. They come for two or three years. We should not use them as if they are slaves working 80 hours a week. We don't do that and they work only 60 hours a week. So 45 hours plus 15 hours overtime and Sundays rest day. How to achieve that is through good planning. Otherwise, you take too many orders and you have to do too much overtime and this creates problems.

I think we should look into their living conditions also. We just cannot take them and don't look at their living conditions. I think there should be a team who should be professional and look after these people.

Q. Is CSR necessary in the Mauritius business environment?

A. Definitely. I would suggest that it should be a competitive factor. Because price is only one factor, delivery also. But the consumer should also know that the product which he is buying has been produced in socially compliant conditions and there have been no forced labour and such things. So for me, it is a competitive factor also to sustain in business

Q. A number of commentators have mentioned that CSR in developing countries such as Mauritius is only a sort of philanthropy. You are giving away money without really looking into how it is used. What are your comments on that?

A. I think giving money, providing assistance to NGOs is important, because in our society we have vulnerable groups. I think we should be involved in them. It's not just giving money or signing a cheque. We should also get our staff to work with them and it is also very important. In our case it's giving money but getting involved also.

Q. Do you think a commitment to CSR impinges, if only a little, on the goal of maximization shareholder value?

A. No. I think whatever we do for CSR is towards improving business. Even the directors are on the same line. If you want to do business, if you want to stay in Mauritius, you should go for that. So it's more contributing to profits than undermining profits.

INTERVIEW Q -01/09/06

This interview does not really follow the format of the questionnaire as I just recorded my conversation with the interviewee.

Q. One question that comes to mind is that because [REDACTED] and [REDACTED] are two separate entities, it just seems that [REDACTED] is simply injecting money into it. How do you feel about that? Or is that just a perceived criticism?

A. No it's not perceived in that actually, well, [REDACTED] is financing [REDACTED] because [REDACTED] can be viewed as a subset of [REDACTED]. For legal purposes and practical purposes, it has been set up as a separate 'fondation' but [REDACTED] is regularly putting cash in it, is regularly monitoring [REDACTED]. You have the Finance Director of [REDACTED], who is on the board of [REDACTED], the corporate secretary of [REDACTED] is also on the Board, and so it's not just left to its own devices.

Then as I was mentioning, [REDACTED] has committees in all [REDACTED] where employees of [REDACTED] sit and so they bring in their own projects for approval and give their views on what is the situation in their region or whatever and also [REDACTED] has launched its own project like we mentioned 'Projet Employabilite Jeunes' (literally 'Youth Employability Project')(PEJ), which aims at giving training, basic, very basic on social competency skills and so on to youths who have left school for various reasons and then this training is done in collaboration with [REDACTED] [REDACTED] has its own trainer to do this but also trainers from [REDACTED] come and do some training also, and after this, these students if they want to, they are assigned or given assignments, 'stages' (internships) and so on in [REDACTED]. And so, it's not detached at all actually, it's very and more and more closely-knit with the actual activities of [REDACTED] as a company and we also have NGOs which we finance. They go and do some training or awareness, whatever you want to call it for employees of [REDACTED]. So it's not something completely separate from what [REDACTED] does at all.

Q. Because I think that's probably the first question to ask that it's a 'Fondation' that's very much separate from the activities of [REDACTED].

A. Well, at the beginning it was a bit like this because we have to start somewhere but the more and more we go- actually the CEO of [REDACTED] in 2003 i.e. some years after the beginning of the Fondation, insisted that it should be more closely linked to what the [REDACTED] actually do. I think this have been very beneficial for everyone.

Q. OK, so what is your understanding of CSR then?

A. My understanding?...Well, what does the charter of the company say is that we want to ...I think what the [REDACTED] has been set up to achieve is that we want to fight exclusion and all this and also help people to take care of themselves, help people to help themselves if you want.

So that's the objective of the [REDACTED] and why is it responsible? I mean so many 'fondations' can be done along those lines, how is it CSR is that OK, we cannot operate – yes, I think that's the usual rhetoric- is that we cannot operate in isolation, we have to weigh all this and so on.

But I think very practically, for us it means that we operate in [REDACTED] [REDACTED] We do not...Actually, I think we have total...Very practically, [REDACTED] managers and human resources managers because I deal mostly with them, I think they really want to employ people in their immediate environment instead of having

to transport people [REDACTED] or whatever it is and so I think they really want to be part of the life of their environment because their employees come from there. But if, for instance, if they want to have employees from this environment, maybe they will need some training because they are not immediately employable and that's why we have the PEJ. This is one instance of something they do to promote this employment. A [REDACTED] manager told me, for example. We do not want petty crime to become a problem because people are looking for money to buy drugs, and so we are promoting drug prevention campaigns'. In this sense, I think that the problems of the [REDACTED]- operational problems of the company- matches the problems that society also feels. That's why I'm saying that the [REDACTED] cannot operate in isolation, so it's not just rhetoric but we're really very practical.

Q. So how do you think the CSR that you practise makes a difference to the lives of the people around the [REDACTED]?

A. Let's take the PEJ for instance. It's a very small example. We started in 2001 – the pilot project- and we took 15/16 youths [REDACTED] and trained them and out of this four of them went to work in a [REDACTED] and I think it's that- I don't say that they couldn't have found work if they didn't come on this project but actually, I think it was a plus for them and they were able to integrate [REDACTED], and three years four of them were employed, some were still at school or working and didn't want to be employed, 6 or 7 completed the course and 4 of them were employed and they worked 3-4 years at the [REDACTED] without problems. I think 2 left because they had better opportunities elsewhere but 2 of them are still working, so I think it did make a difference for those with families because I think one of them is still there, he got married and has children etc., and so having a regular income helped.

So, I think very practically, it makes a difference at least for these families, these people. And we are doing the same thing elsewhere with many more people. We started in 2005 and 2006 so it hasn't been such a long time ago for us to see how it's working but I think it's actually allowing youths who have difficulties to integrate stable work. We are helping them to integrate work and this makes a difference for them, and maybe for their environment, for their parents etc.

Q. OK, now one of the criticisms has been that yes, you train these people but some of them don't actually manage to finish the course and even if they do, they are unable to get any work. How do you respond to this? Is there any truth in it?

A. There's a truth in that we cannot succeed 100% of course, unfortunately. But we do try to support them. We train them, we do our best to see that they finish the course in the sense that it's not just ok, you come here at 3 p.m. every week and if you're not there, ok, you are not there. I think the person responsible for this makes it a point to see that if they don't come for let's say 2 weeks at a go, he/she phones their place to find out what's happening, why they're not coming and so on. Of course, if they don't want to come, we cannot send the police round to force them to do so but we do pay for their transport if they have transport problems so, really, I think we do our best to make sure that they attend the course and complete it.

