

The Political Legitimacy of the Virtuous Firm

A reflection on the complex relation between the practice of corporate social responsibility and political legitimacy



Masterthesis Applied Ethics
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17 August 2012
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*“Corporations are legally people...
they do everything people do,
except breathe, die, and go to jail
for dumping 1.3 million pounds of
PCBs into the Hudson River.”*

- Stephen Colbert-

Preface

Writing a master thesis is never easy and sure takes a lot of personal effort. However, just personal effort does not do the trick. You need the support of other people, whether they help you in brainstorm sessions to get a good idea for your thesis, help you critically discuss your newly written chapter or help you relax and forget the thesis for a while, all these things are necessary to eventually get the job done. For that reason there some people who deserve my thanks.

First of all I would want to thank my supervisor Marcel Verweij, who has guided me through the entire process of writing this thesis. Especially our last discussions were very fruitful and helped me to come up with some realistic illustrations, which enhanced the applied element in my rather theoretical thesis. Secondly, I would like to thanks my co-supervisor for critically reading my thesis on such a short notice. And finally I would have to (again) thank Patty for her support, and especially for the fact that she was willing to read and correct my thesis, while her own thesis deadline was also drawing very close.

Abstract

In thesis the question whether there are limits to the scope of CSR when taking into account the concept of political legitimacy is explored. In order to answer this question the concepts of CSR and political legitimacy are extensively discussed. Based on this discussion a reflection is made upon the possible problems that can arise when corporations practice CSR in both strong (democratic) states and weak (failed) states. The reflection shows that there are limits to the scope of CSR when taking into account the element of political legitimacy, for CSR becomes problematic when the care for public issues and the provision of public goods evolves into a form of (co-)government in which the company is wielding political power through her provision of public goods. At that moment the company transcends its role of a good fellow citizen and actually becomes an authority with political power. Since this exercise of power is neither mandated by the people nor checked, this is conflicts with the idea of democratic legitimacy. Apart from this conclusion several recommendations are made to improve the political legitimacy of CSR in the case of corporate (co-)government.

Key words: corporate social responsibility, political legitimacy, failed states, democracy, ethics.

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Chapter 1: Introduction

Over the past decades the concept of Corporate Social Responsibility (CSR) has become increasingly important in the conduct of business. Ever since H.R. Bowen published his book *Social Responsibilities of a Businessman* in 1953, the debate on what obligations corporations have towards society has increased and evolved (Garriga and Melé, 2004: 51). As the interest of society in responsible behaviour of companies grew, companies have become increasingly concerned about upholding virtues as integrity and honesty, and have incorporated ethical codes in their business principles in order to act responsibly towards their stakeholders. Driven by their CSR-policies companies have become engaged in the provision of public health, education, social security, protection of the environment and the protection of human rights (Scherer and Palazzo, 2011:899).

What the exact scope of these responsibilities are and to which stakeholders companies owe responsibility, remains contested among the various scholars theorizing CSR. Some emphasize only the responsibility towards the company's own employees, while others argue that the company also has a responsibility towards the local community it operates in. Some scholars even state that CSR includes the duty to contribute to social and environmental goals, while opponents argue that social responsibilities only have to be upheld so far as is legally required by the state's national government (Weyzig, 2009: 420).

Given this wide variety of approaches it is hard to give a singular definition of what CSR entails, yet four main approaches can be defined, namely: (1) instrumental/financial approaches, which consider it to be the company's main goal to generate wealth, and CSR can be a means to achieve this; (2) integrative approaches which hold that business should take into account the demands of the society she operates in, for in order to flourish companies necessarily depend on society; (3) ethical approaches, which understand the relationship between companies and society as being embedded in ethical values; firms have certain ethical obligations and duties towards various actors in society (for instance: employees, local citizens, or the environment); and (4) there are the political approaches in which the social power of the company shapes the political relationship and responsibilities the company has towards the other members of society (Garriga & Melé, 2004: 52-53).

It is this last dimension that will be further explored in this thesis. Regardless of whether CSR is given in by instrumental or ethical considerations, one can question whether all the actions and interventions that are conducted in the spirit of corporate social responsibility are also politically legitimate.

1.1 Corporate social responsibility and the dimension of politics

Many scholars of both management and economics assume that the core business of the firm is the creation of profit. Companies take care of their private interests, while the government of the state safeguards and provides the public goods. Only the government and its state subsidiaries are considered to be political actors (Scherer & Palazzo, 2011:904). Sharing this perspective, most traditional neo-liberal scholars are very sceptical of CSR as they consider any CSR policy to be an infringement on the political sphere. Libertarian economists like Friedman (cf. Friedman, 1970, 2002), but also neoclassical economists as Baumol (cf. Baumol & Blackman, 1991) argue that CSR is incompatible with the dominant political theory of the free market. In a market system public social tasks belong to the government rather than to business actors.

Cosmopolitan liberals like David Held and Jürgen Habermas do not share this line of thought. They show reality is starkly different from the view Friedman and Baumol have. Due to the process of globalization there is a gradual shift taking place from state-centred national government to global governance, where a multitude of actors, ranging from states and international governmental organisations to transnational companies and non-governmental organisations, play a role. According to these theorists the strict division between the public and the private sphere no longer holds (cf. Bernstein & Cashore, 2007; Detomasi, 2007; Habermas, 2001; Held, 2006; Scherer & Palazzo, 2011). CSR fits within this new framework of global governance, for instance when a state's national government partly fails to provide all the necessary public goods, a corporation can step in to do this instead (Scherer and Palazzo, 2011: 900; cf. Matten & Crane, 2005). This way private actors actively contribute to the provision and regulation of public goods. However, by taking care of the interests of various stakeholders in the community the company operates in, she starts to gain influence over the provision of certain public goods such as health care, the environment and education. Since these domains used to be under the supervision of the national government the question arises whether these CSR-activities can be considered politically legitimate.

Naturally, the CSR policies of a company do not have to undermine the state's legitimate political authority. When a company takes good care of its employees, ensuring good working conditions etc., which is also part of CSR, this does not affect the government's authority. Yet, the question of political legitimacy does rise when the company's CSR policy expands to the sphere of the local or national community. According to a majority of democratic theories, it is the government's primary tasks to secure the freedom of its citizens and ensure the equal provision of rights (cf. Waldron, 2003; Rawls, 1993; Held, 2006). These core governmental tasks are put under pressure when for instance corporations start to provide security for local citizens in the regions where the company is active. One of the primary tasks of the government is then taken over. Problems could also arise when, for example, a company would start to provide free health care in the regions it is active in, while no health care is provided in the other regions. This way the right to health is no longer equally ensured for all the citizens in the country.

On top of that there is the problem of democratic control. While in a liberal democracy the citizens can control and determine how public policies are shaped, with CSR full control lies in the hands of the company. Hence, the citizens have no influence on the corporation's actions in the public sphere.

These examples illustrate the main problems of CSR in relation to political legitimacy. On the one hand there is the question to what extent companies should care for the public good, e.g. how broad should the scope of CSR be? Are companies allowed to freely enact their CSR policies in all sectors in the public domain, or are there sectors that should always remain in full control of the national government? On the other hand there is the question of democratic control. Despite the good intentions a company might have with its CSR policy, the policy necessarily affects the public sphere. Is this unaccounted influence over citizens in the public sphere warranted?

1.2 Research question and research goal

The above questions are only partly addressed in the contemporary debate on CSR. The traditional opponents of CSR do address this problem, but often without clear definition of the concept of political legitimacy. More contemporary theories of CSR predominantly focus on the duties of the

company has in the globalized world as a ‘corporate citizen’, but fail to reflect on the political legitimacy of the exercise of these duties (Wilke and Wilke, 2008: 556). For that reason I aim to shed a new light on the traditional objections to CSR from a political perspective, by first giving a clear insight in the concept of political legitimacy. When the concept is clearly defined it becomes possible to reflect on how globalization is changing the traditional roles of states and corporations, and how this puts the political legitimacy of corporate action in a new perspective.

The above discussion and questions gives rise to the following research question:

Are there limits to the scope of Corporate Social Responsibility activities of companies when taking into account the element of political legitimacy?

The research goal that can complement this research question is the following:

To map the complex relationship between business actors pursuing CSR and the political legitimacy of their actions.

In order to answer this question the following sub-questions will help to structure the research process:

- What is corporate social responsibility (main views, proponents, opponents)?
- How do traditional liberals understand political legitimacy?
- How is the traditional notion of political legitimacy under pressure by processes of globalization?
- What problems arise when looking at CSR and political legitimacy?
- Are there differences between the political legitimacy of CSR in strong democratic countries and CSR in weak countries with a failing government?

1.3 Thesis outline

In order to answer these questions the thesis will have following structure. The upcoming second chapter will provide an overview of what CSR is, how it has developed and how it resonates with moral theory and ethical practice. After this introduction a short overview of the critiques on CSR will be discussed. On the basis of this the next step can be made, which is to the address the question of political legitimacy.

In the first and second part of the third chapter the concept of political legitimacy will be introduced. It will be explained how multiple liberal theorists view political legitimacy and democracy (John Locke; John Rawls, David Held etc.), as well as how this traditional view is being challenged in the face an ever more globalizing world. The third part will consist of a critical reflection on the compatibility of CSR with this idea of political legitimacy. Emphasis will be put on CSR-activities in both strong democratic countries as in weak states with failing governments, or no government at all. The fourth and fifth section will consist of a reflection on these findings and some recommendations for the real-life practice of CSR.

The fourth and final chapter will provide an overview of the discussion, an answer to the research question and recommendations for future research.

