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Reflexive Governance, Meta-Regulation and Corporate Social Responsibility: The Heineken Effect

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1. Introduction

The governance of corporations has become a central theme in discussion of regulation and governance generally because of the recognition of the power of corporations in national and global governance regimes (Shamir 2005: 92).The invention of 'corporate social responsibility' (CSR) as an alternative ethos and set of processes to the traditions associated with the joint stock company presents significant challenges. For some, CSR risks being little more than an invention of the PR people to enhance corporate reputation without affecting the substance of corporate behaviuor (Christian Aid nd; Frankental 2001). For others CSR is, by definition, something that requires firms to demonstrate that they are going 'beyond' what is required by law in terms of the pursuit of positive environmental and social goals (Shamir 2005: 101). For example, European Community policy on CSR emphasizes the voluntary nature of corporate action (European Commission 2006). Similarly the UN Global Compact encourages firms to sign up to a set of ten universal principles relating to human rights, labour standards, the environment and anti-corruption (United Nations Global Compact Office 2005). A third position, associated with some NGOs, is that, in order for CSR to be effective, it must be supported by mandatory legal requirements on firms (Oxfam 2005: 17). Claimed shortcomings in the effectiveness of the Global Compact are linked to its voluntary character. Supporters of the Compact might tend to overstate the potential of such networked governance mechanisms, while critics may seriously 'underestimate its potential' (Ruggie 2002:

28). If we assume that the broad objectives of CSR are defensible then within each of these three perspectives it is clear that a central question is how to make the commitment to CSR effective.

This paper juxtaposes some of the insights of regulatory theory (RT) with the issues facing the world of corporate social responsibility (CSR). This is, of course, hardly a new linkage, though I believe it is an important one. It is important because the worlds of regulation and corporate social responsibility face fundamentally similar problems and there is considerable scope for mutual learning between the two fields. A central common problem is the recognition of the limits of law enforcement as a mechanism for changing behaviour. The search for 'Heineken effect' instruments (which, adapting the words of the old advertisement, 'reach the parts other instruments cannot reach') has multiple motivations and has generated a variety of solutions, both as a matter of practice and theory.

This chapter begins by contrasting research traditions involving regulation and CSR, and suggests that the differences in focus and approach, which are significant, might be overcome through conceiving of both using the concept of regimes. I then take two approaches to governance of regimes which seek to reconceptualise the role of law and apply them to the CSR case. These approaches are referred to as reflexive governance and meta-regulation. Reflexive governance to some extent mirrors the bottom-up concerns of the CSR movement, while meta-regulation is more attuned with the top-down approach traditional to RT. Whilst regulation traditionally emphasizes legal control, reflexive governance emphasizes the development of learning processes as the key to behavioural change.

2. Differentiating Regulation and CSR Research

For CSR the central unit of analysis has been the firm. The approach encourages corporations to take responsibility for both the development and implementation of norms which look beyond the narrow and short term interests of shareholders towards responsibility for the impact of their corporate activities in the wider world and the potential to harness their energy and capacity for broader purposes. The development of CSR as a means to re-programme the goals and processes of firms is largely,

though not exclusively, a bottom up process geared to establishing the market position of businesses through developing their credentials as better corporate citizens. The norms which are established, often in the form of codes or standards, are commonly characterized as voluntary in character for the firms involved (though their adoption by a firm may make them mandatory for the firms' employees and contractors), and taking firms to a position where they behave responsibly 'beyond' the requirements of the law.

Regulation scholarship largely retains a focus on government agencies and departments (though there is much internal criticism of this emphasis (Black 2001)), the making and enforcing of legal rules and accountability for such processes (Baldwin and Cave 1999). The development of regulatory governance to meet new challenges is largely (though not exclusively) conceived of as a top down exercise in steering behaviour variously through smarter or more responsive instruments (Ayres and Braithwaite 1992; Gunningham and Grabosky 1998). A key distinction between the study of CSR and research on regulation has been that the latter has frequently involved empirical research on the operation of regulatory regimes. This may be because access to public agencies for regulation researchers is more routinely given than would be the case with CSR researchers wishing to examine empirically what a commitment to CSR within a business organization involved in practice. Additionally it reflects a tendency in the CSR movement towards prioritizing a normative agenda at the expense of research which uses social science methods to seek to understand the effects social processes such as regulation.

