INNOVATION, SOCIAL RESPONSIBILITY AND SUSTAINABILITY

Edited by David Crowther
and Shahla Seifi

DEVELOPMENTS IN CORPORATE GOVERNANCE AND RESPONSIBILITY

VOLUME 22

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DEVELOPMENTS IN CORPORATE GOVERNANCE AND RESPONSIBILITY

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PART 1

DEVELOPING SOCIAL RESPONSIBILITY

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CHAPTER 1

TOWARDS A MANDATORY CORPORATE SOCIAL RESPONSIBILITY FOR BANKS IN CHALLENGING INSTITUTIONAL CONTEXTS: A CASE STUDY OF NIGERIA

Victor Ediagbonya

ABSTRACT

Many corporations engage in corporate social responsibility (CSR) activities voluntarily, but there is an ongoing debate about whether the government should intervene in CSR, particularly in countries with challenging institutional contexts. While some have argued that CSR should remain a discretionary exercise, as any attempt to make CSR mandatory through any form of state intervention will negate the meaning and objectives of CSR. However, drawing on the institutional theory, this chapter argues for the need to have some form of legislated CSR for banks operating in countries with challenging institutional contexts. The chapter further acknowledges that a universal CSR framework would be difficult to achieve due to differences in institutional contexts between countries; consequently, the nature, scope, and application of CSR legislation would vary significantly amongst countries as CSR is context dependent. Nonetheless, given the crucial role banks plays in society besides acting as the country's payment system, banks also transform illiquid liabilities into liquid assets, therefore making the banks the drivers of national economic developments globally. Governments in developing and emerging markets (DEMs) should ensure that banks' CSR initiatives are not only meaningful

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but also impactful by implementing a limited legislated CSR framework. This framework would require banks to establish a CSR committee of the board, make mandatory non-financial disclosures on their CSR activities in their Annual Reports, provide mandatory CSR continuous professional development (CPD) training for bankers, and mandate banks to contribute a certain percentage of their yearly profits before tax to agreed CSR initiatives, among other requirements.

Keywords: Corporate governance; corporate social responsibility; institutional theory; banking regulation; institutional voids; developing and emerging markets

1. INTRODUCTION

Globally, banks are pivotal to national economic development in the countries they operate, not because they act as the payment systems of countries, but due to their ability to transform illiquid assets into liquid assets. One way banks carry out their operations is through acceptance of deposits from depositors usually in the short term while lending most of such funds to its customers for a longer period. This mismatch in maturity no doubt creates a material risk by exposing banks to impending financial challenges if not adequately and effectively managed. Whilst this is the nature of the banking operations globally, banks in the developing and emerging markets (DEMs) are further constrained by challenges unique to their institutional environment, these challenges are still persistent despite adopting regulatory approaches from developed economies. It is argued that corporate social responsibility (CSR), although a Western concept is one way of resolving the problem facing the banks including the challenges highlighted above. The debates revolving around the use of CSR in resolving the problems of banks are no longer contentious; however, what is now contentious is whether the approach to CSR should be voluntary or mandatory. The United Kingdom operates a more voluntary/discretionary approach to CSR and that same approach has been adopted by banks in Nigeria despite the differences in the institutional arrangements of both countries. The effect of such transplantation of policies and regulations from developed economies such as the United Kingdom by countries in the DEMs such as Nigeria without any modification has resulted in nothing but a failure to achieve the desired result. The failure stems from the fact the institutional contexts in these countries, developed economies and the DEM are fundamentally different. The nature, extent and application of CSR should be context-dependent. Thus, this chapter advocates for a mandatory CSR framework for banks in the DEMs based on the peculiarity of these countries.

The rest of the chapter is structured as follows. The chapter begins by deconstructing CSR through the exploration of the various concept of CSR. It went further to analyse some of the definitions offered by various scholars. The chapter suggests that the major problem with these definitions is that they present CSR from a voluntary context. The second section of this chapter explores the theoretical framework that underpins this chapter: the stakeholders and the institutional theories. It argues that for CSR to help realise SDG, particularly goals 1 (No poverty), 5 (Gender Equality), and 9 (Reduced Inequality), CSR framework in the banking sector in challenging institutional contexts should be mandatory because CSR is context-dependent. The third section explores the justification for a legislated CSR. It examines various arguments for and against mandatory/legislated CSR.