Chapter 2: A moral theory for business? Business ethics and corporate social responsibility

In order to understand the concept of corporate social responsibility (CSR) one will have to look at its roots first, namely at business ethics. For that reason this chapter will start out with a short introduction to business ethics, to be followed by a more elaborate introduction to the concept of CSR as well as a short overview of the theories of the main proponent and opponents of CSR.

2.1 Business ethics: the roots of corporate social responsibility

Business ethics has for a long time been a remarkable brand of applied ethics, for at its core lays a general application of ethical principles of for instance duty or utility, to very specific situations in business. Throughout the ages the practice of business has been condemned for being an area of human enterprise that was powered solely by the notion of greed. So although historically the principles of business and the market have been heavily criticized, the actual ethical debate on business did not start to take shape until the 1970s (Solomon, 1993: 354).

Scholars of business ethics have approached the topic in two different ways. There is one group who approaches it from philosophical perspective, while the other group approaches it from the perspective of business. The philosophical approach focuses on the analysis of moral problems that arise during the conduct of business and reflect on these issues from various strands of moral theory (for example social justice, utility or personal virtues). The cases that can be assessed range from internal problems of the company (such as discrimination or equal treatment) to external problems that can link to the consumer, or the environment or the local community. The business approach takes up these issues and tries to effectively manage these problems (Beauchamp & Brenkert, 2009: 3-4). To put CSR into perspective, it is useful to briefly discuss the development of business ethics.

2.1.1 History of business ethics

Business and trade has been around for a long time. Yet, as mentioned in the above section, business has not always been perceived in such a positive fashion as it is being perceived today. Aristotle was the first philosopher to describe a sense of economics. He distinguished between two types of economics. On the one hand he described *oikonomikos* (household trading) of which he approved, and on the other hand there was *chrematisike* (trade for profit) which Aristotle considered to be a devious and selfish practice. This notion of business being central to practices as usury and vices as greed and selfishness, can also be found in the works of Christian scholars as Thomas Aquinas and Martin Luther. This general negative image of business lasted until the late Middle Ages (Solomon, 1993: 355).

During the seventeenth century this attitude towards business gradually changed with the rise of political liberalism, but the actual change came when Adam Smith published *The Wealth of Nations* in 1776. Under the influence of Smith's work, the formerly rejected *chrematisike* became the central virtue in the modern economic liberal society. Yet, Smith's work provided no ground for what we today know as business ethics. Many economists have argued on the basis of Smith, that economics and business were amoral practices where ethics and morality played no part. The only

account of business ethics that was constructed, came from socialist movements arguing against the suppression of workers (ibid.: 355-356).

Nowadays business ethics consists of more than just criticism of capitalist enterprise, but it was not until early 1970s that business ethics started to develop from a merely critical perspective towards capitalism to a more nuanced method to reflect upon the actions of companies. After the 1970s the scope of business ethics broadens, no longer looking just at the creation of profit in the form of money, but the spectrum was expanded to include certain social responsibilities companies have towards their own employees as well as to the society they operate in (ibid.).

From this development three different kinds of business ethics were developed: a micro-, macro-, and molar level of business ethics. The micro level focuses on the rightness or wrongness of individual motives and actions individuals within the company, as well as on actions of the corporation as a whole. It is about what is 'fair treatment' and 'fair trade', for instance on how to differentiate between a bargain and a steal (ibid: 359). The macro level is about the ethics of global business, it is on this level that the greater questions of justice, legitimacy and fairness of business are reflected upon. Discussions on the purpose of the free market, or the legitimate role of business are macro level discussions. The molar level however is currently central in business ethics, looking at both the role of individual within the corporation as well as the role of the corporation within society (ibid.: 359-360). It is at the intersection of these three levels that the concept of corporate social responsibility is developed.

2.1.2 The rise of corporate social responsibility

In order to understand the concept of CSR it is important to place its development in a historical context. Although the theoretical concept of 'corporate social responsibility' did not emerge until after the Second World War, types of social responsibility of corporations towards society were already present in earlier eras.

In the early 1800s, during the Industrial Revolution, some of the newly founded business firms showed themselves to be concerned with the well-being of their employees. After criticisms regarding the working conditions of women and children, several business executives started to pave the way for an industrial welfare movement. Initiatives such as the creation of hospital clinics, lunch-rooms and recreational facilities had a positive effect on both the social conditions of the workers, which in turn increased their performance and the company's profit (Carroll, 2009: 20). Around the same time philanthropic activities amongst wealthy industrials increased. They started giving money to schools, art projects and other community projects. This kind of philanthropy combined with the insights of social workers led business leaders to become more involved with society, and gained new insights on how business could contribute to society. From these new insights the idea of CSR gradually developed.

In 1953 Howard R. Bowen wrote the book *The Social Responsibilities of a Businessman* in which the first real definition of social responsibility is given. According to Bowen social responsibility refers to 'the obligations of businessmen to pursue those policies, to make those decisions, or to follow those lines of action which are desirable in terms of the objectives and values of our society' (Bowen, 1953: 6). Based on the work of Bowen, the idea grew that business actors should balance their corporate interests with their responsibilities towards society. Decisions and actions of business should not just be motivated by the economic interest of the firm, but should be framed within the

social context in which the corporation operates. While the awareness on social responsibilities grew among business actors, actual corporate action still remained limited (Carroll, 2009: 27).

The concept of CSR really started to evolve during the seventies. One of the most notable contributors to the debate was Archie Carroll who introduced ‘the pyramid of corporate social responsibility’. Carroll argued that in order to act responsibly the company would have to live up to four responsibilities, namely an economic, a legal, an ethical and a discretionary or philanthropic responsibility. A corporation should be profitable, obey the law, respect and adhere to the dominant moral norms, and act like a good corporate citizen (cf. Carroll, 1991). Various approaches to CSR in line with Carroll’s approach have been developed and in turn taken up by various corporations. In effect these corporations started to act upon different CSR-issues such as ensuring the equal treatment of minorities within the company, making ecological investments, as well as making donations to education and the art industry.

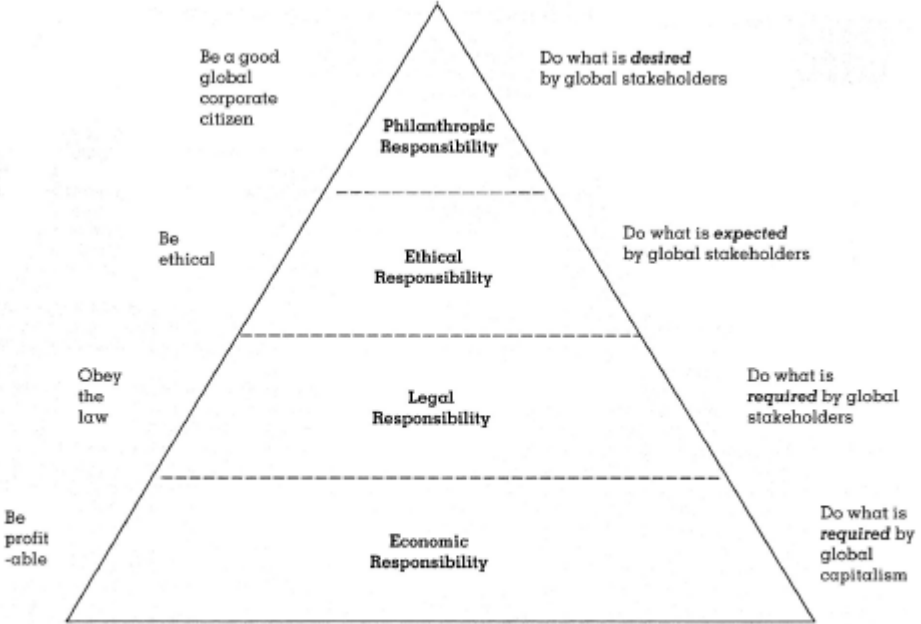
It is this notion of a wide variety of responsibilities (economic, legal, ethical and philanthropic) towards the different actors in society that has shaped the theoretical debate on CSR over the past twenty years.

2.2 Theories of CSR

There is wide variety of different CSR approaches: one emphasises ethical dimension, the other the legal dimension, and again another the political dimension (cf. Melé, 2009; Garriga and Melé, 2004). Since this thesis is not about differences between CSR theories, not all these different approaches will be separately discussed. Archie Carroll has developed a model that incorporates most of the various elements of the other CSR-approaches. For that reason only Carroll’s integrative theory of CSR will be discussed, along with a couple theories that are critical of the practice of CSR.

2.2.1 Carroll’s approach to CSR

Carroll has created a model which incorporates both the economic, legal, ethical and philanthropic dimension:



Pyramid of Global Corporate Social Responsibility and Performance

(Source: Carroll, 2004: 116)

According to Carroll the economic responsibilities provide the basis of the CSR model. He follows the main assumption of capitalism that a company has to generate profit. Hence companies are bound to sell their products and services in order to grow and survive. At the same time the company has a legal responsibility. Its actions are bound by the legal constraints set by the country the corporation operates in. Yet, these are not the only responsibilities of the company; its ethical responsibilities need also be addressed in order to act in a corporate responsible way (cf. Carroll, 1991; 2004).

Ethical responsibilities reflect the responsibilities the company has towards upholding the moral standards and norms of its stakeholders. Firms have the obligation to do what is right and fair by taking into account the various beliefs of both their consumers, shareholders, employees and the local community they operate in (ibid.). This would for example mean that a company would have to refrain from allowing child labour in its company, because child labour conflicts with the norms and values of a group of its stakeholders, for instance with the values of a liberal-minded group of shareholders. Similarly, the company could enforce equal labour standards for both men and women, because a local women rights group expects the corporation to adhere to these values. So ethical responsibilities require a company to live up to certain norms and give in to several demands, even when this is not legally required of the company.