For CSR, of course, the focus on the firm risks neglecting those features of the wider economic and social environment which shape ideas within the firms as to which courses of action to take, whether such shaping is regarded as taking place at the level of cognition or incentives or through some other mechanism. An emergent neo-institutionalist literature directly tackles this problem (Crouch 2006; Doh and Guay 2006).For RT, perhaps even more critically, there is the risk of neglecting the rather obvious point that the capacity to deliver on the objectives of regulatory regimes (whether these are set within firms themselves or externally), within a system of business regulation, lies largely with those firms (Parker 2002).

3. Regimes

One way to link these two frames for analysis offered within CSR and RT is through an analysis of regimes in which the objective is to identify the variety of actors and ideas which bear on the actions, variously, of firms, government agencies and departments and others such as NGOs, unions, and other interest groups (Eisner 2000). Approaches which are fundamentally concerned with the diffuse character of regimes, and the way in which interests, world-view, aptitudes and powers shape outcomes have variously deployed metaphors of 'regulatory space' (Hancher and Moran 1989) 'webs' (Braithwaite and Drahos 2000) 'networks' (Maher 2002) and 'nodal governance' (Burris, Drahos and Shearing 2005) to capture something of this move away from a narrow, single institution and often state-centric focus. From this analysis of regulatory networks or space it is possible to hypothesize upon the nature of the intricate webs of relations within such regimes and ask questions about which actions make a difference, which structures inhibit or promote particular kinds of actions and so on.

An analysis of regimes requires greater specification of the elements of an effective regime. Here I find it helpful to draw on RT, in particular the application of cybernetic analysis associated with Christopher Hood (Hood 1984: 2-4; Hood, Rothstein and Baldwin 2001). A cybernetic analysis breaks down viable control systems into three components – directors, receptors and effectors. Within governance regimes, directors are the governing norms, principles, standards or rules which are geared to the goals or objectives (to the extent that these are defined). Receptors are the mechanisms through which feedback is collected as to the extent to which behaviour is compliant with the norms of the regime. Such feedback might be collected by monitoring or complaints-handling. Effectors are the mechanisms through which behaviour identified as deviating from the norms is realigned to them. This might be through mechanisms of formal enforcement. However, control within governance regimes is not restricted to the hierarchical institutions and processes of classical regulation. Thus "community-based" and "competition-based" control can also be described using the analytical frame of cybernetics.

Within community-based control norms are set through interaction amongst members of the community, and only sometimes formalized into a code (as with a self-regulatory code for an association). Feedback is often informal, comprising the observations of the members of the community, and similarly sanctions of the disapproval and ostracization kind may be wholly informal, or more formalized within institutionalized community regimes (Bernstein 1992).

Within competition-based control regimes such as markets, norms are set through the diffuse interaction of market players (Self 1993). Norms will relate to such matters as price, quality, and sometimes other terms and conditions (for example the presence and quality of a guarantee). Similarly feedback occurs through these diffuse actions in searching for products and comparing price, quality, etc. Deviations from norms are punished through decisions not to purchase or to purchase elsewhere.

It is apparent that business activities linked to responsible corporate conduct can be linked to any one or more of these three bases of control in community, competition and hierarchy. The search for alternatives to law is premised on the ineffectiveness of legal regulation, but obviously begs the question of the effectiveness of alternatives based in community and/or competition. A central question for both RT and CSR is whether approaches to behavioural change based in instruments other than legal coercion can be both credible and effective, both with the businesses which are targeted and with the wider world. In the next section of this chapter I examine directly two contrasting approaches to questions of effectiveness of 'governance beyond law' before moving on to evaluate their relevance to the world of corporate social responsibility.

