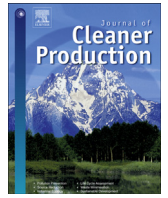


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Review

Is free, prior and informed consent a form of corporate social responsibility?

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ABSTRACT

International organizations are increasingly including Indigenous peoples' rights and the concept of Free, Prior and Informed Consent (FPIC) in their guidance documents, codes of conduct, and performance standards. Leading companies are adjusting their Corporate Social Responsibility (CSR) and Social Performance frameworks to include a human rights based approach for engaging with Indigenous communities. Arguably, insufficient attention has been given to the normative, conceptual and practical differences between CSR and FPIC. The voluntary and instrumentalist character of CSR is not readily compatible with the basic tenets of human rights. While CSR is primarily applied by companies to reduce risk associated with societal opposition and reputational harm, FPIC is a mechanism to ensure respect for Indigenous rights relating to land, use of resources, and self-determination. CSR and FPIC thus serve different purposes, as reflected in their positions on issues such as: economic development; stakeholder management; the role of the corporation vis-à-vis the state; and the responsibilities and accountabilities of corporations.

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Contents

1. Introduction	00
2. The evolution of corporate social responsibility	00
3. Traditional CSR tools for community engagement	00
4. The emergence of free, prior and informed consent	00
5. FPIC-compliant community engagement processes	00
6. Are we talking about the same thing here?: FPIC as a possible dimension of CSR	00
7. Conclusion	00
References	00

1. Introduction

Multinational corporations, especially in the extractive industries, are increasingly encountering Indigenous and tribal peoples in their on-the-ground business activities (Graetz, 2014; Owen and Kemp, 2015; Hanna et al., 2016a, 2016b). These encounters significantly affect the lives of these peoples (Anaya,

2005; McGee, 2010; Hansen et al., 2016). Because of their dependence on the natural resources where they live and their strong spiritual attachment to their lands (Anaya, 2004; Vanclay et al., 2015), any change in the environments on which these peoples depend or to the social, cultural and historical relationships they have with each other or to the lands they inhabit can have severe social consequences (United Nations, 2009; Northcott, 2012). However, corporations frequently fail to respect Indigenous peoples' rights, especially their right to occupy, use and control their traditional lands and natural resources (Jenkins and Yakovleva, 2006; Miranda, 2007; Richardson, 2007). This is worrisome, because respecting Indigenous rights is inextricably connected to

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the preservation of Indigenous cultures, their livelihoods and future survival (Daes, 2001; Hanna et al., 2014).

The concept of free, prior and informed consent (FPIC) arose in the Indigenous rights discourse as a mechanism to ensure respect for Indigenous peoples, and protection by the state of Indigenous peoples and their rights in development projects (APFNHRI & OUNHCHR, 2013; Szablowski, 2010; Ward, 2011). Corporations are being stimulated to adopt and implement FPIC by international organisations (e.g. United Nations, 2013; FAO, 2014), human rights organisations [e.g. Oxfam (Hill et al., 2010)], and industry associations (e.g. ICMM, 2013). This has led to many corporations, especially in the extractive industries, publicly committing to FPIC (see Hill et al., 2013; Oxfam, 2015), potentially without being fully aware of the consequences of this commitment. We argue that community engagement practices based on FPIC are founded on different values and imply different types of activity than those engagement practices based on the stakeholder management practices traditionally applied in the field of corporate social responsibility (CSR). It has been commented (e.g. Franco, 2014, p. 7) that FPIC is being deployed by companies to do whatever they want “while making this seem more socially acceptable”. FPIC is being applied as the new tool in the CSR toolbox, however, various interpretations of FPIC are being used, often at variance to the interpretation in international law (Buxton and Wilson, 2013).

This paper is written by a CSR scholar/practitioner with internship and other experience in the extractive and other industries together with an applied, industry-engaged academic who is a specialist in the field of social performance and social impact assessment (e.g. Vanclay, 2002, 2003, 2012, 2014; Vanclay et al., 2015). We conceptually examine the compatibility of FPIC with CSR and stakeholder management theory by critically reviewing their respective theoretical and normative foundations. We also examine whether the stakeholder engagement practices and strategies are materially different depending on whether they are underpinned by CSR or FPIC philosophies. Finally, we consider whether the evident differences between CSR and FPIC can be reconciled. We note that there are varying understandings of CSR (Gariga and Mele, 2004; Matten and Moon, 2008), especially in the academic CSR discourse, however we have used what we believe to be the dominant understanding of CSR in corporate CSR departments, based on our interactions with social performance and CSR staff in several major companies in the extractives sector, and on the literature dealing with CSR in the extractive industries (e.g. Haalboom, 2012; Hilson, 2012; Slack, 2012).

