

Defining a Post-Conventional Corporate Moral Responsibility

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ABSTRACT. The stakeholder approach offers the opportunity to consider corporate responsibility in a wider sense than that afforded by the stockholder or shareholder approaches. Having said that, this article aims to show that this theory does not offer a normative corporate responsibility concept that can be our response to two basic questions. On the one hand, for what is the company morally responsible and, on the other hand, why is the corporation morally responsible in terms of *conventional* and *post-conventional* perspectives? The reason why the stakeholder approach does not offer such a definition, as we shall see, is because the normative stakeholder approaches tend to *confuse* the social validity with the moral validity or legitimacy. It leads us to a conventional definition of *corporate moral responsibility* (CMR) that is not relevant to the pluralistic and global framework of our societies and economies. The purpose of this paper is to demonstrate this intuition.

KEY WORDS: business ethics, discourse ethics, moral responsibility, normative approach, post-conventional perspective, responsibility, stakeholder theory

Introduction

The purpose of this paper is to investigate the normative proposals of the Stakeholder Theory put forward by Freeman and Donaldson and Dunfee regarding the definition of Corporate Moral Responsibility (CMR). The idea is to present evidence that those proposals offer a normative and pragmatic answer to the following questions on responsibility: who is responsible? For what is one responsible? In whose presence is one responsible? And on whose behalf is one responsible? Such answers, as the analysis of these proposals demonstrate, emanate from a moral conventional perspective and from a *non* post-conventional perspective *able to respond to our pluralistic societies*.

The first part of this paper will focus on debating the principle that maintains that the company has an executive responsibility. That is to say, the company is able to decide and has the freedom to choose from several different courses of action. In that sense, it has a moral responsibility, just as it has a social responsibility.

In the second part, starting from this first premise, it will become clear that the answers elaborated from the normative stakeholder approach, to the above-mentioned, question are supported by a conventional concept of responsibility. The proposals that will be analysed are: "stakeholder-as-contractor" (Freeman, 1994) and "Integrative Social Contract Theory" (ISCT) (Donaldson and Dunfee, 1994, 1995, 1999, 2000).

This article will therefore investigate whether the answers are valid from the perspective of the post-conventional moral responsibility that is required by our pluralistic societies and global

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economic environments. This survey is based on the studies and the concept of the discourse ethics formulated by Apel (1985) and Habermas (1991, 2000) and also by other works that try to show its potentiality with regard to the construction of a new business ethics framework [Cortina (1993, 1997, 2001), Cortina et al. (1994) and García-Marzá-Marzá (2000, 2002)].

In the final part, it will be affirmed that confusion in these normative stakeholder approaches comes about when attempts are made to define the *CMR* in normative and post-conventional terms. For this reason, this paper will attempt to emphasize, on the one hand, the theoretical and practical difficulties resulting from their proposals and, on the other, the possibility of looking for the post-conventional criterion. This criterion will guide the definition of the *CMR* in terms of a co-responsibility between all the stakeholders that participate in and influence the economic and business activity in a conventional and post-conventional way. Therefore, a definition of *CMR* evolves where we take into account both the *moral point of view* and the consequences of the possible course of action to be undertaken.

The company has a deliberative and executive responsibility

The managerial and ethical literature shows a great deal of debate on the question of who is responsible in the company (Lozano, 1999). From this debate, we can distinguish two opposed positions and various attempts at mediation. This paper will not address the three positions in depth as it is worthy of an extended study in itself, but rather to identify its existence and to affirm that the thesis that this paper maintains is situated in an intermediate position that holds fundamental premises proceeding from the two previous ones.

The first position indicates that the person who is responsible in the company is the individual who has the capability to act and take decisions, not the organisation as a whole. Thus, it is the individual who must answer for his or her actions (a). The second position indicates that

the company itself is responsible as a whole. In this sense, it postulates that we can and must attribute responsibilities to the company, as we do to individuals. This is because the company has intentionality and it is guided by moral criteria (b). And finally, the third position, defended by this article, it tries to argue in favour of a position that, without denying the contributions of the previous ones, there is a position which allows us to affirm that companies, just as much as the individuals who make it up, are the subject of corporate responsibility (c). In this sense, it is understood that the company has its own *deliberative and executive responsibility*. That is to say, the company is able to decide, from a position of *freedom* and *choice* when faced with several different courses of action. In this sense it has a moral responsibility.