4. Reflexive Governance and Meta-Regulation

A key starting problem within both regulatory and corporate social responsibility worlds is a lack of faith in law to steer behaviour. We find that well-run firms, particularly within the Anglo-American systems, are able to use the legal framework of the company or corporation effectively and legally to advance the interests of shareholders, with little apparent concern either for the negative externalities of their

activities, nor for the potential their activities might have to foster wider social and economic enhancements for the societies in which they operate. There is a dissatisfaction with the claim, associated with Adam Smith, that the pursuit of private interests within markets has the virtue of delivering wider benefits to society through the mechanism of 'invisible hand', and particularly the benefits accruing from economic growth associated with the pursuit of production and exchange in markets.

Within the analysis of regulation, there is a skepticism about the capacity of government agencies and departments to set and enforce rules because, variously, of risks that such agency activities may be captured by the interests of regulatees (Bernstein 1951), risks that firms, with the benefit of sophisticated professional advice, may find ways to comply with the letter but evade the spirit of the regime (McBarnet and Whelan 1991), and risks that the external demands of regulation will either not be understood within the target organizations, or will place unsustainable demands on the legal system to adapt to the functional requirements of regulation (Teubner 1998 (orig. pub 1987)).

Each strand of thinking about these problems places considerable emphasis on the significance of the reflexive capacity of business organizations (and others) and asks questions about whether such capacities can be harnessed to resolving the dilemma of the limits of law through a form of meta-governance. The thrust of the literature on reflexive governance is to suggest that governance mechanisms should be targeted at creating structures within which actors such as corporations can reflect both on how they see the world, in terms of the problems which their organization is supposed to be addressing, and their own position in that world in terms of what they might do and achieve and what the pay-offs might be. The approach encourages a willingness to revise not just views, but ways of thinking about these critical issues in light of the context in which the actors involved operate. Accordingly it is dependent upon the creation of spaces within which deliberation can occur in an experimental or tentative fashion. Reflexive governance thus exploits the capacity for interactive learning, inter-personally within organizations and between organizations (Voss and Kemp 2005). Such reflexive processes are iterative and enable the consequences of decisions to be revisited and revised in light of experience. These processes are underpinned by more or less well defined procedures but outcomes which are open and undefined at

the outset. The vision has been well articulated, within a constitutional context, under the rubric of 'democratic experimentalism' (Dorf and Sabel 1998). A critical question, from a public policy perspective, is whether such reflexive governance processes emerge spontaneously, and if not, what might stimulate them? Further questions relate not only to effectiveness, but how effectiveness should be measured, and the factors which shape the legitimacy of such processes.

The concept of meta-regulation has been deployed and developed in a number of different contexts. In Bronwen Morgan's study of the Australian National Competition Policy the term was deployed to refer to the policies of government in regulating the regulatory activities of the state and territory governments, in a manner akin to better regulation and regulatory impact analysis programmes familiar with the OECD countries more generally (Morgan 2003). These programmes for the regulation of regulation frequently involve both legal and soft law instruments for monitoring and seeking to reduce the burdens of regulation which are placed on businesses and others. Christine Parker deploys the term in a different way to refer to the steering by government agencies, through legal instruments, of the self-regulatory capacities and processes of firms (Parker 2002). It is the latter sense of this concept which is most useful to a discussion of corporate social responsibility. Indeed Parker has elaborated her analysis of meta-regulation directly to CSR issues (Parker 2007, forthcoming). The focus of Parker's analysis is on the deployment of legal instruments to steer self-regulatory capacity. Complementary to Parker's discussion, I suggest in this chapter that the analysis of meta-regulation can be broadened encompass stimuli which are external to firms, but other than law, to develop self-regulatory capacity towards CSR purposes.

