

CSR: Essays on evolution

This is a collection of three essays, each detailing and considering the evolution of CSR from different perspectives. The first essay considers how CSR evolved from the perspective of form, whether CSR operated as a voluntary or legal concept. The second essay discusses the evolution of CSR from an objective perspective, and details how it transformed from a notion of philanthropy to one of business. The last essay contemplates the historical development of CSR from the perspective of scope and will explore the changing contents that CSR has been associated with.

CSR as a legal duty: A historical recount

This article traces through history the extent corporate social responsibility (CSR) is a legal duty in the United Kingdom (UK) to inform the voluntarism-regulation debate. However, as a positive article, this article will not directly address that debate, nor any of the other normative discussions pertaining to CSR, such as its value, necessity, or definition.¹

It may seem wise to initiate this article by discussing its scope through a clarification of CSR's definition. Unfortunately, that introduction will be gravely flawed because it will effectively be approving CSR as a timeless concept.² Even worse, it will assume that CSR can be defined.³ CSR traverses an array of disciplines,⁴ receives influence from a multitude of sources,⁵ and encapsulates a plethora of overlapping concepts.⁶ Thus, until the more fundamental issue of determining its content is resolved, it is unsurprising that CSR's definition cannot be universally agreed. Nevertheless, it is surely unwise to attempt discussing a topic without even describing it. The origins of CSR as a terminology is often credited to Bowen,⁷ who in 1953 defined "social responsibilities of a businessmen" as "the obligations of businessmen to pursue those policies, make those decisions, or follow those lines of action which are desirable in terms of the objectives and values of our society".⁸ In essence, CSR was born to steer corporate behaviour towards social goodness, and the notion was "voluntary".⁹

Although the roots of CSR is arguably in voluntarism, and Bowen's definition of CSR is a good starting point, CSR has today seemingly increasingly expanding into the realm of law.¹⁰ Thus, spiralling out of that growth are debates as to the optimal form through which CSR

¹ These topics have been studied extensively from a business and management perspective. For... see... For... see...

² For avoidance of doubt, it is the nature of CSR to evolve continuously and rapidly, see Zhao, Jingchen (2017) 106.

³ Zhao, Jingchen (2017) 103. It has even been described as "business contribution to sustainable development", see Lynch-Wood and Williamson (2005) 4;

⁴ CSR has been studied from the perspectives of including "philosophy, business management, law, politics, sociology and economics", see Zhao, Jingchen (2017) 103.

⁵ Lynch-Wood and Williamson (2005) 4-5.

⁶ CSR not only encapsulates "complementary ideas and terms such as sustainability, business ethics corporate citizenship, corporate social performance, stakeholder theory", it is also "overlapping in character with a number of other terminologies", see Zhao, Jingchen (2017) 106

⁷ "Father" Carroll (?); Bowen (1953)... Abstract...

⁸ Bowen (1953) 6.

⁹ Bowen (1953) 6.

¹⁰ CSR "lie both within and beyond the law", see Zhao, Jingchen (2017) 104. This is also the case for areas that have not been directly labelled as CSR. "Mandatory legislation on various aspects of business transparency is emerging around the world. It can form part of company law, environmental regulation, or tailored legislation...", see Halina War, 'Contributing to the corporate conscience' (2003) 28 European Lawyer 2003 56, 56. More generally, "resulting laws and regulations... have formalised what were once voluntary corporate actions into legal requirements", see Chizu Nakajima, 'The importance of legally embedding corporate social responsibility' (2011) 32(9) Company Lawyer 257, 257. For an example, section 172 of the Companies Act 2006 has been described as "corporate social responsibility implicit", see Ji Lian Yap 'Considering the enlightened shareholder value principle' (2010) 21(2) The Company Lawyer 35, 35.

should be conducted.¹¹ However, presenting the form predicament as an “either-or” option would be severely simplifying it, for CSR has through the course of history existed in an array of combinations and contradictions along a voluntarism-regulation scale (see figure 1 below). The complexity of that debate stems from the numerous legal and non-legal sources of CSR.¹² Adding to the difficulty, it is difficult to draw the line between legal and non-legal sources, for there are “informal law and pre-formal law... [and] norms of a legal character but not directly binding on corporations”.¹³

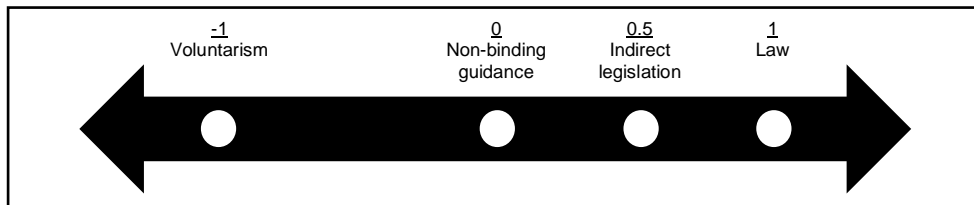


Figure 1

This article will point out the state in which CSR existed at each stage of history. Although the inception of CSR is frequently credited to Bowen in 1953 and “[f]ormal writings on social responsibility are largely a product of the twentieth century”,¹⁴ CSR had already existed in spirit even earlier.¹⁵ Thus, part 2 of this article will analyse the legal necessity of CSR pre-1950s, before analysing the same for the period between 1950-2000 in part 3.¹⁶ Part 4 will continue the study in the context of the 21st century before making some concluding remarks.