The chapter argues that several corporations, particularly in the developed markets, now report on their purported CSR through annual reports and websites. This is not because of the regulatory framework for corporate social responsibility reporting in those climes but because of what they stand to benefit by showcasing themselves as a CSR-compliant corporation, such as giving such companies a competitive edge by attracting socially responsible investors and customers. The fourth section explores CSR in Nigeria, generally and in the banking sector in particular. It argues that while the country's institutional context is different, attempting to adopt a global approach to CSR has not yielded the desired result; it further argues that CSR is not a case of one size fits all, but rather CSR should be context-dependent. The fifth section proposes ways of having a legislated form of CSR as a way forward in the post-COVID-19 era, given that several people, particularly women and children, have been thrown into poverty, thereby widening the financial inclusion gap in most communities. The final section concludes the discussion in this chapter, drawing on lessons to be learnt by other countries, particularly developing and emerging markets with challenging institutional contexts and suggesting further research areas.

2. CONCEPT, NATURE, AND MEANINGS OF CORPORATE SOCIAL RESPONSIBILITY

CSR as a concept have been defined differently by various academics; this is not surprising at all, as CSR is both a multidisciplinary and interdisciplinary subject. It usually depends on the context necessitating the definitions and the particular discipline. However, these definitions have further created some misconceptions about the subject; therefore, to understand CSR fully, a definitional deconstruction of the subject is essential. As stated above, defining CSR is by no means easy because there are many connotations of what responsibilities corporations can be subjected to. Therefore, to lay a proper foundation for understanding the concept, each of the components of CSR will be individually explored, these are 'corporate', 'social' and 'responsibility'. While the concept of corporate/corporation may seem relatively straightforward, it is necessary to explore the concept briefly as this will create a clear picture of the rationale behind its existence.

A company is also called a 'corporate' or 'corporation' which is derived from the Latin word 'corpus' meaning 'body' or 'organisation'. Merriam-Webster dictionary (1998) defines a corporation as 'any group of persons united or regarded as united in one body for a common purpose'. Bierce (1911) defines a corporation as an ingenious device for obtaining individual profit without individual responsibility. A corporation is a legally distinct entity with many rights attributed to individuals (*Solomon v. Solomon, 1897*). These rights include the ability to enter into contracts, borrow money, own assets, pay taxes, sue and be sued, amongst others. A corporation is formed when individuals or group of persons acquires shares in the corporation in pursuit of the corporate goal. Those who have exchanged money for shares in the corporation are known as shareholders. Therefore, due to their investment, they are entitled to profits. Generally, due to the doctrine of limited liability, the losses incurred by these shareholders are limited to the amount invested (*Solomon v. Solomon, 1897*). In *O'Neill v Phillips [1999]* Lord Hoffmann held that 'A corporation is an association of persons for an economic purpose, usually entered into with legal advice and some degree of formality'.

Corporations date back to mediaeval times (Davoudi, McKenna, & Olegario, 2018; Laski, 1917), and their goals have always been to maximise profit for the benefit of their shareholders. This doctrine is rooted in classical economic theory postulated by Adam Smith (1776/1982) in his work entitled 'The Wealth of Nations'. He argued that markets tend to work best when the government leaves them alone, as corporations would naturally find the most efficient way of producing their goods and services to maximise profits for the benefit of their owners. He further argues that government regulation is potentially detrimental to economic growth, inhabiting corporations' ability to maximise profits, given that a corporation that does not profit will eventually fold up. It is evident from the above that neoliberal economists such as Adam Smith argue that where corporations are unable to make profits they would not fulfil their other obligation, such as paying taxes and job creation. Despite how convincing the above argument may seem, given the fact that no country can grow without the payment of taxes and provision of employment from the corporation, that does not in any way obscure the general purpose of establishing corporations by the shareholders, which is to maximise profits for their benefits.

Having explored the concept of 'corporate', the next task in deconstructing the meaning of CSR is to briefly explore the concept of 'social'. What does the word 'social' connote? According to Collins (2008), social means relating to society or how society is organised. From this definition, the concepts' 'social' and 'society' are indistinguishably linked, given that Emile Durkheim's study of social facts underpins them (Durkheim, 1982). The term social identifies society at a very functional and practical level; Durkheim, while defining society, divides it into two categories: the internal society and the external society. The internal society establishes the beliefs and attitudes pertinent and inherent to society, whereas the external society compels and influences the individual to act accordingly (Durkheim, 1982). Hence, if people fail to conform to 'society', they could be compelled to do so through relevant laws. Law was central to Durkheim's study of sociology, he argued that law can be seen as an institutional social fact which provides an index to social solidarity (Durkheim, 1933).

Moreover, in applying the above meaning of social and society, it is evident that law can be manifested in the 'internal' as well as external society (Durkheim, Lukes, & Scull, 1983). Therefore, from the above analysis, one would argue that the term 'social' does not translate to voluntariness and dilute the responsibility of corporations; in fact, the law is embedded within the social context. The last and final task in deconstructing CSR is to explore the concept of responsibility. The term 'responsibility' has been examined by various scholars in recent times and as stated above, there is a need to understand what it entails as it relates to CSR.