From this position, companies are deemed to have a *moral conscience* and can be considered responsible for their actions and, consequently, we can demand real answers from them. But at the same time, this position assumes that the type of *corporate moral responsibility* is not equal to *individual moral responsibility*. In short, we can state, on the one hand, that companies are not individuals, they do not have a personality, and therefore could be considered as moral collectives, actors or agents. On the other hand, it is maintained that individuals are more relevant in the studies mentioned in the first position than those of French and Goodpaster. However, *CMR* maintains the central theses from French and Goodpaster, such as *intentionality* and *moral projection*.

It is necessary to explain what is understood by a *moral agent* and the conditions under which a company could be considered a moral agent. In this paper, a moral agent will be taken to mean all those individuals or entities that are able to consider alternative courses of action and justify their choices by different types of reasons: pragmatic, ethical or moral. That is to say, their actions or decisions are not mere answers to external stimulus, but that they can give reasons for why they decided on one particular course of action and not another. In this way, an agent is considered moral since it is a participant in the configuration of constituent practices of

moral responsibility and because it is responsible as much for the actions or omissions of action as for the results of the same (Fischer and Ravizza, 2000, pp. 208–210).

The conditions for considering a company as a moral agent are related to the *process of decision making* that it embraces (Donaldson, 1982, pp. 29–34). A moral decision making process must have at least two elements: (1) the capacity to use moral reasons in decision making and (2) the capacity by which the process of decision making controls not only its manifest actions, but also the internal structure of policies and rules.

From this position, when we state that the company is a moral agent we mean that the company is not a machine that responds to the external stimulus with no reasoning. For example, it does not respond to the exigencies or demands of public opinion, market conditions and consumer groups without reflecting and deliberating on what it can and must do. From now on, it is entirely pertinent to consider that the companies are those responsible. However this does not mean that companies must be exactly the same as individuals; for that reason the concept of moral agent allows us to define the company as being responsible for their decisions and performances but at the same time, we must not forget that their responsibility is different from that of the individual.

This combination of corporate and individual moral responsibility leads us to think about the interrelation and co-responsibility of all the individuals or interest groups that form the *plural company* so that such companies *satisfy* the two conditions of their *moral agency* and, therefore, also their moral responsibility. All stakeholders have co-responsibility to try to define the moral responsibility of the company.

At this stage, the question facing the normative stakeholder proposals developed by Freeman and Donaldson & Dunfee deals with the way CMR is defined in their proposals and how they respond to the key questions of CMR. That is to say, who is responsible? What are they responsible for? In whose presence are they responsible? And on behalf of what are they responsible? In short, what criterion or norm allows us to speak

of CMR. In other words, how can we distinguish and define CMR from CSR. We want to know if these proposals are able to distinguish *social validity criterion* from the *moral relevant criterion* in order to define and to evaluate the moral responsibility of companies, not only in a conventional perspective but also in a post-conventional one.

The definition of the CMR from two normative stakeholder models: “stakeholder-as-contractor” and “Integrative Social Contract Theory” (ISCT)

This section sets out to analyse the answer to the question of the definition and boundary of the CMR from two normative approaches of the Theory of Stakeholders. The aim is to determine when a managerial practice, strategy or action could be qualified or described as moral one based on these two proposals.

With respect to the concept of *moral judgement*, this article follows the cognitive perspective tradition (Kohlberg, 1987; Habermas, 1991, 2000). The moral or universal perspective of judgement is therefore the post-conventional perspective. This perspective allows the subject or the moral agent to judge the society to which he/she belongs when processing his/her moral judgements. The entity or individual judges as a single unit and its judgement can be universal. That distinguishes it from the conventional perspective where it is the group to which one belongs that processes the judgement. That is to say, in the post-conventional perspective, the judgement handed out is the judgement of any rational moral subject.