Pre-1950s

CSR only began to develop in the 1950s, but even prior in the “mid-to-late 1800s”, the spirit of CSR already began conjuring, and actions to address social issues were already being undertaken by corporations.¹⁷ These took the form of “[w]elfare schemes” and philanthropy, and were driven by “employers who had these religious beliefs and displayed a paternalism towards their workforces”,¹⁸ or because they perceived that it can enable “greater levels of productivity and employee loyalty”.¹⁹ The latter business-centric rationale was also

¹¹ Lynch-Wood and Williamson (2005); Zhao, Jingchen (2017) 108-110. Much has been said about the cost and benefit of compulsory CSR, but there is limited literature that analyses the relationship between CSR and law, see Zhao, Jingchen (2017) 105.

¹² Sources are different from “drivers... that motivate actors to act on sources”, see Karin Buhmann, ‘Corporate social responsibility: what role for law? Some aspects of law and CSR’ (2006) 6(2) Corporate Governance 188, 191.

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¹⁴ Carroll, Archie B (2008) 20

¹⁵ “corporate social responsibility as a practice developed very much earlier and as a general phenomenon”, see Sally Wheeler, ‘Gone and Almost Entirely Forgotten: The Watkinson Report’ (2009) 60 North Ireland Legal Quarterly 263, 271.

¹⁶ The categorisation for parts 3, 4, and 5 is loosely based on Patrick Murphy’s classification of CSR. Murphy believed that there existed four eras, namely “the 1950s... ‘philanthropic’... The period 1953-67... ‘awareness’... The period 1968-73... ‘issue’... [and] the ‘responsiveness’ era... beyond”, see Carroll, Archie B (2008) 25 [explaining Patrick Murphy \(University of Michigan Business Review, 1978\)](#)

¹⁷ Carroll (2008) 20. It has been claimed that some form of “social and environmental concerns about business... can... be traced back almost 5,000 years”, see J J Asongu, ‘The History of Corporate Social Responsibility’ (2007) 1(2) Journal of Business and Public Policy 1, 8. However, other than mere acknowledgement, it seems pointless to mention something so remote, much less discuss it.

¹⁸ Wheeler (2009) 270.

¹⁹ Wheeler (2009) 270.

prominent in the US, to fend off “competition regulation” and to keep “production costs low”.²⁰ However, none of the abovementioned initiatives were ascribed by law.

Nevertheless, the law was not oblivious to the conduct by corporations activities that benefited society. In 1883, Lord Justice Bowen held in *Hutton v West Cork Railway Co.*,²¹ that “charity is not sitting at the board... however, a kind of charitable dealing which is for the interest of those who practise it... may sit at the board... That is... provided it is within the scope of the business of and secures advantage to the company”.²² Later, the 1896 US case of *Steinway v Steinway & Sons*,²³ also approved corporate expenditures on employees that were not directly profitable. Both *Hutton* and *Steinway* only sought to provide benefits to employees, but the courts later considered and approved other corporate undertakings bringing companies “more close to permitting purely philanthropic contributions” and what will become CSR.²⁴ Unfortunately, not only were the pre-1900s cases considering more so the narrower notion of philanthropy than broader issue of CSR, they were also only considering its legality from the more fundamental issue of permissibility than the more sophisticated question of obligation.

The modern issue of whether “CSR” should be compulsory was then “never tested before the courts”,²⁵ and was certainly not a legal requirement “enshrined in UK corporate law”.²⁶ On the contrary, non-profit corporate actions that were undertaken pre-1900s were largely a means to deflect legal regulations.²⁷

By 1931, “CSR” was largely accepted as being permissible, and the “fear of ultra vires, are definitely in the minority”.²⁸ In fact, multiple states in the US codified the permission for companies to “make donations to philanthropic causes, or civic enterprises”.²⁹ In 1933, Justice Brandeis explained in *Liggett v Lee*,³⁰ that the changes that were being witnessed occurred because legislators no longer treated corporations with suspicion and therefore relaxed their approach towards their regulation.³¹ Thus, there was gradually a shift away from the permissibility of “CSR” to the scope of the obligation.³²

But before that shift, CSR “before 1948, fell almost entirely within the purview of management”.³³ And with that, CSR was left undisturbed and suggestions to promote it were largely ignored,³⁴ for two decades.

1950-2000

²⁰ Wheeler (2009) 270.

²¹ (1883) 23 Ch D 654

²² in *Hutton v West Cork Railway Co.*... 673

²³ 17 Misc 43, 47, 40 N Y Supp 718, 720 (1896)

²⁴ Note, Donations by a Business Corporation as “Intra Vires” (1931) 31(1) Columbia Law Review 136, 137

²⁵ Johnston (2017) 1013.

²⁶ Johnston (2017) 1013.

