

# Consumer Social Responsibility as a Requirement for Corporate Social Responsibility

Nitish Monebhurrn\*

At a conference on Corporate Social Responsibility in which I recently participated in Brazil, one of the sessions focused on the conundrum of Mining, Business and Human Rights — a topical issue in Latin America. The drastic impacts of mining activities on Human Rights are known and well documented in the literature and there is serious ongoing research on the subject in the legal scholarship<sup>1</sup>. The speakers were technically flawless, they were competent jurists, their intentions were the best and their realistic approach and proposals were highly appreciated. They discussed how legal tools could be construed to enforce Human Rights norms in the mining sector. Although convinced by their technical contributions, I could not help staring puzzlingly at the ornaments they lavishly sported. Some of the speakers were indeed betrayed by a whole set of shining gems and jewels which decorated their fingers and/or necks and/or ears: my lay eyes could recognise gold, emerald, diamond, maybe lapis lazuli. From the very technical problems characterizing mining and corporate social responsibility, another problematic — of a more existential nature — drew its contours in the already cynical background. And I thought: is it possible to be wholly and permanently coherent while advocating for corporate social responsibility and human rights in Business?

## 1. IS THERE AN ETHICAL CONSUMER?

Joel Bakan ended his enlightening masterpiece *The Corporation. The Pathological Pursuit of Profit and Power* with an optimistic tone by inferring that, to some extent, how corporations behave is “really all about us”<sup>2</sup>. It is, indeed.

1 See for instance: Mihaela Ailincăi, Sabine Lavorel (org.), *Exploitation des ressources naturelles et protection des droits de l'Homme*, Paris, Pédone, 2013, 252p.; Delphine Couveinhes-Matsumoto, *Les droits des peuples autochtones et l'exploitation des ressources naturelles en Amérique latine*, Paris, L'Harmattan, 2016, 618 p.; Patrice Christmann, Dominique Guyonnet, “Les minerais et métaux : au hasard de la rareté », in, Philippe Chalmin, *Des ressources et des hommes. Matières premières : 1986-2016, trois décennies de mondialisation et au-delà*, Paris, François Bourin, 2016, pp.271-292 ; Directorate-General of the External Policies of the European Union, “Indigenous Peoples, Extractive Industries and Human Rights”, Documento Expo/B/droi/2013/23, September 2014, 35p; Sarah L. Seck, “Canadian Mining Internationally and the UN Guiding Principles for Business and Human Rights”, *Canadian Yearbook of International Law*, vol.51, 2011, pp.59-116; David Bilchitz, “Introduction: Putting Flesh on the Bone. What Should a Business and Human Rights Treaty look like?”, in, Surya Deva and David Bilchitz, *Building a Treaty on Business and Human Rights. Context and Contours*, Cambridge, Cambridge University Press, 2017, p.1 *et seq.*

Human Rights Watch has also dedicated specific studies to the matter and these are available at: <https://www.hrw.org/topic/business/oil-mining-and-natural-resources>

See also, the organized book entitled: *Industries minières. Extraire à tout prix*. Points de vue du sud, Paris, Syllepse, 2013, 212 p.

2 Joel Bakan, *The Corporation. The Pathological Pursuit of Profit and Power*, New York, Free Press, 2004, p.167.

\* PhD – International Law (Sorbonne Law School); Law Professor (University Centre of Brasília, Brazil); Visiting Professor (University of Sabana, Colombia); Editor (Brazilian Journal of International Law). E-mail: nitish.monebhurrn@gmail.com

But in the interplay between corporations and “us” — that is “us” as potential consumers — “we” are way too easily and too often condoned and excused. Corporate social responsibility, business and Human Rights theories and policies are justly but tremendously oriented by the forces of the supply side. They focus on corporate behaviour. There is, nonetheless, a complacency when it comes to the demand side or to the buyers’ side, that is, regarding consumers’ patterns of social behaviour. Studies do show that, when surveyed, consumers are prone to accept and to change to an ethical consumerism with regards to products whose manufacturing process does not minimally abide to the best practices of corporate social responsibility<sup>3</sup>. Sometimes, boycotting programs are resultantly planned<sup>4</sup>. Still, very little evidence exists to follow up the practical implementation of such intentions<sup>5</sup>. Some authors accordingly coined “the myth of the ethical consumer”<sup>6</sup>.