The fourth and final responsibility is the philanthropic responsibility of the firm, which entails that the firm should also take into account the desires of its various stakeholders. Acts of taking philanthropic responsibility are for instance donating money to the arts, education or local health services, because society desires this. Philanthropic responsibilities go beyond strict moral duties like respecting human rights (which falls under the ethical responsibilities). While it is morally laudable to be a good corporate citizen and act philanthropic, the corporation has some more leeway in deciding when to act philanthropic. An argument of Wim Dubbink can illustrate this. Dubbink states that there is a difference between the moral duty 'to always respect persons' and the duty 'to be benevolent'. While we always have to respect persons, the duty to be benevolent has a "sometimes-structure", it does not always have priority (Dubbink, 2005: 38-39). The ethical and philanthropic responsibility can be understood in a similar way. While a company should always live up to its ethical responsibilities, how to live up the philanthropic responsibility can be more freely decided by the company. As Carroll states: 'Communities desire firms to contribute their money, facilities, and employee time to humanitarian programs or purposes, but they do not regard the firms as unethical if they do not provide the desired level' (Carroll, 1991: 42). Hence, corporations can more freely determine when and how to take their philanthropic responsibilities (cf. Carroll, 1991; Carroll, 2004).

In practice this means if a company is to live up to its responsibilities it has to make profit (satisfy the shareholders); obey the law (satisfy the national government) and she has to take care of the well-being of her own employees and ensure good working conditions. Additionally, it should also take its ethical responsibility by taking into account the various norms and values of all stakeholders. Lastly the company is expected to adhere to the social expectations the local stakeholders have of the company as 'good citizen' (philanthropic responsibility). In practice this could for instance mean that a company would have to ensure equal working conditions for its employees, invest in schools or medical facilities and lower its CO₂-emissions to prevent pollution of the environment, in order to live up to these various responsibilities.

While Carroll provides a strong model to address the responsibilities corporations might have to society, incorporating both economic, legal and ethical approaches to CSR, not all scholars adhere

to this view. Rather a large group of economists uphold a sceptical attitude towards both the need for CSR as well as its benefits.

2.2.2 Approaches critical of CSR

The approaches critical of CSR, view business from a more economic and instrumental perspective. Supporters of this view are generally more sceptical about the obligation of the firm to act responsible towards society, as well as about the benefits CSR brings for the company. It is important to note that regardless of their scepticism, proponents of the economic view do not reject CSR in all instances. They consider CSR to be a policy option, but only when this is expected to increase the long-term profit of the company (Melé, 2009:55).

Milton Friedman's libertarian objections

One of most prominent opponents to CSR was Nobel-prize winner Milton Friedman. As libertarian and fierce proponent of free-market capitalism, he believed the sole purpose of business was to increase the profit a corporation makes and considered the notion of “social responsibility of business” one of the many misguided ideas of socialism (Friedman, 1970). In 1970 he published an article in the New York Times Magazine where he advocated that the only social responsibility of business was to increase its profits (ibid.). Friedman's ideas of the free society are based upon John Locke's account of liberalism, which envisions a political society with a limited government, and on Adam Smith's economic theory of the invisible hand. The combination of the two accumulates in an individualistic political theory, where multiple civic rights as the right to life, liberty and private property are guarded by the government, but the majority of goods in society are provided by the market (Melé, 2009: 58).

Friedman makes a very strict division between two mechanisms in society, namely the political mechanism and the market mechanism. The political mechanism is the government, which has the legitimate mandate of the people to govern the public sphere. Through a tax-system social policies are implemented, while a body of laws and regulations assures the security of the public. For the conduct of business this means that the government prevents business actors from making deals that harm other actors that do not participate in the deal. This framework should allow each individual to pursue his own interest. The underlying principle is one of conformity, for each individual has to conform to the rules set out by the government in order to contribute to the public purpose. The market mechanism allows people to get private goods. People can invest in companies, becoming shareholders, thereby allowing business to develop, so other people can buy the goods they desire. In doing so, the individual will often also promote the overall interest in society (Cosans, 2009: 393; Friedman, 1970). In effect Friedman assumes that the spheres of the market and the political are fully separated. Business activities are to an extent restraint by government to prevent harm to the public, but the responsibility of corporations does not extend beyond tending to the interests of their shareholders (Mele, 2009:59).

Based on these notions Friedman gives two reasons why there is no such thing as the responsibility of business. First of all corporations are not people and only people have the capability to have responsibilities. So when talking about corporate social responsibility this can only apply to the people working at a corporation. Hence the question revolves around the social responsibilities of corporate executives. In a free-market system the corporate executive is an employee in service of the owners of the company. It is his duty to act in accordance with the desires of his employers,

which generally is to make as much money as possible. This goal will have to be achieved, albeit within the legal and ethical rules of society. When certain goals of CSR (like reducing pollution, safe working conditions etc.) are not required by law, a company should not strive to be socially responsible, for this is not within the scope of the goals of the shareholders (Friedman, 1970).

Secondly, while the corporate executive might be an autonomous person who feels that he has certain obligations and responsibilities towards society, in a business setting he is not a principal, but rather an agent in service of the company and its shareholders. Therefore his personal moral conviction should not be his guiding light when making corporate decisions. Social responsible behaviour will either lead to a reduction of the returns to the shareholders, the rise of costs for the consumer or the reduction of the wages of employees. Either way, the social responsible corporate executive is spending money that is not his (*ibid.*). For that reason Friedman views the CSR-behaviour of the corporate executive as a way of imposing taxes, and spending these tax-revenues again on CSR-related goals. In effect, CSR policies enacted by the corporate executive runs directly against 'the foundation of the free society' for the private property of others is abused (Mele, 2009: 60).

Baumol and Henderson's economic objections

Apart from Friedman's libertarian objection to CSR, neoclassical economists like Baumol (1991) and Henderson (2001) also object to CSR. They argue that CSR is incompatible with the free market system. In the competitive system of the market it is inefficient and ineffective to spend money on social projects while this money could also be invested in the company. By not investing in the company, the company puts her own survival at risk. The fact that companies are now forced take the path of CSR because of societal pressure will eventually undermine the market economy and decrease the overall welfare in society (Baumol & Blackman, 1991: 49-50; Henderson, 2001: 31).

According to Henderson the CSR-approach is not effective in taking up the social and environmental challenges. Nevertheless he does envision an important role for corporate actors in taking on these social issues. In order to tackle the social and environmental problems of society the scope of the market should be further expanded so that corporations can take care of these issues (Henderson, 2001: 31-32).

While Henderson fails to specify how such an expansion of the market would look like and how this would render CSR obsolete, the idea of 'green economy' might resonate with Henderson's ideas. According to the green economy movement companies are to expand their business to new environmental friendly sectors, creating a new market for renewable energy, green buildings, clean transportation etc. (Burkart, 2009). This way the environment can be improved through the market in an efficient and effective way, while the company directly profits from these activities. In this approach the principle of the free market is no longer undermined by CSR-activities that threaten the survival of the company¹.

So while there is a wide array of reasons why companies should act in a social responsible way, from an economic perspective several objections can be raised. However, at the heart of these economic objections lies a more fundamental political theoretical objection.

¹ While the green economy approach might provide a viable alternative to CSR-activities related to environmental protection, there are still other CSR-topics to be addressed. Henderson fails to provide any practical example of how the market-mechanism can provide solutions to other CSR-topics as poverty, protection of human rights and the provision of education.

2.3 An unaddressed problem of CSR: political legitimacy

What seems to be insufficiently discussed in the debate on corporate social responsibility is the compatibility of CSR with the concept of political legitimacy. Economists like Friedman that critical of CSR, partly address this issue. According to them companies should not be living up to their so called 'social responsibilities' for their tasks lie within the private sphere of the market. The public sphere and the provision of public goods belongs to the government and it is not the task of companies to make social policies. It is not their legitimate role. If other actors other than the government take up these tasks this conflicts with the traditional liberal notion of political legitimacy. However, more contemporary CSR-scholar focus predominantly on the moral duties of the corporation and its responsibilities, rather than addressing the political legitimacy of the actions that follow from upholding these moral duties.

Yet this is an element that should be more extensively discussed, especially in the light of the process of globalization as corporations become more involved in governance and co-government. This changes the traditional role of corporation as a private actor, which likely to have implications for the political legitimacy of the actions of the corporation.

In order to understand to what extend CSR conflicts with the notion of political legitimacy, it is first of importance to define the concept of political legitimacy. When the concept is clearly defined the possible problems with CSR can be addressed.

Chapter 3: Politics, democracy and the legitimacy of corporate social responsibility

This chapter will contain a reflection on the possible problems with CSR when taking into account the concept of political legitimacy. In order to do this the classical political concepts of (political) legitimacy and democracy will be discussed. Secondly, a short elaboration will be given on the effects that globalization and the increased role of non-state actors (such as multinational companies) have had on the debate of political legitimacy in political theory. On the basis of this discussion it becomes possible to reflect on the possible problems surrounding the legitimacy of corporate social responsibility activities of business actors.

3.1 Fundamental political concepts: legitimacy and democracy

3.1.1 The political notion of legitimacy

For a long time the concept of legitimacy has been a widely contested concept, and to a large extent it still is. The Stanford Encyclopaedia of Philosophy describes political legitimacy as ‘a virtue of political institutions and of the decisions—about laws, policies, and candidates for political office—made within them’ (Peter, 2010). Political legitimacy is often viewed as being directly related to the concepts of political authority and political obligations. For example, in the Middle Ages the perception was that political legitimacy was God-given. The authority of the king was granted to him by God, which gave him the legitimate means to exercise power over his subjects. New lines of thought on political legitimacy are developed during the Renaissance, in which the idea becomes central that consent by the people is a necessary precondition before an entity can legitimately exercise power (cf. Boucher & Kelly, 2003).