²⁷ It is possible to consider CSR as an act “in the shadow of the law”, see D Sinclair, “Self-regulation versus command and control? Beyond False Dichotomies” (1997) 19(4) Law & Policy 529, 2. CSR was a bid to impose certain regulation in light of being “informed that failure to do so may result in legislative standards being enacted”, see Yap (2010), 38.

²⁸ Note, Donations by a Business Corporation as “Intra Vires” (1931) 31(1) Columbia Law Review 136, 144

²⁹ Note, Donations by a Business Corporation as “Intra Vires” (1931) 31(1) Columbia Law Review 136, 143

³⁰ 288 US 517, 541 (1933)

³¹ *Liggett*, 288 US 542-60; Johnson (2013) 975

³² The consideration of “CSR’s” obligations not yet involved the nuanced discussion of whether it should be made compulsory through legislation. Instead, in the infancy of “CSR’s” scope of obligation, the questions considered were the “class of permissible donees”, and how the interest of “stockholders and creditors should be protected”, see Note, Donations by a Business Corporation as “Intra Vires” (1931) 31(1) Columbia Law Review 136, 144

³³ Andrew Johnston, ‘The Shrinking Scope of CSR in UK Corporate Law’ (2017) 74(2) Washington and Lee Law Review 1001, 1005.

³⁴ Johnson (2013) 975-976

Although there were significant changes to corporate law in the 1950s,³⁵ none of them directly dealt with CSR, and the Companies Act 1948 “made no explicit consideration of how the law could provide further safeguards for the public interest”.³⁶ That lack of reference to CSR may be because CSR was not yet invented until 1953.³⁷ But most of the action in the sphere of corporate law was then with the issue of hostile takeovers anyway.³⁸ However, with the rise of takeovers, directors were disincentivised to dabble in giving value to non-shareholders, less the price of their companies’ decline and become the subject of a takeover.³⁹ Thus, the law had an impact on the practice of CSR, but only in an indirect and remote manner. CSR remained primarily a voluntary concept.

Later in the 1970s, CSR saw no significant divergence from voluntarism. At first, there was seemingly momentum to bring CSR away from voluntarism, and towards an approach from the middle ground. This is because in 1973 the Government published a White Paper stating that directors “have a manifest obligation towards all those with whom they have dealings” and should “on behalf of the shareholders... discharge their social responsibilities”.⁴⁰ Although the relationship of the White Paper’s recommendations to CSR were not exactly crystal clear, at least it directly described “social responsibilities” in the corporate context. Unfortunately, the White Paper was the furthest voluntary CSR threaded into the legal sphere in the 1970s, for no further developments followed from it.⁴¹

Thus by 1975, the legal status of CSR was reset to the pre-1970s position of voluntarism. Instead, the highlight corporate issue became employee representation, as a new Committee was tasked to discover the means to achieving greater “industrial democracy”.⁴² This ultimately cumulated towards the legal duty of directors to “have regard... the interests of the company’s employees”.⁴³ Thus, like the pre-1970s legal scene that revolved around the sole issue of hostile takeovers, the focus of corporate law beginning from 1975 was largely on the single question of employee rights. It is surely possible to draw a connection between CSR and employee rights, however faint, but the crux of the issue remained unchanged. CSR did not gain any ground towards legality and remained a voluntary concept.

The US went even further than employees, and “in the 1980s, almost thirty states enacted laws permitting... directors to consider various nonshareholder constituencies in making decisions”.⁴⁴ However, those regulations did little to alter the status quo, for although explicit, they took the form of rights and not duties. Thus, CSR continued to remain outside the legal sphere for years to come until 1999 when guidance for the 1998 Combined Code on Principles of Good Governance and Code of Best Practice was published.⁴⁵ The guidance suggested that companies take positive action to consider in their risk assessments issues relating to “safety and environmental, reputation, and business probity”.⁴⁶ Although the

³⁵ The initiation of which began from the Companies Act 1948 which “ushered in the modern era of financialized shareholder primacy corporate governance”, see Johnston (2017) 1015.

³⁶ Johnston (2017) 1013.

³⁷ Bowen (1953) 6.

³⁸ Johnston (2017) 1015-1018.

³⁹ Johnston (2017) 1018.

⁴⁰ Department of Trade and Industry, Company Law Reform 1973 Cmnd 5391 (UK) 5. The Government was inspired to “consider corporate behaviour towards interests other than those of the shareholders and providers of finance, including employees, creditors, customers and the community at large”, see CONFEDERATION OF BRITISH INDUS., A NEW LOOK AT THE RESPONSIBILITIES OF THE BRITISH PUBLIC COMPANY: An Interim report for discussion (1973).

⁴¹ The White Paper was abandoned as there was a change in Government, see Johnston (2017) 1020-1021.

⁴² DEPARTMENT OF TRADE, REPORT OF THE COMMITTEE OF INQUIRY ON INDUSTRIAL DEMOCRACY, 1977, Cmnd. 6706 (UK)

⁴³ S 309(1) Companies Act 1985. For a detailed development of S 309(1), see Johnston (2017) 10123-1028.