There is an utter lack of coherence in the discourse and in the behaviour of those citizens who are, on one hand critical of corporations and their selfish behaviour, actions and decisions when, on the other hand, they act, at their own level as impulsive, self-centred consumers whose rationale finds secure abode in their immediate material interests. Conspicuously, the aim is not to excuse corporations or to minimise their doings. But this question of social responsibility must be discussed at all levels of the playing field. And for the issue of corporate social responsibility to be approached with maximum efficiency, in search of concrete results, consumers’ social responsibility cannot be neglected.

3 David Vogel, *The Market for Virtue. The Potentials and Limits of Corporate Social Responsibility*, Washington, Brookings Institution Press, 2005, p.48.

4 See for example, the campaign against McDonalds organized by McSpotlight and available at: <http://www.mcspotlight.org/index.shtml>. The *Ethical Consumer* has an A to Z list of further boycotting campaigns, available at: <http://www.ethicalconsumer.org/boycotts/boycottlist.aspx>. See also: Marylyn Carrigan, Ahmad Attalla, “The Myth of the Ethical Consumer — Do Ethics Matter in Purchase Behaviour?”, *Journal of Consumer Marketing*, vol.18, no.7, 2001, p.565.

5 David Vogel, *The Market for Virtue. The Potentials and Limits of Corporate Social Responsibility*, Washington, Brookings Institution Press, 2005, p.48; Marylyn Carrigan, Ahmad Attalla, “The Myth of the Ethical Consumer — Do Ethics Matter in Purchase Behaviour?”, *Journal of Consumer Marketing*, vol.18, no.7, 2001, pp. 561-563.

6 Marylyn Carrigan, Ahmad Attalla, “The Myth of the Ethical Consumer — Do Ethics Matter in Purchase Behaviour?”, *Journal of Consumer Marketing*, vol.18, no.7, 2001, pp.560-577.

## 2. ARE CONSUMERS THE MIRRORS OF CORPORATIONS?

Consumer social responsibility is the reforming mirror of corporate social responsibility. It can be defined as the level of intrinsic diligence consumers have regarding the origins and the overall production process of their purchases<sup>7</sup>. Corporations are expected to muster a maximum effort to exercise due stewardship of the environment, of human and workers’ rights or to adopt ethical standards — of not indulging in acts of corruption for example — while doing business. Consumers are often concerned about the harmful and damaging consequences a given product might have on their own health and well-being. However, they are not always diligent when it comes to knowing and understanding how, where and under which circumstances the good was manufactured, that is, how and if their purchases have affected others<sup>8</sup>.

Corporations are selfish entities; they lure for profits which are their main and sometimes their ultimate goal<sup>9</sup>. They may act as cold monsters, putting social and human aspects of their business in a pragmatic cost-benefit accounting plan and strategy whereby moral concerns become irrelevant. Maximizing profits while minimizing costs is basically a common business mantra. And imposing duties or responsibilities upon corporations is a potential cost. For this reason, corporations with enough bargaining power sometimes lobby congress persons to block projects aiming at regulating their activities<sup>10</sup>. Asking for corporate social behaviour is, to some extent, an oxymoron, it is preposterous within the codes of the business world unless this demand originates from the very market. Diluting corporation social practices in business practice is tantamount to an incompatible transplantation. Of course, this does

7 James A. Roberts, “Profiling Levels of Socially Responsible Consumer Behaviour: A Cluster Analytic Approach and Its Implications of Marketing”, *The Journal of Marketing Theory and Practice*, vol.3, no.4, 1995, p.98.