In the post-conventional perspective, the subject responsible, whether individual or collective, is conscious of the perspective of being a member of a society, but he/she questions and he/she redefines his/her perspective in terms of an individual moral perspective, so that the social obligations, norms or criteria are defined in forms that can be justified to any moral person. This perspective is located prior or previous to society, because he/she chooses the rules and

he/she believes them to be valid for all rational individuals regardless of which society he/she is from (Kohlberg, 1987).

On the post-conventional level, unlike the conventional level, the moral agent makes a clear effort to define the moral values and principles that have validity and are applicable to the authority of groups of individuals or people who make up those groups. That is to say, moral decisions are generated from values, norms or principles that are (or could be) acceptable to all individuals that make up or create a society with the aim of having equitable and beneficial practices (García-Marzá, 1992, pp. 22–27).

The moral perspective is defined from the reasons of the moral agent: *its reasoning*, its *why something is or isn't*. And when the individual realises, for example, that there is a conflict between the moral and legal point of view, he/she gives priority to the first over the second. That is to say, he/she grants priority to the recognition of moral obligations (Kohlberg and Kauffman, 1987, p. 16).

In light of these considerations, this paper studies the answers given by the normative stakeholder proposals to the questions of CMR. The objective is to find out whether the definition of CMR contemplates and maintains a post-conventional perspective of CMR, or whether it is fitted to socially accepted criteria and values and therefore only takes conventional criteria into account. The two proposals are: stakeholder-as-contractor (Freeman and Evan, 1990; Freeman, 1994) and Integrative Social Contract Theory (ISCT) (Donaldson and Dunfee, 1994, 1995, 1999, 2000).

The result of this study shows, firstly, that both approaches have attempted to draw a Business Ethics theoretical-practical framework based on Rawls's *social contract* concept, a framework that allows us to put the Theory of Stakeholder into practice. Secondly, the study demonstrates a discrepancy in the method used by each proposal to identify the content that this contract should have. The "stakeholder-as-contractor" uses Rawls's method of mental experiment of the *original position* with the tool of the *veil of ignorance*. And the ISCT uses *extant social contracts* and the *relevant communities* as method and substrate

from which to be able to discover the content of the contract and therefore of CMR.

In an attempt to show and to explain the broad responsibility and the definition of the social and moral responsibility of the company, these approaches use the *Social Contract* concept, which, according to its proposals, can help to show the moral *minimums* and synergies that connect business and ethics. That is to say, this concept allows us to identify and to specify the moral content permanently underlying the managerial and economic activity. Therefore, both are an attempt to demonstrate that the thesis of separation between ethics and business cannot be defended.

In my opinion, the formulations of the Theory of Stakeholder offer a methodological access to the normative (prescriptive) and to the pragmatic (strategic) questions that all studies on CMR must cover. For these reasons, these two proposals have been analysed.

Nevertheless, as this paper goes on to describe, the proposal of "stakeholder-as-contractor" describes a conception of CMR that does not adopt a post-conventional point of view because it does not provide for those affected by the actions and decisions of business activity. Thus groups are excluded as definers of the moral principles of the company. Neither does the proposal of ISCT successfully achieve this purpose because it leads us to confusion between the conventional and post-conventional perspective of the CMR and, therefore, it does not offer a clear reference on the matter. These two statements are argued below.

Freeman, in his proposal of *stakeholder-as-contractor*, defines the company as an explicit and implicit contract nexus. This definition relies on the intersubjectivity offered by Rawls's Theory of Justice (Freeman and Evan, 1990; Freeman, 1994). Under the umbrella of this ethical theory of justice, Freeman offers what constitutes a more thorough processing of a theory of stakeholder structure within the idea of the social contract.

This proposal starts off from the premise that the *stakeholders* rationally deliberating behind a *veil of ignorance* – following Rawls's line of thought – could adopt principles of fair contracts

which, taken jointly, could give rise to three corporate moral responsibilities (or obligations): The “stakeholder enabling” principle, The principle of “director responsibility” and The principle of “stakeholder recourse”.