In her analysis Parker suggests that the very idea of using law 'to make businesses responsible for corporate social responsibility is paradoxical' (Parker 2007, forthcoming). Nevertheless this is the essence of the meta-regulation concept, that businesses should be required to take steps geared to acting with social responsibility, but without a detailed specification in the law as to what those steps should be. For Parker the central focus is not the power of law to direct firms, but rather the power within firms to direct their own actions. The central question, for her, is about the capacity of law to steer that self-regulating capacity. It need not, of course, be a

comprehensive capacity, and thus I think it fair to see Parker's ambitions for law within a meta-regulatory model as being rather less than would be the case in a command-and-control regulatory regime where the objective is to achieve, through legal requirements, specified behavioural compliance. On the other hand, Parker's ambitions for law do, in some respects, go rather beyond the command-and-control model, in the sense that she thinks law capable of 'constitut[ing] corporate consciences' as a chief mechanism for harnessing their capacity towards socially responsible ends. Thus law is a reason for acting, and not necessarily the only reason for acting, in particular ways, the detail of which is not specified. Parker sets out a way of thinking about the role and tasks of law in meta-regulating for corporate social responsibility.

Parker offers a number of examples of law exerting meta-regulatory effects on the responsibility of firms. Attachment of criminal liability to certain actions, with the possibility of defences where a defendant can demonstrate they exercise due diligence to avoid commission of the offence, creates incentives for firms to seek out and develop systems through which they can demonstrate diligence. The particular systems which will satisfy the legal defence are not specified by the law. A second possibility is that regulatory agencies use their powers to resolve enforcement actions short of prosecution in return for internal changes to the organization of a firm. A third possibility is to make the development of internal governance mechanisms a pre-condition to the issue of licenses, authorizations of permissions (Parker 2007, forthcoming). Other possibilities include granting exemption from regulatory requirement for firms that commit to developing more stringent internal norms and enforcement mechanisms. The facilitation of whistleblowers, as in the US Sarbanes-Oxley Act (2002), is offered as a more indirect method of stimulating internal change within firms (Parker 2007, forthcoming).

Parker's analysis of the various links between CSR and law has not only law but also the state as the initiator of law at its centre. Claims about the meta-regulatory capacity of law can be elaborated further where the capacity of non-state actors to invoke legal instruments is recognized. A key example of such non-state initiation is with contracts between businesses which might tightly specify codes to be followed, mechanisms for monitoring and penalties (Picciotto 2002). A major international initiative is the

adoption by many of the major banks of the 'Equator Principles' in 2003, which require lending institutions to evaluate and monitor adverse consequences of loans which are supplied within a contractual setting (Wright and Rwabizambuga 2006). Governmental contracts have similarly been used to stimulate better corporate practices over a long period, and provide an incentives-based alternative to command-and-control regulation (McCrudden 2007). Picciotto points also to the possibility of private enforcement of public instruments. For example, false claims by business to follow codes relating to fair trade, are liable to fall foul of fair trading legislation. The EC Directive of Unfair Commercial Practices (2005/29/EC, Art 11), for example, permits member states to create rights of action for competitors, representative groups and individuals for enforcement against business in breach of many of the requirements of the Directive. There is also considerable scope for transnational private litigation (Scott and Wai 2004).

Whatever we might think of the nature and potential initiators of legal processes, within each of these examples law provides a reason for change within the governance structures of the firm, without specifying directly what changes should be made. Parker offers and addresses a substantial critique of her own position, along the lines that the risk associated with the meta-regulatory approach to CSR is that its emphasis on changing processes risks permitting firms to satisfy the law's requirements without getting any closer to the substantive objective of enhancing the social responsibility of firms (Parker 2007, forthcoming). She discusses Julia's Black's view that firms can never be relied to do other than adapt their systems to promote their profits and market share, and that external evaluation of public objectives will always be necessary. Parker follows up this by pointing to the risk that firms will engage in symbolic compliance, without changing their values.

Parker's (2007:**) response to her own critique is to downplay the procedural dimension to meta-regulation and argue that

> 'the substantive goals at which internal processes are aimed must be
> adequately specified and enforced external to the company. Moreover, the
> *standards for the companies' internal processes* must be specified sufficiently
> to make sure that those values are represented within internal decision making
> processes.'