Then if they want to work in [REDACTED] or do an internship in a [REDACTED], we arrange the finance for them, we tell them how to get there, how to dress etc. So we try to explain all this to them. And even if they don't want to work in [REDACTED], for example, some

prefer to take hairdressing courses, we pay for these because if that's what they want to do, we cannot compel everybody to work in a [REDACTED]!

So also one of the objectives is to listen to what they want to do- ok, so we are running [REDACTED], so we want people for [REDACTED] but we tell them it's fine if they want to join a [REDACTED], if not, then that's fine too. So we are really trying to help them in what they want to do and after this we also do some follow-up. For instance, with the batch starting in 2004, finishing in 2005, about half of them- some were working in [REDACTED], some in other companies and after a year, around February 2006, we called all of them back, phoned them to see what was happening to them, what they were doing and we invited them to a sort of get-together and after this, some of them who had not yet found a job, who weren't doing much, we also sent some of them to [REDACTED] because there were gaps or paid some courses- I think it was a babysitter course for one girl who wanted to do this).

Of course, well, we cannot support them until they are 60 but for the time being, we are really trying to follow them up because some of them have some problems in their jobs and if they have someone to talk to, maybe it could have been settled so we are also telling them that if they have any complaints against their employees, they can still call us, we can talk it out and see if we can do something, so we are supporting them. Of course, we cannot spend our time solely on them but it's not like once the course is over, that's it.

Q. Now onto more general questions, how would you rate the awareness and practice of CSR in MRU?

A. I think that more and more employers and companies are aware. I don't know if it matches your own survey but I think big companies are more and more sensitive to this. For instance, on Wednesday, I was having some meeting with people in certain companies who are doing CSR, we had quite a good turn-out. It's not 100 %, not everybody is aware but I think big companies are sensitive to the idea now. Maybe there is more to do with medium-sized or even small companies. They can do their own share in CSR- for instance, one thing which comes up very often is that of small shops in villages, they are selling alcoholic drinks even to minors, so there is an issue about what is the CSR of these small units. But I think that -the top 100 companies is maybe going a bit too far- maybe the top 20 are aware of CSR issues and structuring a CSR programme. More and more now, they are setting up 'fondations' or having departments doing CSR or whatever it is.

Q. So would you say the awareness and practice is in terms of the big companies mainly then?

A. Well the big companies I know I think most of them are doing or at least are thinking of doing CSR. I think also a good sign of awareness is this major Joint Economic Council (JEC) project: 4 years ago, the then President heard about ZEP (Zone Education Prioritaire – literally, Priority Education Zone) schools and he managed to get one company each to manage a ZEP school, there were 30 schools, so 30 companies were involved and he had a great response because he told me that he wrote 40 letters and that he had around 33 companies actually answering and committing themselves for 2 years and I think that's good...

[Tape goes on about JEC and a Taskforce they set up in 2001/2002 on CSR, whose results were never published. Also we talk of a survey done on CSR by the Mauritius Employers' Federation (MEF) in 1999- results not widely known it seems]

Q. What do you think should be the main 5 priorities to be pursued by companies in Mauritius as CSR at the moment?

A. Well, what are the usual priorities about CSR? Looking after your employees but this, I suppose, is more or less well legally speaking, is being done. I think one of the issues of CSR, at least if you look at the EU Green Paper is about looking after your employees not only as your employees but as individuals and that they have a life before they are your employees and after, outside their 40-hour working time, and that would be a good thing to look after. Some companies are starting but maybe it's more and more critical since we have people being retrenched and so on, this idea of your employees having their own career paths and lives I think, this should be an important thing for companies- supporting their employees, empower them so that life doesn't stop for them if they lose their jobs. Some companies are doing it because they are aware more or less, maybe less than more, textile companies, I'm not sure. I think this is very important.

Probably the second priority is the environment. We are always mentioning the environment but MRU is an overpopulated country and everything cannot be left to the government. Government has its role and should be enforcing laws and so on but I think also that companies have a role to play. For instance, it's a pity that government had to enforce a tax or fee on plastic bags. Companies themselves should have taken the lead to do this ages ago. This is the sort of thing I think not only companies individually but probably where private sector institutions like the JEC, the MEF, the Mauritius Chamber of Commerce and Industry should have a role to play. If only one company charges for plastic bags, it will not be accepted. I think this is something that not individual companies but all companies can come together specifically with a role to play.

Education is also important. It has been a traditional thing that OK, government takes care of it. I don't think it's specific to MRU. When I listen to say, France Inter (French radio), it's the same problem. Employers complain that OK the education system is a complete failure, it's probably true but at the same time, there is no real synergy or participation of the private sector in the education system. I agree it's very difficult to achieve this. I think the JEC initiative (above) is a very good one in the sense that employers are people from enterprises and are actually going into a school and looking at what's happening. Of course, the Ministry of Education is officially happy about this but the Head Teachers might be thinking, 'Who are you to come here?' etc. It's difficult but I think it's something very important in the sense that at least HR managers know what's going on, what are the types of people they will be getting in 2-3 years as potential employees. Maybe they can give some ideas about how a school should be better managed etc. and I think these are the sort of things which are really important so that it does not become 2 separate worlds. If you are rich and from the private sector, you send your kids to Labourdonnais, Le Bocage (these are private schools in MRU, i.e. fee-paying ones), and you don't at all know how state schools work, and this is a very good initiative.

Things like this should be developed into other sectors also, e.g. health, partnerships like this- you have to make it work- some people are very aware. I think this is about structures but it also takes 1-2 people with enough power, call it what you want, to make this happen, to drive this or to take the initiative, drive it in time also, it's not just launching it and hopefully it'll work. I think that was the problem with the MEF

INTERVIEW R- 29/8/06

Q. Tell me a bit about your company.

A. [REDACTED] is part of the [REDACTED], it is a private company. We specialise in [REDACTED] and we employ 475 people, of which 20% are expats.

Q. Does your company consider its main objective to be profit maximisation for the shareholders?

A. Yes. Our goal is to make profits so as to be able to keep employing people.

Q. How high does social responsibility rank in your company's list of main objectives?

A. It is amongst our top three objectives. The first two are profit-making and to grab the whole market share respectively. But concerning the latter, not in regard to the Chinese market.