What Freeman looks for in the formulation of Rawls’ Theory of Justice is a framework from which to be able to construct a normative nucleus for the notion of stakeholder that reflects the autonomy, solidarity and justice liberal notions (Freeman, 1994, p. 415).

The normative core of this redesigned contractual theory attempts to capture the liberal idea of justice, understood as fairness or equality between the contract parts, the formulation of a fair or just contract from which the responsibility that the organisation has in relation to its stakeholders is derived.

To summarise, Freeman attempts to define CMR. He states that from a “stakeholder-as-contractor” proposal, a contract is right or moral if all the parties to the contract could be in agreement with all the terms of the contract without bringing in their own present interests. The normative principles that serve as a moral guide for companies enable us to rethink the corporate legal framework in order to satisfy the three moral management principles extracted by the reflective equilibrium procedure (Freeman, 1994, p. 417). Nevertheless Freeman’s procedure excludes those affected by the company activity. His proposal includes only those groups or individuals which might have an interest or actively participate in the company (Marcoux, 1998). In other words, the stakeholders such as competitors or the claims or demands of civil society who are only affected by company are, presumably, excluded.

Regarding the proposal of ISCT, the concept of CMR is defined from the idea of Extant Social Contract whose analysis allows us to select and to point to the implicit contract which can be considered legitimate and normative and therefore part of CMR.

ISCT is based on a moral notion of *bounded moral rationality* that impels individuals to enter and allows for a *hypothetical social macrocontract* with society with the aim of guaranteeing moral *free space*. That space already exists before entry

into the hypothetical contract takes place. It is also necessary to be able to guarantee a space for social communities and micro-contracts. The claims of universality and validity or legitimacy of the norms differ in each type of contract. According to this theory, this is why three types of norms can be found: authentic (micro-contracts), legitimate (macro-contracts) and hyper-norms (macro-contracts). When a conflict or rivalry between norms arise, rules establishing the priority of the various hypernorms can be referred to.

The ISCT is a theoretical-practical attempt to provide the economic and business community with guides to performance on moral questions. It not only attempts to describe how companies or norms that already exist in micro-social contracts work, but also those that should exist in micro-contracts in the light of the hypothetical macro-social contract. Therefore, it is a theory that aims to harmonise normative and empirical factors, without trying to eradicate the differences between “is” and “ought”.

Donaldson and Dunfee propose their ISCT as a normative foundation to the stakeholder theory. They allows for the specification of the obligations of the company towards all stakeholders. That is to say, ISCT enables reasons to be given on why each stake from each stakeholder generates a corporate obligation. The nature of the obligation is related to the norm that is at stake (Donaldson and Dunfee, 1999, p. 235).

The normative Stakeholder approach deals with both the economic efficiency of the company, and the ethical reasons or moral norms that govern business activity and that the company must fulfil. Therefore, the stakeholder approach requires reasons that aim at a moral obligation to respond appropriately to stakeholder demands and these do not only include strategic or instrumental reasons. Thus, in the first stage, stakeholders are recognised, and in the second, the legitimacy of the claims made by the stakeholders is evaluated (that is to say, the assessment of the norm that each stakeholder uses – authentic, legitimate and hypernorm).

The ISCT enables us to define and to delimit the content of the obligations that each stakeholder has towards the company and the

company towards the stakeholders. When we ground the stakeholder approach in ISCT we can respond to the following questions: what the companies and stakeholders are responsible for from the instrumental and from the moral point of view.

Nevertheless, a double criticism can be made of this proposal. On the one hand, ambiguities or difficulties in maintaining the post-conventional level of the theory cause confusion in *the use of the norms with its moral validity*. This deficiency sometimes means that the theory does not explain why the company should be moral. This leads to a justification of *majority rule* that is a long way from universalism and moral pluralism. Therefore, it has contradictory consequences. On the other hand, the theory appears as a procedural theory but it does not sufficiently specify the procedure by which the hypernorms can be developed. It leaves a theoretical vacuum on the matter that produces restlessness and, in the long run, leads to social weight being confused with moral validity.