My own critique is that this position does not leave much left that is truly meta-regulatory, because of the emphasis on specifying substantive goals external to the firm and seeking compliance with them. Rather it pulls us back to a position closer to that of the command-and-control approach which meta-regulation was supposed to displace. This dilution of the meta-regulation approach can be linked to the dependence upon law as the reason for acting with Parker's approach. It is arguable that this over-emphasis on law results in law being placed in opposition to competition as a reason for acting within which, implicitly, acting to comply with the law is responsible, whilst acting to comply with the requirements of competition must, necessarily, be only about profit and market share and not social responsibility.

This sharp differentiation between law and competition is difficult to defend. Experience of CSR suggests that competition is frequently a reason for acting, however imperfectly, to develop programmes for greater social responsibility within firms (as Parker (2002) herself demonstrates in her earlier work), just as compliance with the law (for example directors' duties to the firm) creates reasons for paying attention to profit and market share. We might further add that the position of actors within firms and firms themselves within communities and networks give further reasons to act in ways that deviate markedly from the stereotypical image of the firm focusing only on market share and profit.

Accordingly when we depend entirely on the law to nudge firms towards greater social responsibility we place expectations on the law that it, alone, is unlikely to be able to meet in many contexts, just as law in the classical command-and-control mode is frequently unable to deliver on objectives set. The lessons of the reconceputalisation of pluralized and fragmented governance processes should steer us precisely towards recognizing that alongside diffuse capacity, changes in behaviour are likely to be engaged by diffuse modes of steering and not law alone. The ideas of reflexive governance recognize the embeddedness of social processes within legal, competitive and community structures. This insight encourages us to conceive of meta-regulation as defining the reasons for action more broadly than legal compliance, and to include also the reasons for acting which derive from participation in competitive markets and in communities.

Both meta-regulation and reflexive governance approaches focus on processes at one stage removed from the action through which behavioural norms are set and implemented, and consider the potential for developing frameworks or processes within which the development of 'capacities for learning' (reflexive governance) and 'the regulation of self-regulation' (meta-regulation) are suggested as a means to stimulate, but not direct, behaviour within businesses and, potentially, other kinds of organization.

4. Corporate Social Responsibility

Addressing the problem of corporate social responsibility, we can see that from both theoretical perspectives, the achievement of corporate social responsibility amongst businesses is likely to involve some form of engagement between firms and others from government and/or civil society. But such engagement is unlikely to succeed if it is direct and directive.

A reflexive governance approach looks to the establishment of fora which enable and promote reflection by key actors. Of a set of 246 codes dealing with CSR issues collected by the OECD in 2000 around half were issued by individual firms, while forty per cent originated with associations (Picciotto 2002). What factors trigger firms and groups of firms to develop commitments to greater social responsibility and then institutionalize those in codes? For individual firms it has frequently been external pressures, whether from law, competition or community. In the UK a short-lived aspect of the company law regime required quoted firms to produce an operating and financial review (OFR) each year. Guidance on the completion of the OFR required firms to address issues relating to environment, employment and community (Parker 2007, forthcoming). A weakness in such a legal trigger is that it does not, of itself, involve the generation of reflexive processes and may appear to firms to be just another reporting requirement. By contrast, a response to market and or community pressures, may involve a firm in a more fundamental evaluation of what they do and why they do it. A number of firms were caught up in scandals relating to environmental protection and employment rights in the 1990s which caused them to develop codes through which they might both facilitate and demonstrate changes in

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their operating practices (Picciotto 2001). This begs the question whether some form of crisis affecting market positioning is a pre-requisite to effective change.

Where firms have a shared purpose and interest in working together, codes may be developed collectively. Whilst it is possible to think of sinister examples of such shared interests, as where firms create a cartel to retain artificially high prices, other documented examples seek to tackle common problems of reputation affecting the firms, without which all would lose.