Q. What is your understanding of Corporate Social Responsibility (CSR)?

A. To remain in business, a company has to cater for its villages. It entails giving proper assistance as opposed to just marketing. It also acts as a motivator for employees as they will then be proud to work for the company.

Q. Does your company engage in CSR? Please give reasons for your answer and, where possible, cite examples.

A. We have a special budget assigned to CSR. We make donations to certain non-profitable organisations for example.

Q. Does your company recognise trade unions on behalf of any of your employees?

A. No, but we have a Works Council (WC). The Council meets every 2 months, and its members are elected by the employees. They have 'limited' discussions and the decisions made are affixed on notice boards and we also send emails. We have 100 PCs at the disposal of the employees. We also have an open door policy.

Q. Does your company encourage trade union membership?

A. We don't encourage or discourage. In fact, there are no restrictions but the employees don't seem to be interested in a union as their queries are usually solved in the WC. In a recent survey carried out, we were seen to be amongst the best in terms of salary and remuneration. We have a turnover rate of 13-14 % compared to 22% in the rest of the industry. Our rate of absenteeism is 2.8% compared to an industry average of 8-10%, so our employees are generally content.

Q. What kind of benefits does your company provide for the employees?

A. First of all, our minimum wage is higher than the average. (Rs 3900 compared to Rs 2600). We also give a productivity bonus. Then we give subsidised meals, vouchers for the canteen, a 'night' allowance. We have a medical scheme which is contributory and category-based. We also give out compensation for personal accidents. We give a lot of training to our employees, in fact, each of them has a career planning plan so that they feel a sense of belonging. There is an Employee of the Year Award. We have an end of year party each year as well as a party for children etc.

Q. Does your company have any safety committee in respect of work conditions and equipment?

A. Yes, we have a registered H&S Officer, who works part-time, that is a minimum of 12 hours a week. The H&S committee meets every two months, and all the departments are represented on it. We have a Safety Policy as well as regular inspections, and we are ISO-certified.

Q. Has your company introduced any form of industrial democracy or worker participation within the company?

A. As I mentioned, we have the Works Council.

Q. Does your company operate any disclosure provisions to keep staff informed of the company's policies?

A. We organise seminars every 6 months. We also have a monthly 'notes d'info' (magazine) whereby employees are kept informed of what's happening in the company. We also have monthly as well as annual meetings. I would say that everything is communicated here!

Q. How would you rate the awareness and practice of CSR in Mauritius?

A. With regards to small and medium-sized companies, I would say about 30-40% awareness. There is, however, a lot of talk and no action sometimes. Companies such as Rogers, which are big public companies, are more visible in this area, and therefore have to do more.

Q. In your opinion, what should be the main 5 priorities to be pursued by companies in Mauritius as CSR at the moment?

A. One, to cater for their immediate neighbourhood; two, to cater for NGOs, some of which do some fantastic work such as the Association for the Welfare of Orphans and Handicapped Children; three, to cater for the stakeholders such as their immediate suppliers, employees, training institutions etc.

Q. Is CSR necessary in the Mauritian business environment? Please give reasons for your answer.

A. Yes. At the moment, here, we don't have enough resources to be working in partnerships. It's very time and resource-consuming. Maybe in 2-5 years' time, we might recruit a CSR officer, which appears to be the trendy thing to do.

It is also important to work with the requirements and expectations of the community at large. CSR should not be a marketing tool, not market-driven.

Q. Some commentators have mentioned that CSR in the developing world is mainly seen as corporate philanthropy, what is your view on this?

A. Yes, we need to give to the needy. Give and not expect anything in return. Like when the tsunami happened for example.

Q. Do you think a commitment to CSR impinges- even if only a little - upon the goal of maximising shareholder value? Is this justifiable/legitimate?

A. No. CSR and profits can be inter-related but not necessarily. CSR is indirectly related to profits so it is not CSR which will either increase or decrease profits.

INTERVIEW S – 01/09/06

Q. Is your company a private or public company? Can you tell me a bit about it?

A. It's a private company, part of the [REDACTED]. It's owned 50% by [REDACTED] and 50% by [REDACTED]. We have been operating in the island for 22 years and since 2 years, we have been specialising in 'haut de gamme' products. 80% of our products go to [REDACTED]. We employ 950 people, of which 350 are expatriates [REDACTED]

Q. Does your company consider its main objective to be profit maximisation for the shareholders?

A. Ca forme partie de notre série d'objectifs (It's part of our list of objectives) but not the main one. Of course, we want to make profits but we also look at the interests of our clients and employees. We are not working in a vacuum and realise the importance of our stakeholders.

Q. How high does social responsibility rank in your company's list of main objectives?

A. C'est parmi les premiers (One of the first objectives).

Q. What is your understanding of Corporate Social Responsibility (CSR)?

A. Quand on produit quelque chose ou on donne un service, c'est important d'avoir l'éthique, la responsabilité vis-à-vis du voisinage. Pour ne pas nuire à quelque chose ou à quelqu'un. Rien d'illégal ou d'inéthique. (When one produces a good or provides services, it's important to be ethical, to have a certain responsibility towards the neighbourhood. So as not to destroy anything. So as not to engage in anything illegal or unethical).

Q. Does your company engage in CSR? Please give reasons for your answer and, where possible, cite examples.

A. Yes, for the past five years, we are part of the GSPT, of the Ethical Training Initiative and we are WRAP-certified. We are continually trying to improve. We attach great importance to equal opportunities in terms of our recruitment policies. We don't discriminate and we have codes of conduct that we abide by. In terms of activities, nothing new as such, it's pretty much standardised.

Q. Does your company recognise trade unions on behalf of any of your employees?

A. No, our employees are not unionised. We have an open-door policy and we also have 2 Workers' Council, one of Mauritian employees and the other of expats, which is a forum for communication as we recognise that the issues are different for the different sets of employees. Donc, on en parle (So we discuss).

Q. Does your company encourage trade union membership?

A. It's free and democratic here.

Q. What kind of benefits does your company provide for the employees?

A. Free transport to the four corners of the island, free uniforms, tea and refreshments everyday, soft drinks and cakes if it's someone's birthday and lunch. In terms of medical benefits, we have a nurse who comes in 8 hours a day, Monday-Friday and a

doctor twice a week. All these services are free. It's a contributory medical scheme, the company pays 50%, and they get any medication the same day. We also have a glasses scheme, which we subsidise, they get a free consultation with an optician. Then, a soft loan scheme, which is without interest. Moreover, we help anyone who might be having personal problems, so we'll refer them on to certain NGOs like PILS etc. We also have sporting facilities, we have a football team. We have end of year parties, where the employees receive gifts, seniority gifts are also given. As I said, we have an open door policy and a very dynamic grievance system, so any problems the employees are facing, they can come and talk to me. Furthermore, we give in-depth training to new and old recruits. As for expats, they are given early releases on certain days for prayers, and we also sponsor some festivals.