8 Edward Morrison, Larry Bridwell, “Consumer Social Responsibility – The True Corporate Social Responsibility”, Pace University (article available at: Consumer Social Responsibility – The True Corporate Social Responsibility).

9 Milton Friedman, *Capitalism and Freedom*, Chicago, University Press of Chicago, 1962, p.112.

10 Lee Drutman, “How Corporate Lobbyists Conquered American Democracy”, *The Atlantic* (20 April 2015) [available at: <https://www.theatlantic.com/business/archive/2015/04/how-corporate-lobbyists-conquered-american-democracy/390822/>]

not mean that such measures are never successful. Regulations on corporate social behaviour have been implemented — at least in terms of norm adoption — both at the national and at the international level. For example, on the 27 March 2017, France enacted a Statute (2017-399) on the “devoir de vigilance des sociétés mères et des entreprises donneuses d’ordre” (duty of care for the parent and ordering companies)<sup>11</sup>. Still in France, a new bill — entitled *Plan d’action pour la croissance et la transformation des entreprises* (Action plan for growth and for the transformation of companies) is currently under discussion; one of its aims is to adjust the very definition of ‘companies’, thereby giving it a social function. If enacted, the bill will impose an environmental and social stewardship to private companies. Their mission would extend beyond the interests of their shareholders. Some of the recent international investment agreements — like those proposed and signed by Brazil — contain specific provisions on corporate social responsibility<sup>12</sup>. On similar grounds, a binding treaty on Business and Human Rights is currently being discussed within the ambit of the United Nations Human Rights Council<sup>13</sup>. Their effective enforcement is, obviously, another debate.

The behavioural pattern — in terms of social negligence —, which characterizes the corporate world and for which companies are often criticized correspondingly reflects in the consumers’ world. Morals and ethics tend to be revised to minimum or to ground zero when it comes to satisfying self-interests. Companies like Nike, Shell, Chevron, Wal-Mart, Monsanto<sup>14</sup>, Coca-Cola, Dell, Samsung, Syngenta, Nestlé, Apple<sup>15</sup> and many others have been reminded on some of their malpractices<sup>16</sup>. Such information is not locked in a safe. It has been widely published in and circulated by the media (passive

transparency); moreover, nowadays, consumers do have the means to minimally check the corporate behavioural history and the practices of those companies from which they buy or whose services they consume (active transparency). Still, these companies remain dominant players and their profits are sky high. Their corporate malpractice, their dramatic and sometimes irreversible impacts on the environment or on the social and human rights fields have not run them out of business. In other words, they are still supported by the consumers’ infrastructure: corporate misbehaviour does not necessarily plummet consumers’ will to consume. Companies may have an easy hand on negative externalities when it comes to maximizing profits. And consumers often do the same when their immediate material well-being is at stake<sup>17</sup>.

Consumers can be as rational, pragmatic and cold as the companies from which they purchase: externalities can be easily bypassed, ignored, minimized to satisfy a self-interest. A *homo oeconomicus* rationale! This is not a pathology. It is — or has become — normality. Consumers might indeed act as vehemently and suspiciously as companies if ever asked to apply high standards of consumer social responsibility. When left to depend on conscience, morals or ethics, then due diligence is reduced to the strict minimum. It is always more comfortable to single out the other accusingly; changing one’s own comfort, one’s own habits is more demanding.

### 3. UNCITICAL CONSUMERISM IN A FATIGUED SOCIETY

But this is what is expected to happen in a fatigued or burnout society<sup>18</sup>. The philosopher Byung-Chul Han masterly explains this social tiredness in his book, *Burnout Society*<sup>19</sup>. The author therein describes an automation of social life, namely in the occidental world. He explains how an excess of work and a lack of idleness

11 The Statute is available at: <https://www.legifrance.gouv.fr/eli/loi/2017/3/27/2017-399/jo/texte>

12 These agreements are available at: <http://investmentpolicyhub.unctad.org/IIA/CountryBits/27#iiaInnerMenu>

13 Human Rights Council, “Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights”, Draft Resolution A/ HRC/26/L.22/Rev.1 [25/06/2014].