Abdulrachman (2006) argues that responsibility takes its root from the word 'response', which means to 'answer' or 'compliance'; thus, responsibility means 'being able to respond to the requirements of something or being responsible to something else'. So responsibility would mean accountability or answerability. Barry and Shaw (1979) defined responsibility as a sphere of duty or obligation assigned to a person by the nature of that person's position, function or work. From the above definition, one would argue that responsibility is a bundle of obligations assigned to a person according to persons based on the nature of their position or status. Responsibility can mean 'primary rules', which may be in the form of regulatory obligations, for example, disclosure or 'secondary rules', such as the consequences for breach of regulatory obligations (Nollkaemper, 2006). Therefore, one could argue that responsibility is not just calling on those in positions of authority or those who hold certain positions to answer questions. However, for responsibility to be effective, it requires setting out rules and legal sanctions, which could be preventive, punitive, or reparative sanctions (Cane, 2002). Given the above definitions of responsibility, it is safe to conclude that responsibility is a form of accountability, requiring persons who hold certain positions to give account in terms of their actions and if they fail to conform to the laid down rules, then there will be consequences in the form of any of the sanction identified above (Bottomley & Forsyth, 2007).

It is argued that though the concept of responsibility could easily be applied to individuals who hold certain positions and to the government to a large extent; however, it poses some difficulties when used in the context of corporations. This is because the concept of responsibility requires that corporations be accountable not just to only shareholders but also to society at large. Corporations must operate within the complexity of social and economic relationships and strike a balance between maximising profit for shareholders' benefit and promoting the interests of other stakeholder groups. Achieving this will require the need for proper accountability. Demanding such accountability from corporations has given rise to various contentious debates. For example, Friedman (1970) argues that the social responsibility of a business is to increase its profits for the benefit of its shareholders. A position that has previously gained judicial prominence through several decided cases. In the case of *Dodge v. Ford Motor Company* (1919), Michigan Supreme Court held that:

> There should be no confusion (of which there is evidence) of the duties which Mr. Ford conceives that he and the stockholders owe to the general public and the duties ... he and his codirectors owe to ... minority stockholders. A business corporation is organised and carried on primarily for the profit of the stockholders. The powers of the directors are to be employed for that end. The discretion of directors is to be exercised in the choice of means to

> attain that end and does not extend to a change in the end itself, to the reduction of profits or to... devot[ing] them to other purposes.

It is evident from the above decision that directors are accountable to shareholders and not to anyone else, even though the law resonates with the various concepts that make up CSR, 'social and responsibility' as discussed above. These debates are not unconnected with how various scholars have attempted to define CSR, which has been informed by the multidisciplinary and interdisciplinary nature of the subject; given this dynamic nature, it is argued that CSR needs to be context-dependent. Adopting a universal or global notion of CSR based on philanthropism somehow erodes the meaning and impact CSR is meant to achieve, particularly in countries with challenging institutional contexts. Therefore, before exploring the theoretical framework which underpins this work, at this point, it will be helpful to examine some of the key definitions of CSR to establish the problem evident with these definitions and how to resolve this definitional defect.

According to the European Commission (2001), CSR is 'a concept whereby companies integrate social and environmental concerns in their business operations and in their interactions with their stakeholders on a voluntary basis'. However, the Commission in 2011 went further to define CSR as actions by companies over and above their legal obligations towards society and the environment. Certain regulatory measures create an environment more conducive to enterprises voluntarily meeting their social responsibility (European Commission, 2011). As evident from these definitions, the Commission portrays CSR purely from a voluntary perspective; even if the law must be involved, its purpose is to create an enabling environment where corporations can voluntarily deliver societal expectations. The Department for Business Innovation and Skills (2014) adopted with minimal modification the European Commission's definition stated above by suggesting that corporate responsibility is the voluntary action businesses take over and above legal requirements to manage and enhance economic, environmental and societal impacts. It is about being a responsible business and part of an integrated and strategic approach, creating shared value for business and society (Department for Business Innovation and Skills, 2014). The main difference between the two definitions is that the latter has dispensed with social in the concept, thus basing the definition on corporate responsibility. This does not change the meaning, as the obligation required of corporations in both instances remains the same; this is based on the fact that the phrasings of both definitions are the same. The other point that is of interest here is that the Department for Business Innovation and Skills aligns with the voluntariness of CSR.

Berliner and Prakash (2014) argue that CSR pertains simply to policies and activities aimed at creating public goods (or mitigating public bads) which firms pursue beyond their legal requirements. They described CSR as obligations that require corporations to produce public goods beyond the requirements of applicable government laws (Berliner & Prakash, 2014). They suggested that a bonafide CSR programme seeks to encourage businesses to embrace socially