⁴⁴ Johnson (2013) 980

⁴⁵ <https://www.frc.org.uk/getattachment/53db5ec9-810b-4e22-9ca2-99b116c3bc49/Combined-Code-1998.pdf> which will later become the code of corporate governance

⁴⁶ Institute of Chartered Accountants in England and Wales, Internal Control Guidance for Directors on the Combined Code (1999) <https://ecgi.global/sites/default/files/codes/documents/turnbul.pdf> page 13

Combined Code's guidance were optional and not intended to influence CSR, it helped usher in a new era of CSR.

21st century

Recognising aspects of voluntary CSR in legal sources

In 2000, UK altered its Pensions Act of 1995 to require that trustees of occupational pension schemes publicise their social, environmental and ethical issues investment policies.⁴⁷ That requirement was barely able to impact CSR, much less push CSR into the realm of law, for not only was its influence on CSR indirect, it was also a unique and "industry-specific" requirement.⁴⁸ Nevertheless, the amendments to the Pensions Act of 1995 was an accurate depiction of the era post-2000s, which would ultimately see CSR being dissected and each of its individual aspects transformed into duties through legislation.

But prior to that occurrence, changes witnessed in the early post-2000s were more subtle. In 2000, UK "appointed the world's first Minister for CSR" and created alongside it, amongst others, the Parliamentary Group for Corporate Social Responsibility.⁴⁹ Later in 2001, UK's Government published its pioneer CSR report, which...⁵⁰ These were not alterations to the sources of CSR and did little to impact upon the voluntary nature of CSR.

Also in 2001, the European Commission acknowledged in its Green Paper that CSR is "a concept whereby companies integrate social and environmental concerns in their business operations and in their interactions with their stakeholders on a voluntary basis", "going beyond compliance".⁵¹ In 2002, the Commission reaffirmed its Green Paper's definition of CSR in its Communication,⁵² and stated that the feature of CSR is "behaviour... above legal requirements, voluntarily adopted... in... long-term interest... linked to the concept of sustainable development... which businesses are managed".⁵³ Thus, in contrast to the opinion of CSR prior to the 21st century, the EU explicitly endorsed notions of sustainability and long-termism into the concept of CSR. The inclusion of sustainability into the concept of CSR was confirmed in 2002 by the European Union (EU) when it "made its first pledge to CSR",⁵⁴ and decided to strive towards becoming an "economy... capable of sustainable economic growth... and greater social cohesion".⁵⁵ Such was once again confirmed by the EU Multi-Stakeholder Forum on CSR in 2004, wherein the Commission's Green Paper's definition of CSR was reinstated, along with an emphasis that "[t]hrough CSR businesses contribute to sustainable development".⁵⁶ Although CSR is being emphasised from the new perspective of sustainability, the laissez faire attitude on which CSR is dealt with stood firm, and CSR remained in the realm of "[v]oluntarism".⁵⁷ Such an approach was also favoured by the UK's Government, which confirmed in its 2004 **CSR report that CSR should remain voluntary**.⁵⁸

Nevertheless, "policy-makers recognise that CSR does not operate outside existing or future legal frameworks",⁵⁹ and slowly but surely, regulation was allowed to creep into the territory

⁴⁷ Lynch-Wood and Williamson (2005) 9

⁴⁸ Lynch-Wood and Williamson (2005) 8

⁴⁹ Lynch-Wood and Williamson (2005) 7

⁵⁰ **Department of Trade and Industry (2001) ?**

⁵¹ EU Green Paper 2001 6

⁵² EU Communication 2002 5

⁵³ EU Communication 2002 5. For the highlights of EU's 2002 Communication, see Lynch-Wood and Williamson David (2005) 6.

⁵⁴ Lynch-Wood and Williamson (2005) 5;

⁵⁵ Lisbon European Council 23 and 24 March 2000: Presidency Conclusions, see

https://www.europarl.europa.eu/summits/lis1_en.htm

⁵⁶ EU Multi-Stakeholder Forum on CSR, *Final results and recommendations* (June 2004) 3.

⁵⁷ Lynch-Wood and Williamson (2005) 7; Zhao, Jingchen (2017) 108.

⁵⁸ **Department of Trade and Industry (2004), 4**

⁵⁹ Lynch-Wood and Williamson (2005) 8

of voluntary CSR. In 2003, the EU passed a directive that would require companies to report their “non-financial... indicators... including... environmental and employee matters”.⁶⁰ However, the EU held back, and added that non-financial reporting is only necessary “where appropriate”,⁶¹ and also allowed “Member States... to exempt companies... in so far as it relates to non-financial information”.⁶² Moreover, despite being an arguably positive initiative, the Directive is seemingly not rooted in CSR, for CSR is not explicitly mentioned. The uptake of CSR by the law is slow primarily because, with the exception to dealing with specific corporate actions, the overarching corporate framework continues to put the interests of shareholders above all else.⁶³ The sluggish attitude of regulators towards complete integration of CSR into the law is demonstrated by the 2002 and 2004 failures of multiple Bills that sought the same.⁶⁴