The development of advertising self-regulation in the UK was an initiative of the Advertising Association in 1962, and at least a partial response to the damage to the reputation of the industry caused by the publication of Vance Packard's 1957 book *The Hidden Persuaders* (Baggott and Harrison 1986). The attack on the ethics and integrity of the advertising industry threatened to undermine their market position if producers were to feel that advertising was not trusted by its target audience, and therefore not a worthwhile investment for them. The response of the industry was the establishment of an industry code and mechanisms for reception of complaints and enforcement (see www.asa.org.uk). A critical feature of the Advertising Standards Authority scheme was the negligible involvement of government in its establishment, though it has subsequently been engaged in dialogue with government concerning such issues as the enhancement of standards and increasing lay representation in its decision making (Baggott and Harrison 1986).

A second example is found in the US nuclear industry, which faced a major collective threat as a result of the Three Mile Island Meltdown in the 1980s. The position of the firms involved, threatened with the shutting down of the entire industry due to weaknesses in the capacity of one firm to follow the mandated standards, was well captured in the title of Joe Rees' book *Hostages of Each Other* (1994). In that study Rees documents the development of norms and processes for monitoring and enforcing them which the industry developed for itself (Rees 1994).

The existence of a risk or threat was a key factor in calling forth a response from the UK advertising industry and from the US nuclear industry. These risks were created by the publication of a book and by an industrial accident. It appears first that the emergence of such risks can be exploited for the purpose of establishing mechanisms

to re-programme corporate behaviour in particular sectors and this begs the question can such risks be created? The answer here must, I think, be yes. Campaigning activities of various kinds by NGOS, and discussion of legislative reforms by government both appear capable of creating risks which change the incentives for firms. The widespread adoption by the logging industry of the norms and certification processes of the Forest Stewardship Council was a product of concerted efforts of NGOs to persuade major retailers of wood products to require FSC compliance as part of their contractual compliance for suppliers, an example of 'non-state market-driven governance' (Cashore 2002).

Discussion of these examples does not deny a role for law in supporting changes in corporate behaviour. In the case of the Institute of Nuclear Power Organisations the capacity of the Institute to self-regulate effectively was predicated on its ability to call in a government agency ('the gorilla in the closet') to impose legal sanctions in cases where INPO's own approach failed. In a comparison between the INPO regime and the chemical industry self-regulatory regime, Responsible Care, Rees attributes the greater success in achieving compliance for the INPO regime to this factor (Rees 1997). Similarly, where NGOs fail to persuade firms to adopt better practices there has been a role for litigation, initiated by non-governmental actors (Shamir 2005: 98-99).

 But NGOs recognize that recourse to law, alone, is unlikely to be effective and 'activists around the globe have launched numerous campaigns of corporate public shaming, using non-legal measures such as consumer boycotts, divestment programs, and popular protest in order to pressure [multinational corporations] to adopt responsible business practices (Shamir 2005: 99). As Shamir (2005: 100) points out, the rush to adopt CSR among a number of firms has been as a result of the adverse publicity associated with various 'production scandals' involving such items as clothes and footballs. Such scandals are important triggers given that the research on the link between take-up of CSR and profitably generally is 'inconclusive' as the benefits (Vogel 2005:pp29ff). The potential for market-based controls over corporate behaviour in consumer markets is recognized in the observation that consumers are increasingly exhibiting 'preferences for processes', referring the way in which products are produced, over the inherent price/quality ratio in the product (Kysar

2004). Experimental research suggest that consumers will pay higher prices for products backed by effective CSR processes, and suggests that a key challenge is to maintain confidence in the information available to consumers about the significance of participating in CSR programmes (Mohr and Webb 2005). However, limited evidence suggests that the proportion of consumers willing to pay higher prices in practice for goods produced in compliance with human rights or environmental standards may be as little as five to ten percent(Vogel 2005: 48). NGOs have a key role in distributing information about corporate practices and in persuading firms of the positive market effects associated with adopting CSR programmes (Cashore 2002).

More generally, businesses may be so embedded within the communities within which they operate that some form of implicit approval is required for their practices. This idea is captured within the concept of the 'social license to operate', which originates with firms which operate intensively within particular communities and creating environmental risks. Key examples are mining and logging. Within these industries, it is argued, corporations are constrained to follow certain practices and inhibited from engaging in others, whether or not such norms are contained within legal requirements (Gunningham, Kagan and Thornton 2004). In these examples the reasons for acting responsibly are to receive or maintain the approval of the community.