As FPIC is a relatively new discourse, its literature base is quite small. Searches on this term were performed using Google Scholar and relevant articles in the published and grey literature were skim-read, with interesting items read in detail. A domino process of following-up on key references was also followed. CSR, however, is a long-established field with a very large literature base. Here, we tended to use Scopus to identify the most cited references and relevant literature, particularly focussing on review articles. We also considered recent articles in the CSR journals. We also searched for combinations of terms including: CSR and Indigenous peoples; CSR and extractive industries; CSR and FPIC. In this paper, we cite what we consider to be the key articles in the FPIC and CSR discourses. However, we note that this is not a review essay, rather it is an analytical comparison of the FPIC discourse with the CSR discourse as it is implemented within industry.

2. The evolution of corporate social responsibility

Early CSR literature implicitly or explicitly assumed that CSR had its basis in liberalism (Boele et al., 2001). Since the mid twentieth century, the debate about the responsibilities of

corporations developed alongside unease that advancing neoliberalism was overshadowing concern about the social issues in business (Richter, 2010). This unease was amplified by growing awareness of the increasing power of corporations (Gariga and Mele, 2004). Questions were raised about the purpose and scope of corporations, and whether they could or should accept responsibility for social issues (Richter, 2010). Early CSR theory considered that the social responsibilities accepted by corporations were of a voluntary character, underpinned by a neoliberal philosophy of minimalist state interference. Social responsibilities were envisaged to be opportunities to improve corporate performance and competitive advantage. To quote Drucker (1982, p. 54): “The proper ‘social responsibility’ of business is to tame the dragon, that is, to turn a social problem into economic opportunity and economic benefit, into productive capacity, into human competence, into well paid jobs, and into wealth”.

The neoliberal basis led to instrumentalist reasoning. CSR was seen as a tool useful for the enhancement of a business's position vis-à-vis its competitors, with the overall purpose to increase business profits (Scherer and Palazzo, 2007). An example of such reasoning is Wartick and Cochran (1985). Rather than arguing that social responsibility was incompatible or inconsistent with a company's economic responsibilities (Friedman, 1970), they developed a model that integrated these responsibilities with corporate performance. Wood (1991) continued their work taking an explicit focus not only on the CSR process, but also on the outcomes or performance. By the beginning of the 1990s, the increased focus on the use of CSR as an instrument to improve corporate performance resulted in the emergence of a sub-field based on evaluating the financial value creation of CSR practices (Griffin and Mahon, 1997; McGuire et al., 1988; Waddock and Graves, 1997). Elkington (1997) extended and/or challenged this by proposing that businesses needed to consider their social and environmental performance as well as their economic performance and is credited with coining the concept of the triple bottom line (see also Vanclay, 2004).

The growth and maturation of the CSR field in the 1990s led to it becoming fragmented, with Carroll (1999) identifying three themes – stakeholder theory; business ethics theory; and corporate citizenship – and Dahlsrud (2008) identifying five dimensions: environmental, social, economic, stakeholder, and voluntariness. Corporate social performance and stakeholder theory developed from the abovementioned instrumentalist point of view. However, some stakeholder theorists applied descriptive, normative or narrative approaches to explain the processes by which corporations engage their stakeholders (Donaldson and Preston, 1995; Quinn and Jones, 1995; Waddock and Graves, 1997; Hillman and Keim, 2001). While stakeholder theory and engagement tools are the traditional mechanisms through which corporations engage with external communities and are discussed below, it is necessary to mention developments that have questioned the adequacy of the traditional liberal economic model underpinning CSR.

Some scholars criticized the traditional liberal conceptualization of CSR as being apolitical, suggesting this to be untenable in a world of decaying nation states, emerging corporate power and transnational politics involving multiple actors (Richter, 2010; Waddock, 2004). In an attempt to legitimize the dominant position of corporations within society and justify the role of corporate community engagement practices, participative and deliberative theories from the social sciences have been used. Moon et al. (2005), for example, introduced the notion of ‘corporate citizenship’. This supported a shift in views about the role of companies towards paradigms which accepted that corporations should have (or at least could have) an active role in the political field. When

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