Q. Does your company have any safety committee in respect of work conditions and equipment?

A. Yes. By law, we have a bi-monthly check. We had a 'Safety Week' some time back, which was attended by representatives of the Ministry of Health and Labour etc, the Health and Safety Institute and professionals. We organised a workshop for the employees of every department.

Q Has your company introduced any form of industrial democracy or worker participation within the company?

A. We have a Workers' Council, as I mentioned earlier, on which representatives of each department sit. They meet monthly for an hour and we discuss the work conditions, the environment, 'la vision strategique de l'entreprise' (vision and strategy of the company), everything apart from personal matters.

Q. Does your company operate any disclosure provisions to keep staff informed of the company's policies?

A. We have magazines, which relay what was discussed at the Workers' Councils. We also have management meetings everyday, and we trickle down the information to other levels.

Q. How would you rate the awareness and practice of CSR in Mauritius?

A. In general, MRU is far behind in terms of CSR. Both awareness and practice could be 4 out of 5 in terms of the textiles industry, however. Companies in MRU tend to do mainly what they are required by law to do only. We do have certain people who take the initiative to do more, however, especially in the textiles industry.

Q In your opinion, what should be the main 5 priorities to be pursued by companies in Mauritius as CSR at the moment?

A. First of all, (labour) laws need to be harmonised. Secondly, we should have a CSR body as it were, to know the ins and outs in terms of social compliance. We should have a uniform code of practice. Ce qui est important, c'est d'ameliorer l'etre humain (What's important is to improve the human condition). It's also then that society will progress, so we need transparency. There has to be some form of quality control, like the ISO system, from start to finish. Be responsible and thus create a snowball effect right down to the supply chain. This will have a good effect on society overall: discipline, ethics, productivity, quality.

Q. Is CSR necessary in the Mauritian business environment? Please give reasons for your answer.

A. Of course. If not, then we won't have any clients as they will not be confident about doing business with us. (Q: So is it necessary only to attract clients?) No, it's been there right from the start. It's very important in terms of human capital.

Q. Some commentators have mentioned that CSR in the developing world is mainly seen as corporate philanthropy, what is your view on this?

A. Yes, probably as a number of companies are mainly interested in profits. Not here, and this is certainly not true in this company. Our commitment is from top to bottom, and we really look after our employees in real terms rather than simply writing a cheque.

Q. Do you think a commitment to CSR impinges- even if only a little - upon the goal of maximising shareholder value? Is this justifiable/legitimate?

A. The way I see it, it's a win-win situation. Il y a certaines façons de mener la chose (There are ways of doing it). We have a budget, so no, it won't impinge.

INTERVIEW T- 04/09/06

Q. What is your understanding of corporate social responsibility?

A. I think that today, corporate social responsibility includes corporate citizenship, corporate ethics and, corporate governance and in our industrialised world and in developing countries, there has been an escalation in the social role corporations have to play so CSR demands that there is public-private partnerships in dealing with employees, consumers, suppliers, local communities and society at large.

Q. How would you rate the awareness and practice of CSR in Mauritius?

A. I think a lot of things have been going on. There has been corporate social responsibility in several well-known companies but there is not a lot of awareness about it. And maybe the word itself is not well known, the definition of corporate social responsibility. Companies have been helping the community around them and the NGOs but strictly speaking there is little awareness of what it is. It has become recently what I would say the buzzword in companies that are linked with other companies in UK or the USA.

Q. When you say recently, what do you mean?

A. I mean in the past five years.

Q. So awareness is very low, what about practice?

A. Practice is also, compared to other countries, not very large. Companies like Beachcomber have done it. A lot of companies that are linked to the hotel industry and the sugar industry have done it quite a lot. Recently Barclays bank has been really at the head. They have done a lot of CSR in the community.

Q. What do you think are or could be the main drivers for CSR in Mauritius.

A. If you look back, I think the main driver has been the responsibility of different organisations. I think the main reasons are political transformation, market liberalisation, privatisation and a lot of innovations. I think these are the drivers. And the reasons are that Mauritius has to cope with all this and companies that have got capital, that have got money, must look at the welfare of the community around them, otherwise it might cause a lot of unrest.

Q. You mentioned political transformations. How do you see that happening in Mauritius?

A. I think that in Mauritius when we started with independence, it was a sort of social transformation, but as the years went by the government tended to look at issues rather than human beings. We looked at issues such as the economy and in the struggle for a better Mauritius, we forgot the people themselves. And I think that today government has to look at the way that the population is living.

Q. And you see corporations helping?

A. I think it is very important that you bridge the gap. People see big capital investment and there is the poorer side of the population that looks on and I see it important that there should be a government, private sector and public collaboration

Q. Can you give some examples of CSR activities in Mauritius and what they are meant to address?

A. Well, I have just mentioned some of the CSR activities in the hotel sector. Beachcomber has done quite a lot to try to help many NGOs to develop and to address issues like poverty. They have looked into that and ensured that there have not looked at employees of the hotel industry, but they have also seen to it that villages and communities around them have developed -may be not at the same pace but in a way that you don't see that you don't see a lot of difference in the way that people live. The sugar estates have also taken up now because they have come out with a global project for developing not only the hotel industry but also the community around them.

Q. In your opinion, what should be the five main priorities that should be pursued in the field of CSR?

A. It goes back to the millennium goals. One of the most important is poverty. I'll talk about NGOs and poverty and the private sector. It must not be the sort of development where you assist people only. So, it is capacity building, it's making people aware of what they should be doing for their own benefit. There's gender equality that has also to be looked at because although Mauritius has signed agreements in many sectors, there is no gender equality. People may come to you and say that there are many women in decision making positions, but this doesn't mean that at the bottom level, people know what gender equality is, what are their rights and all that.

Now there are human rights. I think it is also important that companies or people who look into corporate social responsibility ensure that their employees are aware of their rights as human beings, not only their rights as workers but on the whole.

Q. So, is CSR necessary in the Mauritius business environment?

A. I think it is, because more and more the gap between the richest and the poorest is widening and with the economic problems we are facing these days, I think it is essential.