The Founding Father of liberalism, John Locke, is one of the first political philosophers who extensively elaborates on the concept of political legitimacy as democratic legitimacy. In his *Two Treatise of Government* Locke puts forth his vision on the state and authority. He starts from the assumption that man is living in a state of nature where all citizens are equally free and possess equal political authority. However, the state of nature also brings along certain ‘inconveniences’, since not all citizens respect each other’s natural rights (life, liberty and estate), hence bringing along acts of public aggression, theft and strife. In order to regulate the enforcement of natural law, Locke envisions the creation of a hypothetical social contract that transfers the political authority of each citizen to a set of political bodies, a civil association known as ‘the government’ (Waldron, 2003: 185-187; Held, 2006: 62-63).

The main task of the government is to preserve the life, liberty and estate of its citizens through legislation and enforcement. What is crucial in Locke’s theory is that the government’s political power is bestowed upon it by its citizens. The sovereign political power ultimately resides with the citizens. The government’s rule in the public sphere is legitimized by the consent of the individuals within society. If public power is exercised without the consent of the people, their fundamental rights and freedoms are illegitimately constrained. Only by the consent of the people the entity of the government is allowed to use its power in the public sphere (ibid.)

Locke's writings show the importance of individual rights, legitimacy, sovereignty and the importance of a representative system of government. With these notions Locke laid the first foundations for the modern liberal democratic society (Held, 2006: 64-65).

The Lockean idea of political legitimacy, that a political authority needs a certain mandate of the people it governs, still resonates in contemporary political philosophy. Libertarian professor Robert Nozick almost fully endorses Locke's theory in his *Anarchy, State and Utopia*. He also considers political authority to be legitimate, only and only if, the condition of consent of the governed is met (cf. Nozick, 1974).

John Rawls has developed a different account of legitimacy, arguing from both the account of public reason as from democratic values, yet these approaches are also partly based on Locke's insights. Rawls assumes all citizens to be free and rational persons who possess political power, and then reflects on when citizens can legitimately exercise coercive political power over each other. According to Rawls:

"Our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason. This is the liberal principle of legitimacy." (Rawls, 1993: 137)

By shortly looking into these liberal approaches to political legitimacy, it becomes clear that a mandate of the people is necessary to speak of political legitimacy. Additionally, the political authority should be able to be held democratically accountable for its actions, since the people have transferred part of their power to the government. Therefore some kind of democratic procedure must precede the creation of a political authority before this authority can legitimately exercise its power.

3.1.2 The idea of democracy

From this follows the idea that democracy is central to providing authorities with the necessary political legitimacy. By the means of democracy a mandate can be given to rule the political community. As David Held states: 'Democracy has been championed as a mechanism that bestows legitimacy on political decisions when they adhere to proper principles, rules and mechanisms of participation, representation and accountability' (Held, 2006: 261). Obviously, there is not one approach to understanding democracy, but a wide variety of models of democracy exists, ranging from republican democracy and competitive elitism to deliberative democracy (cf. Held, 2006).

It is beyond the scope of this thesis to discuss all the various approaches to democracy. Only a general idea of democracy is necessary to understand the relation between democratic legitimacy and CSR. For that reason only David Held's model of democratic autonomy will be briefly discussed. This multifaceted approach to democracy, which combines the strong elements of various models of democracy, can be used to more specifically grasp the notion of democratic legitimacy.

David Held's model of Democratic Autonomy

Central to David Held's model of democracy is the general principle of autonomy:

“persons should enjoy equal rights and, accordingly, equal obligations in the specification of the political framework which generates and limits the opportunities available to them; that is, they should be free and equal in the processes of deliberation about the conditions of their own lives and in the determination of these conditions, so long as they do not deploy this framework to negate the rights of others.” (Held, 2006: 264).

On the basis of this principle it follows that if people want to be able to live free and equal, they should be able to participate in the decision-making process and the process of deliberation about all matters of urgent public concern. It is imperative that these political processes are open to all. Decisions on issues in the public sphere are politically legitimate when these decisions are the result of either deliberative processes or procedures of majority rule (ibid.: 265).

In practice, Held envisions a political system where the principle of autonomy and the rights of people are ensured in a constitution, while the state is governed by a parliamentary/congressional structure whose representatives are elected through a form of proportional representation. Decisions are made in parliament, but on both national and local level elements of deliberative and participatory democracy are included to pay heed to the demands of the various groups of citizens. In the civil society there should be rules governing labour, welfare, health and the environment, and even to some extent the market (ibid.: 282).

All in all, it seems that Held adheres to a model of state that comes close to how Matten et al. (2003) view it, namely that the state is expected to protect political and civil rights, as well as coordinate the welfare state in order to ensure social rights (Matten et al., 2003: 115). This entire democratic political framework is considered legitimate as long as the principle of autonomy is being upheld.

Based on this overview it becomes clear what political legitimacy and democracy entail in the liberal tradition. The state ensures the citizenship rights of its people (civil, political and social rights), it tends to public issues and provides public goods, and regulates the economy to the extent that the common good is served. The state ensures protection and safety for both citizens and corporations, through which both can survive (cf. Scherer and Palazzo, 2007).

3.2 The current situation: Globalization - intertwining politics and economics

It has become clear that a clear distinction can be made between the sphere of the market and the sphere of politics. Especially from the perspective of economists, business is considered to be 'de-politicized'. In the market all actions people make, and transactions people do, are motivated by free choice. In the market no type of coercion is exercised by the business actors over regular citizens. People voluntarily choose to work for a company and they freely choose to buy certain products. Individual actions are coordinated by the market but without the use of force ('the invisible hand'). Since no coercion is involved, the private sphere of the market is not in need of any legitimization mechanism (Peter, 2004: 2-3).

The same cannot be said for the political sphere of the state, where some degree of coercion over the people is necessary to insure their freedom and the provision of public goods (ibid.). The problem of legitimization is therefore something that belongs to the sphere of the political. As Peter (2004) notes: 'the emphasis in economic theory on freedom of choice in the market sphere suggests that legitimization in the market sphere is 'automatic' and that markets thus avoids the typical legitimization problem of the state' (Peter, 2004:1).

Nowadays, according to cosmopolitan scholars like David Held and Jürgen Habermas, this situation is changing. While companies used to be predominantly active in countries with a strong (democratic) government, this changed as business has become more and more globalized and companies are now active all over the world in all kinds of countries. Nowadays multinational companies are still active in democratic regimes, but also work in authoritarian states and weak states (cf. Detomasi, 2007 Habermas, 2001; Scherer & Palazzo, 2011). In especially in these weak states there is a gradual shift taking place from state-centred national government to global governance, in which corporations play an ever increasing part.

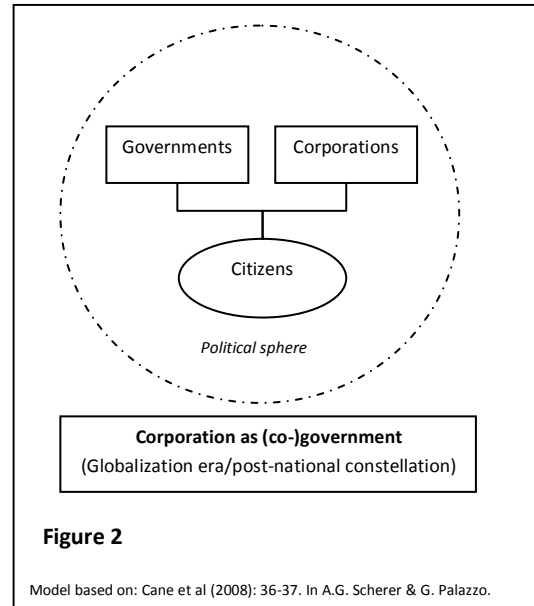
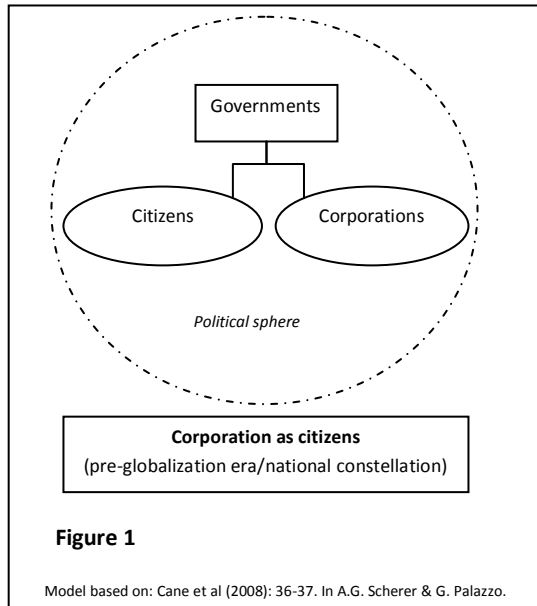
In this new framework of global governance, also known as the 'post-national constellation', private actors (e.g. corporations) also play an active part in provision and regulation of public goods (e.g. health care, education and sometimes even security). This idea coincides with some principles of corporate social responsibility. The difference between the two constellations is made visible in Figure 1 and Figure 2 (Crane et al., 2008: 36-37). Figure 1 shows how before the era of globalization citizens and corporations both were subjected to the political authority of the state. The state ensured the provision of security, rights, freedom and various public goods. The state's provision of security and rights allowed for the creation of the market in which companies could operate. In this setting corporations can be considered 'as if' they are citizens, since they are participating in society and fall directly under the power of the government's executive actions and legislation. Both citizens and corporations have a vertical power relation with the government (Crane et al., 2008: 35)².