Perhaps some redemption was found in 2005 when the Companies Act 1985 was actually amended to require that the compulsory business review within the director’s report must include “where appropriate... information relating to environmental... and employee matters”.⁶⁵ Additionally, and out of the UK’s own volition,⁶⁶ the Companies Act 1985 (Operating and Financial Review and Directors’ Report etc.) Regulations 2005 also introduced to the Companies Act 1985 the requirement for directors of a quoted company to prepare an annual “operating and financial review”,⁶⁷ which must include “where appropriate... information relating to environmental... and employee matters”.⁶⁸ Thus, redemption, if any, is only ever so slight as the Company Act 1985 uses the same terminology of “where appropriate” as the **Accounts Modernisation Directive**, and suffers the same fate of uncertainty. Despite legislation increasing the stringency of reporting, CSR, which is already only remotely connected to the intent of the amendments introduced to the Company Act 1985,⁶⁹ will at best sit in the realm of a director’s ability to conjure excuses,⁷⁰ and not within the law.

Soon after, section 172 of the Companies Act 2006 introduced the requirement for directors to “have regard to... the long term... employees... suppliers, customers... community and the community”, amongst others, when acting on behalf of companies.⁷¹ Section 172 has been described as “corporate social responsibility implicit”,⁷² and is a “broadbrush attempt to

⁶⁰ Article 1(14)(a) **the Accounts Modernisation Directive (2003/51/EC) [2003] OJ L178/16**. The deadline for implementation of the **Accounts Modernisation Directive** is “1 January 2005”, Article 5 the **Accounts Modernisation Directive (2003/51/EC) [2003] OJ L178/16**.

⁶¹ Article 1(14)(a) **the Accounts Modernisation Directive (2003/51/EC) [2003] OJ L178/16**.

⁶² Article 1(14)(b) **the Accounts Modernisation Directive (2003/51/EC) [2003] OJ L178/16**.

⁶³ **Department of Trade and Industry, *Modernising Company Law* (em 5553-[July 2002]; Lynch-Wood and Williamson (2005) 8**

⁶⁴ The 2002 and 2004 Bills were the Corporate Responsibility Bill and the Performance of Companies and Government Departments (Reporting) Bill respectively, see Lynch-Wood and Williamson (2005) 9, 18-19.

⁶⁵ S 2 The Companies Act 1985 (Operating and Financial Review and Directors’ Report etc.) Regulations 2005

⁶⁶ Lynch-Wood and Williamson (2005) 14-15. In 1998, the Company Law Review Steering Group (CLRSG) was commissioned to review company law by the Department of Trade and Industry. CLRSG published its report in 2001 proposing that companies undertake “Operating and Financial Review” (OFR), see Company Law Review Steering Group, *Modern Company Law: For a Competitive Economy* (Final Report, June 2001) 3.33. CLRSG’s recommendations were adopted by the Government for consultation, and were ultimately implemented, see Department of Trade and Industry, *Modernising Company Law* (Cm 5553-1 July 2002) 4.28-4.41; Department of Trade and Industry, Draft Regulations on the Operating and Financial Review and Directors’ Report: A consultative document (DTIIPub 7294/3’ k/03/041NP May 2004); The Companies Act 1985 (Operating and Financial Review and Directors’ Report etc.) Regulations 2005.

⁶⁷ S 8 The Companies Act 1985 (Operating and Financial Review and Directors’ Report etc.) Regulations 2005

⁶⁸ S 9 The Companies Act 1985 (Operating and Financial Review and Directors’ Report etc.) Regulations 2005

⁶⁹ The reporting requirements introduced to the Companies Act 1985 is its connection to CSR, see R. Goddard, “Modernising Company Law: The Government’s White Paper.” (2003) 66(3) *Modern Law Review*, 402.

⁷⁰ Lynch-Wood and Williamson (2005) 18; **ENDS “Risks and opportunities posed by draft OFR regulations,” (2004) 352 May → provide directors with “ample opportunity” not to include environmental or other non-financial matters;**

⁷¹ S 172(1) Companies Act 2006.

⁷² Yap (2010), 35. Alternatively, and minimally, section 172 “implicitly assumes that corporations will be pushed by reputational considerations to behave in a socially responsible manner”, see Johnston (2017) 1028.

introduce... into the general company law framework" CSR.⁷³ Section 172 goes further than S 309(1) of the Companies Act 1985, which only permits directors to consider the interests of employees, but section 172 still fails to make a direct reference to CSR. Thus, CSR cannot be said to have been legalised. Section 172 at most "does no more, than the previous law".⁷⁴

Although the turn of the century did not instantaneously bring about a duty of CSR, CSR was doubtlessly becoming increasingly prominent in the legal sphere as its voluntary nature became acknowledged by varying legal sources. CSR's rise in prominence was recognised when the UK introduced the Stewardship Code in 2010,⁷⁵ that sought to "improve long-term returns to shareholders",⁷⁶ and suggested institutional investors to "intervene... when they have concerns about the company's... social and environmental matters".⁷⁷ Thus, the Stewardship Code not only recognised CSR's growing scope, but also its enlarging definition which now also emphasises sustainability.