Q. Some commentators have mentioned that CSR in the developing world is mainly seen as corporate philanthropy, giving a cheque without really bothering to know how it is going to be implemented or where the money is going to be used for. What is your view on that?

A. Well, it is philanthropy. We must be realistic about it. But, I think we must not forget the end result. And I think this is the more important. It is not the fact of the attitude of the company which is trying to do CSR looks down on the people that they are trying to help. For example BAT is doing quite an excellent project for students who want to go to university and who don't have the means. There is absolutely no relation between what BAT is doing and what the young people want. It is people who don't have the means to have the education but not sort of telling them 'you owe everything to us'. I think it is that sort of attitude which we should forget.

Q. But do you think this is more pertinent in the developing world or do you think there might be some difference?

A. This is personal, but I think that philanthropy is more in the developed world, because when you read the papers, you talk about philanthropy societies. Look at the stars [celebrities], they do that sort of thing. You don't have that in developing

countries because people can't afford to do that sort of thing. You really feel that. This is where there is a problem. This is where we need to act.

Q. Do you think a commitment to CSR impinges, even a little, upon the goal of maximising shareholder?

A. Well, it does, because it takes part of your capital and your interests. But if there is awareness of the role of each one in society, I think that the little that you give to have a better world with better human beings will on the whole make a better place to live in. I think it is not important to think of whatever we lose.

INTERVIEW U- 04/09/06

Q. Is your company a private or public company?

A. Private company.

Q. The nature of the shareholding?

A. 100% Mauritian.

Q. Does your company consider its main objective to be profit maximisation for its shareholders?

A. Yes.

Q. How high does social responsibility rank in your company's list of main objectives?

A. We take our share of social responsibility seriously and we play our part in the community. We have been in existence now since [REDACTED]. One thing of which I am proud of is that workers who joined me at the beginning and they are still with me. As you know, in Mauritius there is great demand for high skilled labour and there is quite a movement. But when you have people staying with you for such a long time, I think that things are bright.

Q. What is your understanding of corporate social responsibility?

A. These are new words and having started business many years ago, these words were not in vogue then. Anyway, to me responsibility, whether social or otherwise, is to do the right thing, whether by the work force, by the community in which you live, I think that my company works within the laws of the country, whatever law is there, whether it is banking, customs. We obey these laws very strictly and we seem to be comfortable by doing that. We have a significant growth, every year since we started. When we started, my exports were Rs 30 million. This year, we would be exceeding Rs 1 billion. I think this is comfortable. We employ 2 500 people. They seem to be happy. We have a very important presence in our local community. We support sports, schools. We support libraries. Every year we have a certain sum available and we support schools. I make it a point to support schools because there are not many big institutions in this area. And whenever I get requests, I send help to them. We support every institution within this area.

Q. I think you've answered the next question. Does your company engage in corporate social responsibility?

A. I don't know what that means but we have tried to do it.

Q. Can you give some examples? You've talked about the schools. Are there any other institutions in which you are engaged?

A. The religious institutions also come to us for support because they hold their prayers and their meetings and they need support for providing food. One of the biggest supports we do every year is for Maha Shivaratree. The Hindus from our community do a pilgrimage to Grand Bassin and they require T-shirts. In some places, they provide food and drinks. We distribute over 10 000 T-shirts every year. That's an annual event and we do that as a routine thing. We are starting, in fact we started it earlier, but lack of ground facilities stopped it. But now the government is

providing facilities at Anjalay stadium for us to train for cricket. We are going to start it in the north. My company will provide everything. We will provide trainers, we will provide the equipment, we provide transport, etc for beginners to be taken from and to the ground. I hope this will catch up. This is something new as Mauritius is one of the few Commonwealth countries which does not play cricket. We have some cricket which is being played but it is mostly by expatriates and I feel that it could be done. We are going to start the group. We'll fund the whole thing.

Q. Can you give some reasons why you are engaging in corporate social responsibility?

A. I have always believed that when you live in a community, you must be part of that community. And this is not because I read any books or anything, it's just natural to us. My people work here and they come from the local community.

Q. Does your company encourage trade unions on behalf of your employees?

A. We do not have any trade unions. The law locally requires that to be recognised as a trades union, you must represent, I think, 40% of the work force to register as members. We have never had that good luck. They have come to us and I told them that they can talk to my workers and that if they wish to join, they are absolutely free. That is true. However, I do tell my workers that if you have any concerns you can talk to me directly instead of going to Port Louis and somebody comes with his briefcase. They seem to understand.

Q. Does your company encourage trade union membership?

A. No, I don't encourage them, but I don't discourage them either.

Q. What kind of benefit does your company provide to its employees?

A. Of course we pay the salaries etc. We do provide a pension scheme, a contributory pension scheme. We also provide a contributory medical scheme. The senior staff get help for travel, but that's more individual. We also provide car and bicycle loans.

Q. Does your company have any safety committee as regards maintenance and equipments?

A. We have. In fact, by law, we are required to have Health and Safety officers. We have regular meetings with our personnel and administrative officers. And of course the equipment, for example the boilers, we have to get a certificate from an independent authority every year. Those factors are well taken care of.

Q. Has your company introduced any structure of industrial democracy, such as worker participation within the company?

A. No.

Q. Does your company operate any disclosure provision to keep staff informed of the company's policies?

A. Yes. I address them. Very regularly I gather them and I think it works beautifully. I talk to them. I tell them what we are doing. I address them on a regular basis.

Q. What do you mean by regular?

A. I would say once every three months, because we have some 1 000 foreign workers and I personally see to it that they know what is happening and their concerns are taken on board.

Q. Do you do such things as newsletters?

A. No. This is too much sophistication.

Q. How would you rate the awareness and practice of corporate social responsibility in Mauritius?

A. I'm not really concerned about that. But I would say that in Mauritius, we have really good industrial peace. We have had no strikes, and I have been working in Mauritius now for [REDACTED]. We have responsible trade unions and I think people are comfortable and it can't be just me. There are problems from time to time, but generally speaking, there is a good industrial relationship. I see a lot of companies having social or sports activities. I think people take it seriously.

Q. In your opinion, what should be the main five priorities which should be pursued by companies in Mauritius as corporate social responsibility?

A. Well, I would say good industrial relationship, that's first. Social responsibility towards the locality. Then, if you are in a position to play a part, supporting national events, such as in sports. For example if there is a sports team going abroad, we are asked for sponsoring and we do it. There was a cricket team which went to Zimbabwe. We gave support for the equipment and some for the airfare. I am more involved in cricket which is my love and which I will keep on supporting. I have put up three teams here. But sadly they are all expatriates with Indians and Sri Lankans, but I think it will have to go through the school system which I am going to support.