Figure 2 shows the situation in the post-national constellation in some countries. Here one can see that the corporation is becoming and more involved the provision of public goods, and is thereby starting to perform similar functions as the government. In the case of co-government the national government transfers part of its responsibilities and authority to the corporation, and the company becomes responsible for 'the allocation, distribution and administration of rights' (ibid.: 37). For instance a company can become involved in the provision of education or health care when the national government fails to do so, or is unable to do so. In this situation the power relations shift, for the corporation gets a horizontal power relation with the government, but a vertical relation with the citizens. The corporation has gained political power that can be exercised over the citizens (ibid.).

Because the emerge of this post-national constellation the earlier notions on legitimacy and the assumed clear-cut distinction between the private and the public sphere can be called into question. In situations where national government is failing, corporations can become actively involved in the provision of public goods. According to Scherer and Palazzo, corporate acts that transcend voluntary acts of philanthropy, acts that involve the creation of national or local rules and the provision of public goods are political acts: 'Issues are defined as political if they provoke public concern resulting from power' (Palazzo and Scherer, 2006: 78).

² Figure 1 illustrates the pre-globalization era and the contemporary situation in states with a strong government. Figure 2 shows the post-globalization situation in countries with a weak government or failed government.

In the situation where government is failing and business actors start to take up the task of governance and government, actions by private actors become political acts and these actions have to be legitimized by the public (Scherer and Palazzo, 2008a: 3-4).



3.3 The problems of corporate social responsibility and legitimacy

Based on the issues outlined in section 2.2 and 3.2, there is reason to believe that the traditional notion of democratic legitimacy is hard to combine with the practice of corporate social responsibility. The main problem with the public exercise of power by business actors is that these actions lack the traditional elements of democratic legitimacy. Regulatory power is shifted from an elected government to private actors. Hence two problems can be identified with this, namely 1) the regulatory power is not granted by the people to the private actor, thus there is no mandate nor consent by the people; 2) the public has no means to check the actions of the private actors. The corporations can only be held accountable by their shareholders, but not by the citizens. Therefore there is no public control over public decision making (Scherer & Palazzo, 2008b: 559).

To see whether CSR is indeed not compatible with democratic legitimacy I will reflect on both CSR in strong (democratic) states and in weak states where the government is failing or government is non-existent. In order to determine whether a state is a strong or a weak state one can look at four things, namely: 1) security (the degree to which a state able to ensure security for its citizens and sovereignty over its territory); 2) politics (the degree to which the state is political accountable to its citizens and how transparent and effective its institutions are); 3) the economy (the degree to which the state is able to ensure stable economic environment) and 4) social welfare (the degree to which the state ensures the basic human needs of its citizens, like health, education, food etc.). Based on these indicators an average score can be given, from 0 (weak) tot 10 (strong) to show how weak or strong a state is. Hence a low score on these variables indicates that a state is a weak state, while a high score indicates it is a strong state (Patrick, 2007: 649-650)³. To illustrate this: a country like

³ For a more elaborate overview of this operationalisation on what constitutes a strong state and a weak state, see *The Brookings Institute Index of State Weakness in the Developing World*. <http://www.brookings.edu/research/reports/2008/02/weak-states-index>.

Somalia can be considered a weak state, while the Netherlands are a strong state (Website Brookings Institute).

3.3.1 CSR in strong states

As suggested in the previous section there is reason to believe that at the moment companies start to intervene in the public sphere this problematic when it comes to the political legitimacy of these actions. This point has explicitly been made by Friedman and Beaumol, who state that bestowing corporate social responsibilities upon corporate actors is problematic, for when corporations start to get involved in public affairs, there is no consent by the people nor a mechanism of democratic accountability.

According to these scholars, public issues such as poverty and environmental issues need to be democratically decided on, and thus should fall under the supervision of the state rather than under that of corporate actors. Public issues have to be collectively decided upon, so all public problems have to be addressed through the state's representative system. So any action undertaken by a private actor to actively take on an issue in the public sphere is considered to be illegitimate (Dubbink, 2005: 42-44). The argument Friedman and Beaumol make is pretty straight forward: no voluntary action of the corporation affecting the provision of public goods is allowed. This would mean that if the government provides national health services (a public task of the government), it would be an illegitimate public act of company to set up a small medical clinic in a city where the company is active, to provide free medicine for its employees and for the poor in the local community⁴.

Any service that is provided by the government is a public good, thus something private actors are not allowed to get involved in. Yet one can question the soundness of this argument.

Natural duties, public issues and CSR

According to the Dutch philosopher Wim Dubbink, this approach to democratic legitimacy and the liberal tradition is far too rigid. The economists misunderstand the legal and the moral meaning of 'the public' and 'the private' in the liberal democratic tradition. Liberals firmly adhere to both the ideal of the free market and the ideal of democracy. In this view of democracy the use of power over a free individual is never unproblematic, yet sometimes freedom needs to be curbed, in order to be free. Hence the sphere where the use of political power by the government is legitimate is known as the public sphere, while the private sphere refers to the sphere where the government cannot legitimately exercise power over the individual (Dubbink, 2005: 48).

A distinction between private and public can also be made in the sphere of morality. Public morality refers to the duties which we all owe to our other fellow members of society, by the virtue of being reasonable human beings. Private morality refers to duties we personally take up, but others are not bound to. Public duties or natural duties are duties we owe to all others. Natural duties are duties as: 'do not harm', 'do not kill' and 'respect other people'. At the same time there are common problems, or 'public issues', such as poverty and environmental problems, which are problems that each political community has to deal with (ibid.: 49)

Dubbink states that since the political community is necessary for the freedom and survival of the individual, the individual has the public duty to ensure that the political community is

⁴ Note that if Friedman's line of thought would in fact also imply that not only companies, but also international organizations, charity funds and non-governmental organizations would not be allowed to get involved in public issues.

sustained and thus every member of society is free to address and challenge problems such as poverty, or help others members of society in their daily needs. However, this public morality should not be enforced by the state. Coercion is only legitimate when enforcing the natural duties. The duty to care for public issues is rather an 'imperfect duty of wider requirement' (ibid.: 53). Apart from that, in order to uphold the concept of self-governance (autonomy), people should be free to act to these public moral duties, rather than being forced to act by them through the state. The state should have a minimal role in upholding public morality, only enforcing natural duties, while the citizens are free to act upon their duties of public morality to address public issues (ibid.: 50).

So while the state has the duty to enforce certain legal duties (the moral duties that are natural duties), this does not mean the state needs to take all responsibility in dealing with public issues. Public issues fall within the scope of public moral duties of the members of the political community. The market remains a private sphere. However, this does not mean – as the perfect market approach assumes - that the actors in the market do not have a public moral duty. Every actor in the political community, both individuals and corporations, have the duty to address the public issues in society (ibid.: 51). Hence this means that CSR-activities of corporations are in fact compatible with the duties that follow from being a member of a liberal democratic society.

The scope of public issues and limits to CSR

The above argument shows how the assumption that CSR policies of corporations always conflict with the traditional tasks of the government, does not hold. As long as CSR policies only address public issues and not do aim to enforce certain natural duties, these CSR-activities are not at odds with political legitimacy. Citizens and corporate citizens (that is: people and corporations) do not need a mandate or an accountability mechanism to legitimately exercise their public duties, since no form of coercion is involved.

The enforcement of natural duties (do not harm, do not kill etc.) relates to the provision of security of the people. According to early liberal thinkers such as John Locke and the American Federalists this is the prime duty of the government. The primary principle for political association is the creation of a government that preserves peace and tranquillity and protects the people from the dangers of foreign and domestic threats. The state has to ensure the right to life, liberty and property. The state's government is the only entity with the legitimate political power to coerce people; it holds the monopoly on legitimate violence (Hamilton et al., 2009; Waldron, 2003).

So as long as CSR-activities that target public issues do not involve some kind of coercion, and do so within the boundaries of the law CSR is compatible with democratic legitimacy. A company would be free to set up a medical centre to aid both its employees and the members of the local community where it is operating in (as long as this is legally allowed). The main difference between public health provision of a government and that of a company, is that in case of an epidemic of some terrible disease (say the a deadly variant of the Mexican flue) the government would be allowed to force people to get vaccinated, while the company could not legitimately do this. Yet, in principle they would be allowed to offer the vaccination to the people, so people can get it if they want to get it.

They are allowed 'in principle', for one can think of extraordinary circumstances where the government might be legitimized to interfere with these practices of the corporation for the sake of the entire political community. For instance when the equal care for rights of entire population is at stake. Imagine a situation where the vaccine for the Mexican flue would be extremely scarce. The government has been unable to buy any of the vaccine on the global market, but the corporation has

been able to secure a huge amount, making the corporation the sole provider of the vaccine. In that case it could be that the government would interfere and take over the distribution of vaccine. This way the government can ensure that all members of society have an equal chance of getting the vaccine, protecting and providing their right to health.

Nevertheless, under normal circumstances it would be legitimate for a company to freely distribute all kinds of care to its fellow citizens, provided that these actions are within the legal constraints of the national law.

Conflicting ideas regarding public issues

It seems that there are limited objections to the CSR activities of corporations in democratic countries. However there is one problem that needs to be addressed, namely one can envision a possible clash of insights between the government and the company on how to deal with certain public issues.