These examples provide more substance to the idea that meta-regulatory conceptions of CSR should not be regarded as dependent on law alone and, indeed, that meta-regulatory effects are witnessed within regimes within which law has a limited or negligible role. In a study of the Equator Principles by banks it was found that voluntary adoption of the standards, which go beyond legal requirements in their scrutiny of adverse social consequences of loan finance projects, was 'largely concentrated in institutional environments shaped by targeted advocacy campaigns organized by civil society groups and strong regulatory systems' (Wright and Rwabizambuga 2006: 110). Thus while the ultimate reasons for acting might have been to enhance market reputation, it may be hypothesized that the context in which market position could be enhanced was shaped by both community activity and legal regime.

Under what conditions are credible CSR processes likely to emerge and be sustained? Taking us back to the analysis of regimes, a critical factor is the development of instruments for monitoring and promoting compliance (Picciotto 2002). As with CSR processes generally, mechanisms for monitoring are diffuse. The rejection within the policy literature of a single model for CSR promotes the role of intermediaries such as accounting and law firms in offering audits which provide independent evaluation of compliance with required norms and processes. Whilst one line of critique suggests that this has simply created a market for accounting firms in processes of 'social auditing'(Shamir 2005: 103), it may conversely be pointed out that much of the running in the field is being made by NGOs which are devising processes for assuring compliance with certification schemes relating to such matters as environmental and fair trade labeling and labour rights (Courville 2003). The development of such processes of auditing is a response to the damage to the credibility of CSR arising from the exposure of token rather than sustained commitments to responsible governance within firms. A significant degree of reflexivity, including the development of learning processes, has been detected within social auditing initiatives which involve an array of stakeholders in piloting and developing evaluation mechanisms (Courville 2003: 291-293).

As to compliance, as we have noted, the reasons for compliance may sometimes be linked to legal obligations. However, pressures for compliance frequently derive from the kind of economic and social pressures associated with participation in markets and communities. The point being that even where compliance is not legally required, it may nevertheless be 'required' for other reasons. Commitments to comply with CSR which appear voluntary from the perspective of law, need not be merely 'aspirational' (Picciotto 2002).

5. Conclusions

A key preoccupation within discussion of CSR is its relationship to law. On one side of the debate there is a view that CSR, by definition, involves conduct going beyond legal requirements. On the other side is a view that CSR can only be effective and trusted where it is backed by mandatory legal requirements. We may refer to these

contrasting perspectives as the irrelevance view and the necessity view of law in CSR. The analysis offered in this paper transcends these two competing views. It accords with the irrelevance view, to the extent, that it offers an expectation that behaviour which is compliant with CSR norms may well go beyond legal requirements. It accords with the necessity view in recognising the role of law in facilitating (though not necessarily mandating) the elaboration of CSR programmes. The necessity view is challenged to the extent that it views law as necessary in all contexts to underpin CSR and sees law as the main reason for acting. It goes beyond both views in seeing the role of law as part of the normative framework within which responsible forms of conduct are defined and effected, and attempting to relate that role to other parts of the normative framework.

The challenge set out by the reflexive governance approach is to develop the capacity for learning within firms so that they may more effectively address the question of social responsibility and put into place mechanisms for achieving CSR-related objectives. To see firms as located within networks of firms, governmental and non-governmental actors, and that there are mechanisms for steering behaviour associated with each (markets for firms, law for government, and community for NGOs) suggests that we place too much emphasis on individual firms capacity for the development of CSR. Learning processes are likely to involve dialogue between firms, between firms and NGOS, between firms and governmental actors and between NGOs and governmental actors. Meta-regulation is fundamentally concerned with the reasons for acting in particular contexts, and it is clear that compliance with legal requirements is not the only reason to act. The reasons for acting will sometimes be because of law, but often in combination with requirements of competition and membership of communities. Sometimes there will be reasons to act in the absence of any legal requirement.

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