Q. When you mentioned the locality, what do you have in mind?

A. Well, schools and even the religious institutions. I don't want extremism as such but there are a lot of religious bodies. Mauritians generally are quite religious minded and they are not aggressive in their religious beliefs. They are happy to practise and they let somebody else practise what they want and this leads to a very good working relationship.

Q. Is CSR necessary in the Mauritian business environment?

A. I think each company should take it on its own. We have our trade bodies such as MEPZA who do promote good relations and they also sponsor things. So I think people are responsible. It is something which somebody is doing formally but it is being done.

Q. One of the criticisms of CSR in developing countries such as Mauritius is that you only give money. You write cheques and you are not really looking at how your money is being used. What is your opinion about that?

A. It's partially true because there may be some groups which give a lot of money, such as MCB and Rogers, but I have seen that they are sponsoring such things as athletics etc. but I say that it would be nice to participate, but if you need money take it, because the money is there, take it, criticism or no criticism because if people need money, they need money.

Q. Do you think a commitment to corporate social responsibility impinges, even if only a little on the policy of maximising shareholder value?

A. Not at all. Because I always believe in this. If my people wake up one Monday morning and they feel not well and they find they are not going to work, or they feel ok it's Monday and I am going to work. I feel that if they had a good week end they

would come. So I believe that generally keeping good relations with your workers creates a happy atmosphere. A happy workforce is a good workforce, a productive work force. I firmly believe in that.

INTERVIEW V- 04/09/06

Q. Does your company consider its main objective to be profit maximisation for shareholders?

A. Yes.

Q. How high does social responsibility rank in your company's list of main objectives?

A. Not as high as it should be, but over the past 10 years, we have been doing quite a lot, but not enough to my opinion, to get involved with social organisations and also to combat the poverty of the people whom we have around us.

Q. What is your understanding of CSR?

A. We have to look not only to maximise profit for shareholders, we also have to look after the welfare of our employees, their family, and also the welfare of the region where we operate.

Q. Does your company engage in CSR?

A. Some 10 years back, we read an article in the local press about a primary school in [REDACTED] where the kids suffered absolute poverty. So, we went to [REDACTED] and witnessed the poverty, and from that day on, our company ensured that every pupil got at least one meal per day and at least two hot meals per week. When we started this project, the pass rate at CPE examinations was below 20% and the absenteeism rate at school was above 50%, and as soon as we started this project, the absenteeism rate went down because these pupils started to come to school as a means to get food. The pass rate at CPE examinations reached 60% ten years later. I think it's our responsibility to look after these children. This is one project. We have other small projects like, for example, there is a primary school at [REDACTED]. Most of the parents of the pupils are factory workers who finish work late, and children are left alone in the time gap from when school finishes and when their parents come home. They hang out with friends and develop bad habits. So, some 6 to 7 years back, we started a project called "Atelier de Menuiserie" where we have hired an experienced carpenter, we have invested in machinery and equipment, and installed it at the school, where we have been allocated a room. Children in standards 5 and 6 are taught to manufacture small pieces of furniture. This is another project we are proud of. There are also a lot of organisations coming to us throughout the year and we try to finance their projects.

Q. Why do you engage in CSR?

A. Because we think it is important to finance projects which help reveal the creativity of people and help them become self-dependent. I think this is more and more important for Mauritius.

Q. Does your organisation recognise trade unions on behalf of any of your employees?

A. Yes. Our workers are affiliated to the [REDACTED] which is affiliated to SPU (Society of Progressive Unions) and we have been recognising this union for about 10 years and we have entertained excellent industrial relations with the Union.

Q. Does your organisation encourage trade union membership?

A. We have done nothing to encourage or discourage it.

Q. What kind of benefits does your company provide for its employees?

A. We have different categories of employees. We have staff employees, intermediate staff employees, and then we have the labour force. For the staff category, we give the statutory thirteenth month bonus and depending on the company's profitability, we also give additional bonus. For the past 10 years, all the staff has received not less than 3 months bonus, depending on profitability. We also have the pension scheme, paid mostly by the employer. The premium amounts to about 30% of salary. The employee pays 3% and the rest is met by the employer. We have got medical schemes where we have got the normal medical cover where the employee pays only 25% of the premium. We also have the catastrophe cover, the premium of which is paid fully by the employer. We have also got an overseas scheme for all members of staff, for receptionist to director, though the frequency allowed is not the same. For the intermediary staff, they have the same benefits, apart from the overseas scheme. As for the labour force, which is around 3500, they are not on our medical scheme, but we do have loan schemes without interest. Most recently, a member of staff had to go to South Africa for medical intervention, costing 1.1 million and we paid it fully. This is mostly on an ad hoc basis.

Q. Does your company have any safety committee and respective work conditions and equipment?

A. Yes. It is compulsory for us to have a fully qualified safety officer. In fact, we have a safety department. We are currently sponsoring an employee to follow a course at the University of Mauritius on Occupational Health and Safety. [REDACTED]

We must have a Health and Safety meeting on all sites with more than 100 workers. On most sites we have regular Occupational Health and Safety meetings with representatives of management and workers.

Q. Has your company introduced any form of industrial democracy or worker participation within the company?

A. No. Not yet. We do have work councils, but only to address direct site matters.

Q. Does your company operate any disclosure provisions to keep staff informed of the company's policies?

A. Yes. We have got a journal in which we disclose the policy, visions and the new projects undertaken by the company. We try to give maximum information and all employees get a copy of this journal. We are too scattered to adopt the notice board system. We do have some employees who do the link between the sites and the head office. Our sites are visited every week.

Q. How would you rate the awareness and practice of CSR in Mauritius?

A. I think it is starting to get more and more important. Last Friday, we arranged a meeting with Fondation Espoir et Développement concerning CSR and we are trying to harmonise our actions in this respect.

One event which prompted the private sector to become more socially conscious is the Kaya affair.

Q. In your opinion, what are the main 5 priorities to be pursued by companies in Mauritius as CSR at the moment?

A. Education, especially to ensure that the children in the deprived regions get the right education. There is also enhancement of creativity, leading to self-dependence.

Q. Is CSR necessary in the Mauritian business environment?

A. It is essential.

Q. A number of commentators have mentioned that in the developing world, CSR mainly takes the form of corporate philanthropy. What is your view about it?