To illustrate this, an example is provided. Think of a state with a strong government and a large welfare system. Education, public transport and health care, all are fully taken care of by the state. Now imagine that the national government, in which the majority party is a conservative Catholic party, has just rolled out their new health care plan, which incorporates a strong pro-life policy when it comes to birth-control, abortion etc. The conservative party is in favour of limiting all pro-choice practices, but current legislation does not prohibit these practices. Yet, if the governing party would have the necessary majority in parliament, they would push through a law to ban these pro-choices practices. But as for now abortion etc. are still legal.

Then at the same time a company, say GlaxoSmithKline (GSK)⁵, who has a very strong CSR policy advocating freedom and equal rights for women, opens a new medical clinic next to its factory in the nation's capital, whose inhabitants are more liberal minded. In the capital GSK starts to provide advice on planned parenthood and freely distribute anti-conception medication.

What we see is that the government advocates policy X, which is pro-life and against birth-control, while GlaxoSmithKline does the exact opposite. Is this clash between values and actions between company and state problematic? Clearly there is clash of different values and ideas, but the actions of GSK do not seem to qualify as politically illegitimate actions in the public sphere. While the government might not share the values GSK is defending, the company is not doing anything illegal for as long as there is no legislation that would prevent them from distributing anti-conception. Nor is the company coercing people to get advice or forcing them to get anti-conception. Therefore these actions cannot be considered to be at odds with political legitimacy. Rather GSK is merely doing its duty as a good citizen, and is living up the expectations of the liberal inhabitants of the capital.

What this example illustrates is that even if the state takes care of a large amount of public issues, this does not mean that the corporation cannot take on these issues as well, even with a different policy, provided that these CSR-activities are compatible with the national legal framework. If the initiatives of the company conflict with the general policy of the state, this does not make the CSR-activities illegitimate. The corporation remains a (corporate) citizen, it maintains in a vertical power relationship with the government, and horizontal one with the citizens (see Figure 1 in section 3.2).

⁵ Note that this can be any kind of company. In this example it is GSK, but it could also be Royal Dutch Shell or a group of physicians that would set up a clinic to offer free health services.

For all these reasons taken together, it can be concluded that CSR-activities in strong democratic nations do not conflict with democratic legitimacy, provided that the companies adhere to two standards. Firstly, the CSR-activities should non-coercive. People should be able to freely choose to be involved with the CSR of corporation and should be able to opt-out. Secondly, the CSR-activities have to be within the boundaries of the legal rules of the country. If these conditions are met, CSR-activities of corporations are perfectly compatible with democratic legitimacy.

3.3.2 CSR in weak states

In weak states in which the government is unable or unwilling to ensure the basic functions of the government (see section 3.3) the situation is very different. When companies operate in these type of countries regular acts of corporate social responsibility are likely to evolve and change, as corporations can become involved in governing citizenship. Situations like these occur when either a company is already active in a country and the national government retreats and ceases to take of its responsibilities towards its citizens (for instance in Somalia), or when a company moves to a state that at that time not yet have an effective government (for instance in post-war Iraq). In those cases a company's CSR activities can also focus on those public sectors that used to be taken care of by the government. For instance in public transport, health care and educations services. This development of the corporation becoming a 'surrogate government' has taken place in various developing countries. Corporations like Nike and Levis Strauss have provided a living wage for the employees and have provide children with scholarships in such countries, while in Burma and Sudan, US companies have tried to encourage citizenship status and human rights (Crane et al., 2008: 36-38).

Yet while these actions are mainly confined to the sector of social welfare, it might be that the company will gradually start to take over even more tasks when the formal government is absent. One can image that when civil war will break out in a country and large multinationals yet remain active the country, they will be inclined - from both the idea of self-protection and from a CSR-perspective - to ensure the safety of the local stakeholders. This shows how the corporation can take over (parts of) national governance. When the government is only partly failing, a form of co-government can develop, but when it is fully absent, albeit unlikely in reality, the company can in theory take over the original role of the government (Crane et al., 2008 35-38).

So, as government fails, CSR can move a company into actually taking over certain tasks of the government, turning the corporation into a powerful public actor that it is to ensure citizens' rights and provide public goods. These developments are problematic from a perspective of democratic legitimacy.

The absence of democratic legitimacy

As corporations become 'substitute governments' the local citizens become citizens of the corporation rather than citizens of a government. This transfer of the regulatory power of the elected government to private actors cannot be considered democratically legitimate for multiple reasons.

First of all there is no mandate of the people provided to the corporation. From a democratic perspective on legitimacy it is essential that the people consent to the political authority that is wielding power of them and enforcing them to comply with certain rules and to do certain things. In the case of corporate government there has been no moment that the people have granted the corporation these powers. So although the corporation might have taken up these public tasks from

an intention to do good by helping the local population to preserve 'their life, liberty and estate', at the moment CSR starts to evolve into a mechanism of legislations and enforcement, there needs to be a mandate of the people in order for this corporate authority in the public sphere to become legitimate.

The problem is that companies do take up these all these public tasks, but they have developed no means to get the consent of the people first. In the case of co-government, a company might push the local government alter its policies to match these with the corporations CSR-policies, as a condition for the corporation to become active in helping the government with the national governance. In effect the corporation is indirectly governing the local population, without the consent of the public. So while the efforts of the corporation might be good, the company can for instance urge a weak government to abandon child labour or prevent the discrimination of minorities, the fact remains that there is no mandate of the people and this runs contrary to all basic ideas the social contract (Wilke and Wilke, 2008: 556).

From this a second problem also becomes clear, namely that the local population cannot hold the company accountable for what they are doing. Even if the company would find some model by which she could consult the people to gain their consent, there would still be the problem of accountability. The citizens have no formal power to check the actions the company undertakes in the public sphere, nor do they have the power to influence the policies the company is setting out. While contemporary CSR-theories do take into account that local stakeholders have to be consulted, there is no guarantee that their position will truly be heard. The only stakeholders that have formal power in the company are the council of shareholders and the council of employees. They have the power to steer the board of the company into a desired the direction. The local citizens lack this power, while the actions of the company directly affect their daily lives when the corporation takes over parts of the government.

Now, one could say that this lack of an accountability mechanism does not have to be problem, for as long as the company adheres the interests of the citizens. But how can the company adhere to all the different interests of the local population, while also paying heed to the interests of the company's other stakeholders? To illustrate this, an example:

Imagine the fictional country of Muzambé. In Muzambé the national government is failing. The government is unable to provide its population with the necessary public goods, especially when it comes to public health. In order to prevent an outbreak of anarchy, the government desperately turns to one of the large multinational companies present in the country, namely Adidas. Adidas is willing to aid the national government in the provision of public goods, and take up the task of co-government but makes certain demands. While Adidas is willing to cooperate with the local business and help out the national government, she will only to this when the government agrees to improve the working conditions in the country. As such the company decides that they will only aid the government, if the government bans the practice of all sweatshops in Muzambé. Desperate for help, the government gives in to this demand of Adidas. While the company's shareholders, and its board of employees endorse this plan for it strengthens the position of the working man, a majority of the local population does not share this enthusiasm. They did not mind working in the sweatshop. The working conditions might have been bad, but at least they made money and generated income for their family. With the ban proposed by the co-governing corporation they lose this opportunity to make money. But even though they do not agree with the policy Adidas has introduced and it directly effects them, they have no formal power to change the decision.

Here we see that the interests of stakeholders outside the country can determine what public affairs should be addressed by the company. While the dominant stakeholders (the councils of shareholders and employees) are able to determine what is going to happen in the public sphere of Muzambé, the local population can only hope that its position is being heard. This directly conflicts with democratic legitimacy⁶. It are the local people that have to be able to keep the company accountable for its actions in the public sphere.

The above shows how actual (co-)government by corporations does not meet the necessary conditions for democratic legitimacy. However, this does not mean that not all CSR-activities in weak states are necessarily illegitimate, but only those that take the shape of corporate co-government or full corporate government.

3.4 Reflections: the problem of legitimizing corporate (co-)government

As made clear in the previous two sections, corporate social responsibility becomes illegitimate when the corporation actively gets involved in co-government and the subsequent provision of public goods. Nevertheless, the fact that this corporate provision of public goods might not always be democratically legitimate, does not take away the fact that there still is a certain ethical responsibility of the company towards these local stakeholders.

Some scholars try to overcome the democratic legitimacy problem by introducing a different concept of legitimacy in order to legitimize the political role of corporations. In this final section I will reflect on how fruitful these attempts are, what other problems arise with corporate co-government and some recommendations will be made to overcome these problems in the real-life practice of CSR.

3.4.1. Moral legitimacy

Scherer and Palazzo suggest that while companies might not be able to get the same democratic legitimacy to justify their actions, their actions might yet be legitimized in another way. Rather than turning to democratic legitimacy, they introduce the concept of moral legitimacy for regions where governance is needed, but no effective government is present. Their idea of moral legitimacy draws heavily from Jürgen Habermas' ideas on communicative action. According to Scherer and Palazzo, moral legitimacy results from communication (Palazzo & Scherer, 2006: 78). Public discourse is crucial to gain moral legitimacy. Only through provision of reasons, discussion of various arguments and the acceptance of better reasons, real legitimacy can take shape. So in order for a company to legitimize their political acts, there will have to be intensive communication and deliberation with all the relevant local stakeholders. Only on the basis of this consensual deliberation can legitimate political actions by private actors follow (ibid.: 79-82). Through these acts of deliberation the citizens can provide the corporation with a mandate, as well as provide it with input for what they think should be done in the public sphere and what public goods should be provided.