14 Monsanto recently merged with Bayer.

15 David Barboza, “Workers sickened at Apple Supplier in China”, *The New York Times* (22 February 2011) [available at: <https://www.nytimes.com/2011/02/23/technology/23apple.html>].

16 Eric David, Gabrielle Lefèvre, *Juger les multinationals. Droits humains bafoués, ressources naturelles pillées, imputé organisée*, Bruxelles, Mardaga, 2015, 185p ; William Bourdon, *Face aux crimes du marché*, Paris, La Découverte, 2010, 333p.

17 James A. Roberts, “Profiling Levels of Socially Responsible Consumer Behaviour: A Cluster Analytic Approach and Its Implications of Marketing”, *The Journal of Marketing Theory and Practice*, vol.3, no.4, 1995, p.97.

18 Byung-Chul Han, *Sociedade do Cansaço*, Petrópolis, Editor Vozes, 2015, 128p.

19 Byung-Chul Han, *Sociedade do Cansaço*, Petrópolis, Editor Vozes, 2015, 128p.

— a lack of *otium* as Nietzsche would put it<sup>20</sup> —, has reduced the human being to the state of an *animal laborans* (a working animal)<sup>21</sup>. Bertrand Russell also critically discussed this question in one of his works<sup>22</sup>. In this mechanized world and life, little or no time is dedicated to *thinking* or to *questioning* as an activity. It therefore becomes easy to let oneself go with the flow, a flow of mimicry whereby everyone consequently becomes the other because there is no intrinsic will. Questioning, thinking, doubting, choosing... all surrender to tiredness. And such tiredness casts an irradiating light upon various components of society. Tastes, for example, tend to become uniform and unquestioned, and are often dictated by the market. This context subsequently becomes a fertile womb for uncritical consumerism by fatigued consumers. We do live at a market place and are easily drawn to be(come) passive market players and to blindly obey the market's law. Surrendering is the easiest and most complacent option for many. Adopting immediate attitudes to change one's consuming behaviour demands a full stock of good will and critical distance. In turn, transforming such good will into positive actions rests upon a necessary vitality which is lacking in our tired societies. In this book "*Soumission*"<sup>23</sup>, the French author Michel Houellebecq sardonically describes how a lack of vitality in a given society facilitates the *submission* to a new religion, because, all in all, according to a cost-benefit setting, submitting or surrendering oneself (cost) leads to more personal advantages, privileges and power (benefit). Here, the analogy holds because the consumers' reality — between options and choices, between costs and personal benefits — is not very different. Many things can be sacrificed, bypassed, overlooked or excused to uphold a personal gain. The consumer calculation is also a cold one whereby regrets and remorse easily become *liquid*<sup>24</sup>. A bad, discomposing conscience and shamefacedness are often not strong enough to change consumers' habits: knowing that child labor, forced or exploited labor was used in a

given manufacturing process, that security norms were not adopted do not necessarily deter the will to purchase. Many products — sometimes superfluous ones — define our standard of living and questioning their use implies revisiting such living standard. It is a cultural trap organized by a market trap.

If corporate social responsibility, effective Business and Human Rights practices require a corporate cultural change, the latter depends, to some extent, on a cultural change in our consumption habits.

20 Friedrich Nietzsche, *Human, All Too Human: a Book for Free Spirits*, Cambridge, Cambridge University Press, 1996. p. 132.

21 Byung-Chul Han, *Sociedade do Cansaço*, Petrópolis, Editor Vozes, 2015, pp.41-50.

22 Bertrand Russell, *A conquista da felicidade*, Rio de Janeiro, Nova Fronteira, 2017, pp.45-53.

23 Michel Houellebecq, *Soumission*, Paris, Flammarion, 2015, 315p.

24 Zygmunt Bauman, *La cultura en el mundo de la modernidad líquida*, Mexico City, FCE, 2013, 101p; Zygmunt Bauman, *La vie líquida*, Paris, Fayard, 2013, 252p.