A. Unfortunately, that's true. It's easier to write a cheque than to really get involved. It takes time. People need to see that you believe in the project and this is very important.

Q. Do you think involvement in CSR infringes, if only a little, on the goal of maximising shareholder value?

A. It will not affect the interest of shareholders negatively. Because, if we do not invest in CSR, the shareholders may find in the coming years, their dividends considerably reduced because of social explosion.

INTERVIEW W – 05/09/06

Q. Is your company a private or public company?

A. It's a public company listed on the Mauritius Stock Exchange

Q. What is the nature of the shareholding? Is it 100% Mauritian?

A. Mostly Mauritian, There are less than 10 % overseas shareholders.

Q. And the number of employees?

A. About 230.

Q. Does your company consider that its main objective is profit maximisation for its shareholders?

A. I have a French quote here. "L'objectif principal de toute entreprise est de créer des richesses matérielles et immatérielles à l'intention de tous ceux qui la font exister." I think it is a fully comprehensive objective for the company, its raison d'être, because we have to work for all our stakeholders and I would say, yes, for our shareholders maybe, to start with.

Q. How high does corporate social responsibility rank on the list of the objectives of your company?

A. We are fully committed to social responsibility. Right from the board, we believe in, another saying, triple bottom line. We have got the importance of the economic results. Also we have to look after our societal and our environmental duties, triple bottom line, economic, societal and environmental.

Q. So what is your understanding of corporate social responsibility?

A. I think it's in the definition I just gave you in French. Not only to look after the interests of our shareholders and society and the environment.

Q. Does your company engage in corporate social responsibility?

A. We are trying to finance some projects, for example, Mauritius Wildlife foundation in Rodrigues. That's a good programme and we are helping them. We are also committed in the company about tidiness and hygiene. We have a food factory and we have treated water. I would say yes, we are socially responsible.

Q. Why do you think there is a need for you to be socially responsible?

A. It's by conviction, I think it's part of a culture that you would pass on to other people, to educate them rather than to earn a market or to do business. There is a bit of it as well.

I should also tell you that we are starting to work on a code of ethics.

Q. Does your company recognise trade unions?

A. There is a trade union. Your question may be is that whether trade unions are partners, are stakeholders? If they are civilised, why not? If they look for employment security and good working conditions and all that, we'll do it.

Q. Does your company encourage trade union membership?

A. No, we don't encourage, but we deal with them in a normal way and whatever collective agreement there is, we do it without any threatening on our part or whatever it is.

Q. What kind of benefits does your company provide for its employees?

A. Too much. Let's start with pension. Over and above the National Pensions Scheme, which is mandatory, we have got a pension plan for all our employees right from the top to the bottom and the scheme is more or less the same. When they retire, they get full benefit. They get a lump sum which is 25 % and the rest until they die. We've got widows and orphans pension scheme, we've got a medical scheme. We are contributing to the medical scheme. It applies to the worker, his wife and children under 18.

We have also profit sharing so that every gets part of the cake. We have got a formula. This year it is going to be about 5/6 of a month's salary. It can't be more than 2 months in any case. It's a fixed formula based on the profit of the company. We also organise outings and social programmes. We've got a football team. We offer travelling facilities, in fact more than what is prescribed by the law. We have got a housing scheme as well which is an interest free loan – up to one million rupees- which is not very much.

Q. Does your company have any safety committee in respect of work conditions and equipment?

A. Yes, it's mandatory. The factory inspectorate visits us and we've got a very clean record. In fact we're cited as an example for other companies.

Q. Has your company introduced any form of industrial democracy or worker participation within the company?

A. We're trying to have a good communication network. We start with the Board of Directors. We have an executive committee which meets every Tuesday and then we mostly talk of strategic and executive operations. We've done that separation. I am now the CEO rather than managing director and we have a COO, who is called the general manager and he looks after all the operations side. So I preside the executive committee which is made up of five persons. Then once a month, you have got all the heads of department, about 12 of them chaired by the general manager who would give them all the feedback from the board of directors and the executive committee plus the on going matters. And when they meet, they've got the minutes of the meeting which is shared with the heads of department. So it goes not only down but also up. We are in fact a democratic company. We trust in transparency and example. My main criteria for a leader would be honesty and integrity, leadership by example and dedication to team work, apart from the creativity and all the innovation.

Q. Is there a work council?

A. There is a work council, but there is a union. If there were to be no work council, we would have a work council.

Q. So does the union participate?

A. We're trying to get them involved but it's through the workers but not in the form of a work council. It's less formal. I have more the open door policy and when I walk

around, if anybody wants to talk to me, he can do so, but I have my priorities of course.

Q. Does your company operate any disclosure provision to keep staff informed of what is happening?

A. There is a journal d'entreprise which comes out twice a year. The first part is very formal and sort of serious and the social part goes from about the middle page through to the end.

Q. How would you rate the awareness level of corporate social responsibility in Mauritius?

A. Not enough. I believe in *Entreprise Citoyenne*. I think this is a better word than corporate social responsibility. I don't like responsibility. I would rather go for corporate citizenship. I am myself totally convinced, and as I said earlier, we believe in a culture of social responsibility. No, it's not enough in Mauritius. We've tried with [...]. We had a committee on the role of the private sector in community development. It was not internal. We had all the directors of the private sector participating. We started with les 'vérités de la société mauricienne, l'extrême pauvreté existe à Maurice, il y a des gens qui sont vraiment nécessiteux et que l'entreprise a une part de responsabilité envers eux. We put up a nice report.

By the way we have got a commitment whereby 2 % of our profit will go towards social and community development.

Q: In your opinion what should be the 5 priorities to be followed by companies in Mauritius as CSR?

A. It's helping the poor. We really believe in education. It's very worrying that 40% of our students do not get through their primary education. At CPE there is 40% failure. That's why we're participating in the ZEP Initiative, "Zone d'Education Prioritaire". The idea is to give schools with the worst results a very good team of teachers to help the pupils. We are very happy with the way we're helping them to work. They are very committed. Our Human Resource Manager participates in all their activities. C'est une initiative du secteur privé coordonnée par la JEC. Education is the root of everything. I think it's a good philosophy.

So the priorities are to deal with extreme poverty, with education, with environment. We have got our donation going towards the Mauritius Wildlife Foundation which is community development as well. We have sports as well. There is the Ecole de football, an initiative of [REDACTED] All the quarters of Port Louis have these schools. We gave them a lot of things, we provide about Rs 50 000 a year. What would the children have done if they had not gone on a football ground two or three times a week?