Developments in CSR eventually saw the EU in 2011 alter its 2001 position towards voluntary CSR to propose that "certain regulatory measures create an environment more conducive to enterprises voluntarily meeting their social responsibility".⁷⁸

However, on a global scale, things were moving at a faster pace. In 2013, India legalised CSR through its Companies Act, and required certain companies to "constitute a CSR Committee of the Board",⁷⁹ and "provide a percentage of... profits as a CSR contribution".⁸⁰ India's legal CSR requirements were built from case law, where it has been held that "CSR expenditure was the responsibility of the company",⁸¹ and that companies "should... strive to fulfil their corporate social responsibility... as long as the unit is under operation".⁸² However, UK had no equivalent provision. Nevertheless, 2013 did see amendments to the Companies Act 2006 that required companies to publish a "strategic report",⁸³ detailing environmental matters, company employees, social and community and "human rights issues".⁸⁴ Unfortunately, as is all too familiar, those new requirements "has not substantially changed the requirements",⁸⁵ and certainly did not bring CSR any closer to a legal duty.

Transforming aspects of CSR into legal duties

In 2014, the US Supreme Court acknowledged that "modern corporate law does not require for-profit corporations to pursue profit at the expense of everything else... and it is not at all uncommon for such corporations to further humanitarian and other altruistic objectives".⁸⁶ The same was applicable to the UK, and with that, 2015 marked the beginning of a trend in the UK to extract specific aspects of CSR to be legislated into duties.

⁷³ Yap (2010), 37.

⁷⁴ See Johnston (2017) 1028; Andrew Keay, The Duty to Promote the Success of the Company: Is It Fit for Purpose? 13 (Univ. of Leeds Sch. of Law, Ctr. for Bus. Law & Practice, Working Paper, 2010),

⁷⁵ Financial Reporting Council, 'The UK Stewardship Code' (2010)

⁷⁶ Financial Reporting Council, 'The UK Stewardship Code' (2010) 1; See also Johnston (2017) 1033.

⁷⁷ Financial Reporting Council, 'The UK Stewardship Code' (2010) 7

⁷⁸ European Commission: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions A Renewed EU Strategy 2011–14 for Corporate Social Responsibility, Brussels 2011 COM (2011), 681 final 146?

⁷⁹ Zhao, Jingchen (2017) 117; Section 135 (1) Indian Companies Act 2013 (describe what are those certain companies)

⁸⁰ Zhao, Jingchen (2017) 117

⁸¹ The Tata Power Company Ltd (Transmission) v Maharashtra Electricity Regulatory State Commission & Ors¹⁰⁹

⁸² Aam Janta v State of Mp. Ors CS, No 35 of 2013, NGT, 21 February 2014.

⁸³ Companies Act 2006 (Strategic Report and Directors' Report) Regulations 2013 introduced Sections 414A-D of the Companies Act 2006.

⁸⁴ Section 414C(7)(b) Companies Act 2006

⁸⁵ Zhao, Jingchen (2017) 120

⁸⁶ Burwell v Hobby Lobby 134 S Ct 2751 (2014).

Spinning out of CSR, 2015 saw the introduction of the Modern Slavery Act, which required certain corporations to “prepare a slavery and human trafficking statement”.⁸⁷ In 2016, the Companies Act 2006 was amended by the Companies, Partnerships and Groups (Accounts and Non-Financial Reporting) Regulations 2016 which implement the European Union Directive on disclosure of non-financial and diversity information. Those amendments came into force in 2017,⁸⁸ and amended the requirements of the Strategic Report, making it a “must” to include information pertaining to “environmental matters... employees... social... human rights... anti-corruption and anti-bribery matters”.⁸⁹

Later in 2017, employers with more than 250 employees,⁹⁰ including companies, must publish an annually, amongst others, information pertaining to difference between their male and female employees.⁹¹ Also in 2017, the EU published requirements for corporations importing certain metals from the EU to make certain disclosures,⁹² and conduct specific due diligence,⁹³ that will become compulsory in 2021.⁹⁴

In 2019, the latest Stewardship Code require that signatories “integrate stewardship... including material environmental, social and governance... and climate change” considerations into their role.⁹⁵ Such is significant development from its initial position in 2010 which only suggested intervention when “social and environmental matters” become problematic.⁹⁶

From these numerous example

Share something in common – They all do not discuss CSR, but all pertain to aspect or aspects of CSR, and all relate to corporations.

In 2017, Zhao believed that “[i]t is clear that law and litigation have become an important part of CSR”.⁹⁷

Since at least 2017, there is an “increasing trend towards interventions by corporate law, so that CSR may no longer be seen as voluntary.”⁹⁸

Enforcement is increasing...

Conclusion

⁸⁷ S 54(1) Modern Slavery Act 2015.