⁶ It is important to note that some authors (cf. Wilke and Wilke, 2008) go even further and suggest that instead of co-government, a company might completely take over government, when the former national government has failed and is no longer existent. While this situation might not likely happen in reality, it is clear that should a company take over the monopoly of violence, set up a rule of law based on its CSR, thereby ensuring citizenship rights for the local population, this would be very problematic with regard to political legitimacy, since like in the earlier example, no mandate of the people nor a method of accountability exists.

While this idea of moral legitimacy through deliberation is a step in the right direction, there are some points of critique that have to be addressed.

Points of critique

While the idea of legitimizing corporate authority through deliberation might be a viable approach, one will still have to deal with the pitfalls of the deliberative approach. One of the main problems that will have to be overcome are the non-ideal conditions of reality. The deliberative approach assumes that deliberation will take place under ideal conditions, free of coercion and power relations. The deliberation is all inclusive, and all participants are willing to reach consensus. Reality is different in the sense that local stakeholders are not a homogenous group (as is often assumed in CSR-theories), but rather are a very diverse and pluralistic group of various individuals which each their own preferences and beliefs. While people might be able to reach agreement on security issues, this might be more problematic when it comes to real moral dilemmas as social justice, religious teaching in schools or medical ethical issues as abortion and euthanasia. For these problems, which the company then also will have to deal with, a majoritarian approach to decision-making might be more fruitful when consensus cannot be reached (Gutmann & Thompson, 1996: 25-26; Held, 2006: 241-243). Because of this the company would also have to setup some kind of representative system or system of referenda to determine its policies on these controversial issues. Apart from that, new measures would also have to be taken in order to make deliberation inclusive and free of coercion of dominant groups.

So while the deliberative approach might provide the company with a substantial degree of legitimacy, one will have to come up with solutions to overcome the general problems of deliberative democracy. This not to say that the deliberative approach is not a viable approach, but it is important to note that there are some barriers to be overcome before this communicative approach to legitimacy really becomes effective.

Based on this critique there are at least two elements the company can take into account to guard the political legitimacy of their public actions.

The need for inclusive deliberation

First of all, it is imperative for the legitimacy of the actions of the company that a large amount of the population joins these deliberations, so that all the various opinions and ideas will be heard. Additionally, the greater the amount of people, the greater the legitimacy of the actions of the corporations will be. If only a small group attends these deliberations, the corporation will - in the end - not be acting for the entire population, but only be executing the wishes of a small group. In order to be able to make legitimate policies it is important that all members of the society are given the equal opportunity to ventilate their opinion.

Setting up new mechanisms of accountability

Secondly, while the deliberation might provide a certain mandate of the people, the process does not automatically ensure a sufficient degree of accountability. For accountability it is essential that there is public transparency and the means for public disempowerment: 'mechanisms for disabling public political agents, through an effective sanction imposed upon them by publics when they consider it appropriate, to minimize the agent's capacity to continue exercising public power'. (MacDonald and MacDonald, 2006: 104).

If only one deliberative meeting is held upon which the company then makes its policy, the people are still unable to check whether and how the company is executing these policies. Therefore it is important that the company communicates on a frequent basis with the local stakeholders. This can be done through the media, but also through new deliberations rounds in which company makes clear what steps they are currently taking in the creation of their policies, what problems they encounter and how the process is coming along. Through this the political actions of the corporation also become visible to the citizens ensuring more transparent public political action. Based on this information the deliberation groups should then be able to control the public actions of the corporation. Ideally they would also be able to temporarily stop the exercise of public power by the corporation, when the locals think the public policies do not sufficiently target the interest of the local population.

3.4.2. Company goals and norms vs. local demands and values

Another important aspect that tends to be overlooked in the corporate governance discussion is the fact that the company is not the same impartial authority as regular national governments are. Where national governments have the sole task to ensure the liberty and security of their citizens and take care of the public sphere, the corporation also has to take care of itself. While a regular government has the sole duty to serve the public, the company has a predominant private duty, namely it has to make profit to survive. So it will always have to balance its interests between the interests of citizens and the need for profit, even when it becomes the co-proprietor of governance in a country. This brings along two problems.

Firstly, there is a risk that in times of economic crisis the company will have less money to spend on corporate social responsibility, since money has to be invested in the business branch of company in order to ensure the survival of the company (see section 2.2.1). Hence, the citizens might be at risk of losing the provision of certain public goods, when the company's economy runs into bad weather. While the company still has the ethical responsibility to take care of the local citizens, its priority lies ultimately with the economic well-being of the company.

Secondly, there is the risk that the company might one day leave the country. For instance, Royal Dutch Shell is active in Mozambique, since Mozambique has a wide variety of gas and oil resources. Since the government has failed, Shell has taken up a large part of tasks of the national government, providing public goods to the local citizens etc. However, ten years later the energy resources have depleted and there are no longer any economic incentives for Shell to stay in Mozambique. At the moment the company leaves the country, there is risk that provision of public goods disappears as well.

So corporate (co-)government is unlikely to provide a permanent solution for the lack of good government in country, and provision of public goods for citizens will always be dependent on how well the company is doing in an economic sense.

Another problematic element in the relation between corporations and citizens is the fact that international companies have to deal with a plurality of ideas and morals. As a result it can happen that the values of the board of the company, and the values of the other stakeholders of the company (shareholders, NGOs in the home country etc.) conflict with the values of the local citizens or the values of the national government. Most large multinationals are a member of the UN Global Compact (UNGC). The UNGC created a list of ten ethical principles to which a company should abide

in the areas of human rights, the environment, labour and anti-corruption. These principles are derived from The Universal Declaration of Human Rights; The International Labour Organisation's Declaration on Fundamental Principles and Rights at Work; The Rio Declaration on Environment and Development and The United Nations Convention Against Corruption (Website UNGC). As such the companies that are a member of the UNGC have incorporated the UNGC-standards for human rights, labour standards, the environment and anti-corruption in their CSR-policies.

The implementation of these standards can be problematic in nations where the majority of the local stakeholders does not share these liberal values. For instance, let us assume that in the country of Muzambé the majority of the people are conservative Muslims. The government has asked a MNC to take part in the provision of public education. The company agrees to do this but on one condition, namely that if they take up this task then education should be made available to all children, and it should be obligatory to go to school for both boys and girls until they are twelve years old. The company makes this demand because a large part of company's stakeholders (its shareholders, the UN, and various NGOs) are strongly in favour of improving the human rights of children. Only if this condition of full access to education for both boys and girls is met, the company will take up this task. However, in the deliberative forums organised for the local population it becomes clear that the local citizens reject the idea of education for all children. While the boys should be able to go school, the majority of the citizens judge it to inappropriate for girls to go to school.

Thus we see a conflict between the beliefs and motivations of one group of stakeholders of the company and the beliefs of the local stakeholders (the citizens). The problem here is that it is unclear what the company should do. Should it adhere to the demands of its liberal stakeholders and ensure that girls go to school? Or should it listen to the wishes of the local stakeholders and ensure only education for boys?

While most CSR-theories would suggest that one would have to balance the various wishes of the stakeholders I think this would be problematic when taking moral legitimacy into account. Since it is imperative that the local citizens determine what happens in the public sphere, the company would have to give in to the wishes of the local population. The local citizens are the group that power is being exercised over and it is their public sphere that is being affected, not that of the liberal stakeholders outside Muzambé.

However, this is problematic for CSR and corporate government, for are there limits to these demands of the citizens? On the one hand, the actions of the company will have to be legitimized and so the voice of the local citizens would have to weigh heavier than that of the other stakeholders, yet on the other hand the company also needs to live up to its own CSR policy and ethical standards. Where to draw the line? What if, in the case of co-government, the local inhabitants wish that female circumcision is also provided by the corporations health centres? While this might be in line with local cultural practice, these acts of mutilation will likely conflict with the CSR guidelines of most companies, and according to multiple moral theories mutilating people against their will is clearly unethical.

Maybe the first line can be drawn at upholding human rights, so the request for introducing female circumcision in the local health centres will have not to be honoured by the corporation. Still while ensuring human rights as the right on bodily integrity might be more clear cut, the situation is more unclear when looking at the right for education or reproductive rights. The problem is that a balance would need to be found between preventing a kind of liberal paternalism and ensuring the

moral legitimacy of the actions of the company, while on the other hand still living up to the values that the company endorses.

3.5 Recommendations

Based on the discussion and reflection in the earlier sections of this chapter it becomes possible to point out several elements that need to be taken into account when companies want to legitimately perform their CSR-activities.

In section 3.3.1 it has been shown how CSR in general (and especially in strong democratic countries) is not problematic when it comes to political legitimacy. So in these cases, the recommendations for good and legitimate CSR do not differ from the traditional CSR-approach as proposed by Carroll. What is of importance is that in order to live up to the economic, legal, ethical and philanthropic responsibilities, the company should take into account the various concerns of its stakeholders. While the traditional groups of stakeholders and employees can ventilate their concerns and wishes through the formal management structure of the company, the interests and wishes of the local stakeholders can be mapped through polls or town hall meetings. With these factors combined the CSR will entail a combination of the various interests of the stakeholders.

As shown in the section 3.3.2 and 3.4 CSR can be problematic if it entails a form of co-government (as is most likely in weak states). In these cases it is imperative that the company obtains legitimacy to justify its actions in the public sphere and that it ensures the creation of a mechanism that allows the public to hold the company accountable.