Q. Is CSR necessary in the Mauritius business environment?

A. Yes. I am categorical about it. As I said, we don't work only for profit. We also work for the community. It's to your advantage as well. If there was insecurity everywhere there won't be tourists. If people don't get the money to buy their basic food, we won't exist. It's not only for that, it's also a conviction.

Some years ago, there was an end of year function. We have a meeting like that every year as it is part of our program. There was a workshop at [REDACTED] and all the employees, 200 of them, were treated to lunch. The chairman asked me to speak and I

had not much to tell and then we came up with the idea of giving 2% of our profits and the workers were very happy with the idea and they came up to say it.

Q. One of the criticisms commonly made is that CSR in developing countries is a sort of philanthropy.

A. Sometime it is difficult to control the money you are giving out and we don't have the time to participate in all the activities. But you have to trust people so that they use the money properly. We never ask to be cited as a company which gives money or if it is done, they can do it, but we don't insist on putting our name as a donor.

Q. A lot of people say that it is because of competition that companies do it as their competitors do it.

A. We don't have much competition. We are lucky enough. In fact we are less protected in terms of customs duty. [REDACTED]

[REDACTED]. Of course we don't pay any duty on our raw material, but when you consider other sectors, [REDACTED] who are protected by 30% and some years ago it was 60%.

So we are not doing it in the way you mention. But we try to keep a low profile and we have never boasted about what we have been doing.

Q. Do you think that commitment to CSR impinges, even if only a little, upon the goal of maximising shareholder value?

A. I don't go along with that. Even though if, I think it is the Financial Secretary who said that "l'entreprise travaille rien que pour générer des richesses", that the only objective of the company is to create wealth. I don't agree with that. Even the economists go along the same line when they say that the only purpose is to create wealth for the shareholder. I don't agree because I see it in practice. It works the other way round.

INTERVIEW X - 05/09/06

Q. Is your company a private or public company?

A. It's a public company that has been listed on the Mauritian Stock Exchange since [REDACTED]. We have 17 000 shareholders, of which [REDACTED] are foreign. We employ over 900 people and we are based in Mauritius, Madagascar and India.

Q. Does your company consider its main objective to be profit maximisation for the shareholders?

A. I want to change this slightly and say that our main objective is to maximise shareholder value. This means what the shareholders expect as returns compared with the risks involved. So there's a slight differentiation between that and profit maximisation.

Q. How high does social responsibility rank in your company's list of main objectives?

A. It is part and parcel of our main objective i.e. maximising shareholder value - it includes caring for our stakeholders, i.e. our employees, the government, the public and customers.

Q. What is your understanding of Corporate Social Responsibility (CSR)?

A. CSR is more than corporate philanthropy. It is an implicit contract that the company has with society- which means, we have to give something back to society. We give our employees value back to them, the services they need to our customers, and different objectives to our shareholders. It's a constant balancing act between generating profits and giving value back.

Q. Does your company engage in CSR? Please give reasons for your answer and, where possible, cite examples.

A. Yes but as corporate philanthropy. We have a budget earmarked for CSR purposes for things such as the environment, education, poverty, social events. At a shareholders' meeting, we decided to establish three trusts: (1) [REDACTED] (which tries to improve the conditions of the most deprived segment of the population by giving away funds for educational purposes), (2) a Staff Welfare Fund and (3) [REDACTED]. These all come up to about Rs100 mn worth of assets and are managed by independent trustees.

We also give money if we feel it is for a worthy cause like in the case of the Chikungunya epidemic last year. We can't obviously give all our money away though but there is an implicit or informal understanding that we will give money in times of need.

Q. Does your company recognise trade unions on behalf of any of your employees?

A. Yes. There are two categories of unionised members: managerial and clerical.

Q. Does your company encourage trade union membership?

A. Union membership tends to be automatic.

Q. What kind of benefits does your company provide for the employees?

A. Loads! We have medical and pension schemes. We have the [REDACTED], which acts as a leisure, health and learning centre- because we believe in the long-term rather

than short-term goals. We give training locally and overseas. We also give out travelling expenses and we have a reward system, which is commensurate with productivity. We have an in-house doctor, who comes in twice a week.

Q. Does your company have any safety committee in respect of work conditions and equipment?

A. No but we have a Health and Safety officer, who is part of the HR team.

Q. Has your company introduced any form of industrial democracy or worker participation within the company?

A. No but we promote equal opportunities and we have a policy that promotes transparency. We have also adopted the JEC's Code of Business Ethics, which shows our willingness to adopt best practices. We also organise focus groups to get feedback from the staff e.g. when we launch a new product. This happens regularly but not at specific intervals. We have different committees such [REDACTED]

At board-level, we follow the required conditions within the Companies Act, which are already quite stringent.

Q. Does your company operate any disclosure provisions to keep staff informed of the company's policies?

A. Yes. We publish an Annual Report. There is an intra-net, whereby news is posted. And we have a newsletter, which is published on a quarterly basis.

Q. How would you rate the awareness and practice of CSR in Mauritius?

A. In terms of awareness, there is a lot more to be done. It needs to be extended to a lot more companies. In terms of practice, it is currently very much on an ad hoc basis so it needs to have a more organised and strategic focus at the national level. Companies need to get better organised.

Q. In your opinion, what should be the main 5 priorities to be pursued by companies in Mauritius as CSR at the moment?

A. I will be a bit philosophical here. I think we (companies) need to look forward and question ourselves, especially if we want to be in existence for the longer term. The sectors that we need to promote are tourism – we have to protect our national heritage, think about sustainability over the long term as we compete in a changing environment; education- we have to look after, we are responsible to the younger generation, inculcate certain values in them.

Q. Is CSR necessary in the Mauritian business environment? Please give reasons for your answer.

A. Yes. As I mentioned before, it is a social contract between business and society. One cannot function without the other.

Q. Some commentators have mentioned that CSR in the developing world is mainly seen as corporate philanthropy, what is your view on this?

A. I agree. That is the easiest way but CSR takes a bit more than that. One has to redevelop one's products to be socially responsible. We need to be committed, think of involvement at a much higher level and take strategic decisions.

Q. Do you think a commitment to CSR impinges- even if only a little - upon the goal of maximising shareholder value? Is this justifiable/legitimate?

A. I guess yes. There is a delicate balance to be maintained. We need to think at maximising profits in the long term. The critical issue is to look at the time-span. If we succeed and it is reflected in our products and in shareholder value, then society accepts it. If not, then we won't be around for long.