⁸⁸ S 1(2)(a) Companies, Partnerships and Groups (Accounts and Non-Financial Reporting) Regulations 2016

⁸⁹ S 4 Companies, Partnerships and Groups (Accounts and Non-Financial Reporting) Regulations 2016

⁹⁰ S 1(2) The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017

⁹¹ S 2 The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017

⁹² Article 4 of REGULATION (EU) 2017/821 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

⁹³ Article 5 of REGULATION (EU) 2017/821 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

⁹⁴ Article 20 of REGULATION (EU) 2017/821 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

⁹⁵ Principle 7 page 15 The UK Stewardship Code 2020.

⁹⁶ Financial Reporting Council, ‘The UK Stewardship Code’ (2010) 7

⁹⁷ Zhao, Jingchen (2017) 109.

⁹⁸ Zhao, Jingchen (2017) 105.

CSR's objective: Past, present and future

“the emphasis has shifted from philanthropy and attention to corporate action “beyond law” to an inquiry into how a company conducts its business.”⁹⁹ “Indicative of this shift, many academics and practitioners in management now refer to the topic as corporate responsibility, not corporate social responsibility”¹⁰⁰

⁹⁹ Williams (2018) 634

¹⁰⁰ Williams (2018) 634

The changing definitions of CSR

“Defined in an influential 1970s article as “the firm’s considerations of, and response to, issues beyond the . . . economic, technical, and legal requirements of the firm to accomplish social benefits along with the traditional economic gains which the firm seeks,”¹⁰¹

“the European Commission more simply defined it in 2011 as “the responsibility of enterprises for their impacts on society.”¹⁰²

“Indicative of this shift, many academics and practitioners in management now refer to the topic as corporate responsibility, not corporate social responsibility”¹⁰³

¹⁰¹ Williams, Cynthia A – Corporate Social Responsibility and Corporate Governance (2018) 634

¹⁰² Williams (2018) 634

¹⁰³ Williams (2018) 634

Pre-1900s

“philanthropy by business people had origins that began centuries earlier, including patrons of the arts, builders of churches, endowers of educational institutions, and providers of money for various community projects.”¹⁰⁴

“In examining the mid to-late 1800s, it is apparent that emerging businesses were especially concerned with *employees* and how to make them more productive workers.”¹⁰⁵

“According to management historian, Daniel A. Wren... industrialists such as John H. Patterson of National Cash Register as one executive instrumental in setting the course for the industrial welfare movement. Welfare schemes emanating from this movement sought to prevent labor problems and improve performance by taking actions... Examples included the provision of hospital clinics, bathhouses, lunch-rooms, profit sharing, recreational facilities, and other such practices (Wren, 2005: 269–70).”¹⁰⁶

“*philanthropy* was appearing on the scene in the late 1800s... such individuals as Cornelius Vanderbilt or John D. Rockefeller”¹⁰⁷

“Great Britain in 1883 when the West Cork Railroad Company tried to compensate its employees for job losses brought about by the dissolution of the corporation. In this case, Lord Justice Byron ruled that charity had no business at the table of the board of directors and that they could spend the company's money only for purposes of carrying on the business.”¹⁰⁸

“Steinway, by contrast, the court permitted the piano manufacturer to buy an adjoining tract of land to be used for a church, library, and school for its employees. In this case, the court saw ‘improved employee relations’ as a major benefit accruing to the company.”¹⁰⁹

“R. H. Macy Company of New York City... In 1875, Macy's contributed funds to an orphan asylum. In 1887, company gifts to charities were listed under Miscellaneous Expenses in the company's books (Heald, 1970:7).”¹¹⁰

“turn of the century that suggested some degree of social responsibility was being taken on by companies, though they were never called social responsibility. First, there was the example of *paternalism*... In 1893, a model industrial community at Pullman was created south of Chicago. George M. Pullman of the Pullman Palace Car Company created a community town that was quite a showplace and was considered by some to be an example of enlightened business policy.”¹¹¹

“YMCAs (Young Men's Christian Associations) as a good example of early social responsibility initiatives. Begun in London in 1844, the YMCA movement quickly spread to the United States. The YMCAs were supported not only by individuals, but by companies as well. Just before World War I, there appeared growth of company giving for community-related welfare and social programs became closely associated with the YMCAs, especially linked to the railroad companies (Heald, 1970: 13–14).”¹¹²

“During the period 1918–29, Heald has suggested that the ‘community chest movement’ also helped to shape business views of philanthropy, one of the earliest forms of CSR...”

¹⁰⁴ Carroll, Archie B (2008) 21

¹⁰⁵ Carroll, Archie B (2008) 20

¹⁰⁶ Carroll, Archie B (2008) 21

¹⁰⁷ Carroll, Archie B (2008) 21

¹⁰⁸ Carroll, Archie B (2008) 21

¹⁰⁹ Carroll, Archie B (2008) 21–22

¹¹⁰ Carroll, Archie B (2008) 22

¹¹¹ Carroll, Archie B (2008) 22

¹¹² Carroll, Archie B (2008) 22

Business leaders began to be exposed to others' views as to what constituted social problems in society and became somewhat conscious of the mission of social agencies."¹¹³

"Nicholas Eberstadt has observed that in the late 1800s a charter of incorporation was a favor bestowed only on those businesses that were socially useful."¹¹⁴