So in order to practice CSR as (co-)government in a legitimate way, the following recommendations should be taken to heart:

- 1) The corporation should set up broad scale deliberation groups in all local communities in the country the corporation is active, in order to get a mandate of the people in order to justify the corporation's involvement in the distribution of public goods and the allocation and administration of citizens' rights. Ideally all members of the community would participate in these deliberations. Since this is likely to be practically unrealisable, such a deliberation could also happen between various representatives of the local population (for instance with the leaders of the villages in the local communities)
- 2) Similar deliberations will have to take place on a frequent basis to determine what the wishes of the people are for the allocation of public goods. If the various groups of people are unable to reach consensus, people will have to vote on what policy option they would prefer. This way policy can be made even if consensus is not reached.
- 3) The deliberation sessions can also function as an accountability mechanism, for local stakeholders will be able to discuss the policy process with members of the corporation. In the deliberation round the company can make clear what policy steps have been made. Hereby the process becomes transparent, and the locals are given the opportunity to voice their critique on the process.
- 4) An alternative way to secure the accountability of the company, is to create a new input organ for the local stakeholders in its corporate structure, 'the board of stakeholders'. The board could consist of representatives of the local population, who could be chosen during the first deliberation rounds. This 'board of local stakeholders' could then check on the CSR

process and public policy processes to see whether this is still in line with the local demands. They should have the power to temporarily stop the company from making public policy, if the board judges these policies to not be fully in line with the interest of the local population.

- 5) Lastly, the company should try to balance the interests of the local stakeholders with the interests of its other stakeholders outside the country. A balance needs to be found between upholding the moral legitimacy of the company through listening to the wishing of the local stakeholders, but at the same time also leaving room for the values and wishes of other important stakeholders, like the shareholders.

While these recommendations are far from perfect and require more elaboration before they can be used directly in CSR practice, they are first steps that need to be made in order to make corporate CSR-activities inclusive, effective and above all legitimate.

3.6 General conclusion

All in all, this chapter has shown how CSR-activities sometimes clash with the notion of political legitimacy. It has become clear that CSR-activities do not become problematic for as long as they retain a non-coercive character. Friction between CSR-activities and democratic legitimacy start to arise when the corporation actively takes over the public tasks of the government, since there is no mandate of the people nor any means of holding the company accountable for their actions. It has also been shown that a different interpretation of legitimacy might justify corporate government, but even this approach cannot ensure full control by the public, nor does it take away some inherent conflicts between needs of private actors and public actors.

Nevertheless, the recommendations in the last section provide a first solution to tackle these problems, and when implemented will make CSR as co-government at least more politically legitimate, than it currently is.

Chapter 4: Conclusion and Remarks

This fourth and final chapter contains the answer to the central research question and an overall conclusion. The following sections also contain some final remarks on the research.

4.1. Central Research Question and Summary

In this thesis the practice of corporate social responsibility is put in a political theoretical context. Rather than looking at the traditional questions of social responsibility, like: why would companies would have the duty to care for their various stakeholders, or which groups count as stakeholders, instead the question of political legitimacy is addressed. Since corporate social action is often aimed at helping certain groups in society by providing them with certain public goods, the question is raised whether these corporate actions are not interfering with the tasks of the national government? Can CSR-activities be considered politically legitimate? Are there limits to the scope of corporate social responsibility?

In order to answer these questions it was imperative to first give a short introduction to the origins of corporate social responsibility and an overview of what CSR entails. From this overview in the first part of the second chapter, it became clear that in general CSR can be understood as a self-regulating mechanism that corporations employ in order to live up to both their economic, legal, social and ethical responsibilities. This multitude of responsibilities also entails a wide variety of responsibilities towards local citizens in which the company is operating, and because of this the company has the duty to give in to the various demands and expectations of the local population. Acting upon those responsibilities can take shape in financial donations, but the company can also become personally involved in the provision of all kinds of public goods, like education and healthcare.

In the second half of the second chapter the position of multiple opponents of CSR has also been discussed. Beamol, Henderson and Friedman object to the practice of CSR for economic reasons. The former two consider CSR to be incompatible with the free-market system, as they argue that investments in social projects in the public sector put the survival of the company at risk. Friedman adds to this that the sole purpose of a company is to make profit for its shareholders. The practice of CSR would in fact be stealing from one's shareholders, according to Freeman. From this overall critique one underlying assumption can be distilled, namely that companies should not be involved with social responsibilities since their tasks lie within the private sphere of the market, rather than the public sphere of politics. If corporations start to take over the public tasks of the government, this conflicts with the traditional liberal notion of political legitimacy. It is this objection that required further reflection, which has been taken up in the third chapter.

The idea of political legitimacy is extensively elaborated on the third chapter. In the first section it is shown that the liberal idea of political legitimacy mainly entails that any type political authority needs a certain mandate of the people it governs. In order for any kind of authority to wield power in the public sphere, there needs some democratic mechanism that provides the authority with a mandate of the people, and as well as means for the people to hold this authority accountable for its actions. In the section that followed it was shown that this idea of democratic legitimacy seems to be under pressure of the process of globalization, as corporations start to take up more tasks that traditionally belonged to the government.

The third section contains a reflection on the possible problems that arise when corporations practice CSR in both strong (democratic) states and weak (failed) states. The reflection shows that CSR in general is not problematic. In fact the practice of CSR fully matches with the idea that corporations (which are considered to be ‘citizens’ as they are run by citizens) have public duty to care for public issues and their fellow citizens. In strong states the practice of CSR is unlikely to become a problem, since here the corporate CSR-activities that target public issues are likely to always have voluntary character. As long as CSR is within the boundaries of the law, and does not involve some kind of coercion (which would also immediately make it illegal), CSR-activities of corporations can be considered legitimate. The same cannot always be said for CSR-activities in weak states. For here CSR-activities are more likely to evolve beyond their non-coercive character as the company actually becomes involved in government. This is problematic for democratic legitimacy since there is no mandate of the citizens nor any means of holding the company accountable for their actions.

In the final section, the idea of moral legitimacy as an alternative to democratic legitimacy is explored. It is shown that while moral legitimacy might provide a mandate of the people to justify corporate government, in practice it will be problematic to ensure necessary control by the public. Also it becomes clear that due to inherent conflicts between the needs of private actors and public actors, CSR as corporate (co-)government is unlikely to be a durable and effective measure for the provision of public goods in a political community. However, through implementing new methods of deliberation and setting up a new mechanism of accountability, the political legitimacy of CSR as co-government in weak states can be improved.

4.2 Answering the central research question

On the basis of this discussion and reflection it becomes possible to provide an answer to the central research question. The central question was:

Are there limits to the scope of Corporate Social Responsibility activities of companies when taking into account the element of political legitimacy?

The answer to this question will have be: Yes, there are limits to the scope of CSR when taking into account the element of political legitimacy. When understanding political legitimacy as the liberal notion of democratic legitimacy, CSR becomes problematic when the care for public issues and the provision of public goods evolves into a form of (co-)government in which the company is wielding political power through her provision of public goods. At that moment the company transcends its role of a good fellow citizen and actually becomes an authority with political power. Since this exercise of power is neither mandated by the people nor checked, this is conflicts with the idea of democratic legitimacy.

Friction between democratic legitimacy and CSR-activities are unlikely to occur in strong states, where the national government is the only entity with the legitimate power to enforce certain rules. CSR-activities of corporations in these countries will remain limited to that what is expected of a good citizen. Thus, it will be on a voluntary basis, within boundaries of the legal framework of the state. In weak states, without an effective national government, CSR can evolve into a form of co-government or corporate government and in these cases democratic legitimacy is at stake.

Any form of CSR that entails some kind of enforcement without a mandate of the people and a proper accountability mechanism for the people, falls outside the boundaries of politically legitimate CSR. In order to prevent any conflict with the traditional notion of democratic legitimacy, CSR-activities should always be non-coercive and free of enforcement, both in strong and in weak states. And although it might be possible to increase the political legitimacy of CSR as co-government in weak states through new deliberative practices and mechanisms of accountability, the provision of public goods by the national government will always be preferable over the provision by a corporate actor, because the government will always have a sole public duty, while the company will always have to balance its private interests and public duties.

4.3 Final remarks

This conclusion does not close the debate on the limits corporate social responsibility in relation to political legitimacy, rather it provides sufficient grounds for further research. For instance, in this research project the only distinction that has been made between states, is the difference between strong states and weak states. Obviously, this leaves out the states with an effective government but with an authoritarian regime. It would be useful to find out whether the scope of legitimate CSR-activities changes compared to the earlier defined strong and weak states.

Furthermore, in this thesis the notion of political legitimacy was in the first place understood as democratic legitimacy. As illustrated in the end of the third chapter, there are other notions of legitimacy that might be able to legitimize coercive corporate action in the public sphere. For while these actions might not always be democratically legitimate, there might still be a moral need for companies to tend to the provision and protection of human rights in the community where they are active. When do moral responsibilities become more important than the political legitimacy of the actions necessary to uphold these moral duties? Where to strike the balance? The idea of moral legitimacy through discourse and deliberation might still be a promising approach but only if the earlier mentioned pitfalls of accountability, inclusiveness and the conflict between private and public interests can be overcome. While some first recommendations have been made, these elements are in need of additional reflection and should be taken up in future research.

In the end it can be concluded that there are indeed limits to CSR-activities of corporations when taking into account democratic legitimacy. CSR-activities of a corporation become problematic at the moment the company becomes involved in actual (co-)government and provision of public goods. These are the only instances where CSR-activities are really problematic. Overall it is greatly compatible within a well-functioning democracy. Milton Friedman's libertarian notion that any type of involvement of business actors in the provision of public goods is illegitimate does not hold. In a democratic society all citizens, both 'corporate' and 'ordinary', have a duty to care for the public issues in society, and as such CSR-activities of corporations can only be judged as to be laudable acts of good citizenship.

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