In summary, this section concludes that the Rawlsian social contract concept does not offer a suitable normative treatment of the consensus and definition of moral obligations because it confuses *social with moral validity*. Thus, it cannot ground a universalist moral capable of providing a post-conventional perspective to its practical proposal. Freeman's and Donaldson's & Dunfee's proposal treat moral questions and economic justice questions of an economic association of individuals in the same way. Thus, these theories do not give equal respect towards all those involved or affected by the norm, or a universalist moral (Habermas, 2000).

Proposal for the definition of the Corporate Moral Responsibility

When faced with the limitations displayed by the analysed proposals to capture and to maintain both a conventional and a post-conventional perspective in their definitions of the CMR, this paper proposes a Stakeholder Theory based on the normative core offered by the discourse ethics theory formulated by Apel (1985) and

Habermas (1991, 2000) and its application to business and economics by Cortina (1993, 1994, 1997, 2001) and García-Marzá (1992, 2002).

When distinguishing between *morality* and *ethicity*, the discourse ethics explains that only in the first case can *intersubjectively valid agreements* be reached. Therefore, it shows its normative superiority because it does not confuse *use* and *validity* or moral legitimacy in the agreements (Reed, 1999, p. 465). In addition, the quality of universalism in discourse ethics is held when we justify the *moral point of view* from which we are able to judge our norms and institutions in an unconditional and universal way, that is to say, post-conventional. Nevertheless, contractualism only aspires to reconstruct the best normative intuitions of the traditions of western political thought and, in the formulation, for example, relevant communities from ISCT (Habermas, 2000, p. 209).

Against the background of the two proposals analysed it is observed, as its authors also indicate, that the *universal moral principles* are discovered from a shared understanding about them. In other words, the shared understandings should be reinterpreted when circumstances change. Its position is of a moral universalism, but bearing in mind the particular context that is always variable. Nevertheless, its explanation of the procedure, which guides moral agents in business and economics, leads to the confusion between *local ethical understandings* and *legitimate force of moral truths* (Swanson, 1999, pp. 506–522). To summarize up, the use of the contractualism does not allow us to clearly distinguish between the effective social norms, that enjoy broad consensus in society, from those valued moral norms. That is to say, the conventional and post-conventional perspective is confused and is frequently diluted (García-Marzá, 2002).

From these analyses it is necessary to indicate new ways of thinking in order to define accurately and without confounding the CMR from the conventional and post-conventional level. In this vein, CMR could develop from a conception of applied ethics as a procedural reflection that takes three moments into consideration: Deontological, Aristotelian, and Utilitarian, where the first takes priority over the other two.

In this respect, an *integral model of the methodology of stakeholders* could be presented (González, 2001). A model that provides the corporation with orientation in its moral obligation and considers the particular contexts and the aim of the enterprise activity. It would also identify possible consequences and collateral effects of the application of the norms or the pursuit of certain courses of action.

This paper opens up the search for a model or way of theoretically and practically defining a concept CMR that takes into account the following coordinates in order to respond to the pluralistic societies and global economies with answers that are able to rise to the moral occasion.

Firstly, the existence in corporations of an internal decision-making structure, along with a set of corporate rules, which allows us to state that the company can make an *adjustment* for different norms, mainly, legal, social and moral. This adjustment can be carried out within the company's own space of freedom, subject to economic and legal constraints. Within this space of freedom any corporate response will be subject to moral valuation. In this sense, the social answer that corporation gives are not only bound by conventional norms, but also by post-conventional or moral criteria (Enderle, 2001).

Secondly, the type of corporate responsibility appears as a type of *convinced* responsibility that not only considers the deontological moment of performance but also is a responsibility that values and calculates the short, medium and long term consequences with respect to the project or aim of the company. Aims that cannot be obtained without the cooperation of all the different institutions. For this reason we must understand corporate responsibility as *co-responsibility*. Therefore, a stakeholder approach is relevant in making these CMR ideas operative (González, 2001).

And, finally, by defining corporate responsibility as a *Convinced Co-responsibility Post-conventional* we are thus expressing that the moral responsibility of the corporation must be understood in relation to an economic, legal and social environment within which the company will make its decisions and take action with respect

to its three spheres or scopes of responsibility: economic, ecological and social.

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