"Robert Hay and Ed Gray characterized the period we have been describing up to this point in time as the 'profit maximizing management' phase in the development of social responsibility."¹¹⁵

1900s

"Robert Hay and Ed Gray dubbed the 'trusteeship management' phase, emerged in the 1920s and 1930s... Hay and Gray believed two major trends brought these changes about: (1) the mounting diffusion of stock ownership, and (2) a gradually more pluralistic society."¹¹⁶

"According to Sophia Muirhead (1999) in a research report for The Conference Board, the period of the 1870s to 1930s should be considered the 'prelegalization period' of corporate contributions."¹¹⁷

"according to Eberstadt, the corporations began to be seen as institutions, like the government, that had social obligations to fulfill (Eberstadt, 1973: 22). As business grew in the 1940s, and World War II, Eberstadt argued that companies thought they were being socially responsible by standing up as an anti-Communist institution."

"polled by *Fortune* magazine asking them about their social responsibilities. The results of this survey suggest what was developing in the minds of business people in the 1940s. One question asked the businessmen whether they were responsible for the consequences of their actions in a sphere wider than that covered by their profit-and-loss statements. Specifically, the question was 'do you think that businessmen should recognize such responsibilities and do their best to fulfill them?' Of those polled, 93.5% said 'yes'."¹¹⁸

1950s

"Howard R. Bowen's publication of his landmark book *Social Responsibilities of the Businessman* (1953) best marks the beginnings... He inquired: 'What responsibilities to society may businessmen reasonably be expected to assume?' (p. xi). Interestingly, we are still asking this same question today... Bowen was one of the first to articulate a definition as to what SR means... It (SR) 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. (p. 6)"¹¹⁹

"Morrell Heald's (1970) *The Social Responsibilities of Business: Company and Community, 1900–1960*... provides an interesting and provocative discussion of the theory and circumstances surrounding CSR during the first half of the twentieth century."¹²⁰

"Philanthropy, or corporate contributions as manifestations of CSR, was said by Muirhead, who wrote a history of corporate contributions, to be in a period of 'innovation and legalization' during the 1940s and 1950s."¹²¹

¹¹³ Carroll, Archie B (2008) 22

¹¹⁴ Carroll, Archie B (2008) 23

¹¹⁵ Carroll, Archie B (2008) 23

¹¹⁶ Carroll, Archie B (2008) 23

¹¹⁷ Carroll, Archie B (2008) 23

¹¹⁸ Carroll, Archie B (2008) 24

¹¹⁹ Carroll, Archie B (2008) 25

¹²⁰ Carroll, Archie B (2008) 26

¹²¹ Carroll, Archie B (2008) 26

“decade of the 1950s was one of more ‘talk’ than ‘action’ with respect to CSR. It was a period of changing attitudes, with business executives learning to get comfortable with CSR talk. There were very few corporate actions, beyond philanthropy, to report that stood out in terms of accommodating this new theme”¹²²

1970s

“Morrell Heald's path-breaking book, *The Social Responsibilities of Business: Company and Community, 1900–1960*... describes in an historical fashion community-oriented programs, policies, and views of business executives. His accounts suggest that business people during this period were significantly preoccupied with corporate philanthropy and community relations.”¹²³

“1960s and early 1970s was a period during which social movements with respect to the environment, worker safety, consumers, and employees were poised to transition from special interest status to formal government regulations.”¹²⁴

Attempt to define CSR by “Harold Johnson's *Business in Contemporary Society: Framework and Issues* (1971)... A socially responsible firm is one whose managerial staff balances a multiplicity of interests. Instead of striving only for larger profits for its stockholders...”¹²⁵

Attempt to define CSR by “Committee for Economic Development (CED) in its 1971 publication, *Social Responsibilities of Business Corporations*... *inner circle* includes the clear-cut basic responsibilities for the efficient execution of the economic function... *intermediate circle* encompasses responsibility to exercise this economic function with a sensitive awareness of changing social values and priorities... The *outer circle* that business should assume to become more broadly involved in actively improving the social environment.”¹²⁶

“Davis in 1973 defined CSR as follows: ‘For purposes of this discussion it [CSR] refers to the firm's consideration of, and response to, issues beyond the narrow economic, technical, and legal requirements of the firm’ (p. 312).”¹²⁷

“Richard Eels and Clarence Walton addressed the CSR concept in the first (1961), edition of their volume *Conceptual Foundations of Business*... extensive discussion of the CSR movement and the various ways in which academics and practitioners were coming to regard the topic at this point in time.”¹²⁸

1980s

“In the 1980s, the focus on developing new or refined definitions of CSR gave way to research on CSR and a splintering of writings on alternative or complementary concepts”¹²⁹

¹²² Carroll, Archie B (2008) 26

¹²³ Carroll, Archie B (2008) 28

¹²⁴ Carroll, Archie B (2008) 29

¹²⁵ Carroll, Archie B (2008) 28

¹²⁶ Carroll, Archie B (2008) 29

¹²⁷ Carroll, Archie B (2008) 30

¹²⁸ Carroll, Archie B (2008) 30-31

¹²⁹ Carroll, Archie B (2008) 34