The Possibility of Imposing Enforceable Legal Duty on the Board with Respect to the Interests of Non-Shareholding Stakeholder Groups*

Abstract

As one of the well organised institutions of the modern society, big companies have the capacity to contribute immensely to a better, ethical and saner society. They can, as well, contribute towards the advancement and development of the society especially through their corporate policies. This they can do by being broad-minded and integrative of the interests, welfare and wellbeing of not only their shareholders but those of other non-shareholding stakeholders. Whether a company may be concerned about its social and ethical responsibilities depends on a number of issues including the corporate law or legislation in place in the jurisdiction concerned. Currently in Nigeria, companies are not duty-bound to be stakeholder or pluralist-oriented. This article sets out to see whether the companies can be mandated to discharge wider responsibilities by the instrument of the law, that is, by the imposition of statutory or legal duty on them to do so. The article does this by employing doctrinal research method. The work finds out that most companies in Nigeria are pre-occupied with shareholder wealth maximisation. In order for there to be a significant shift away from this shareholder primacy approach, there ought to be a combination of the imposition of certain legal duties on the board to do so, as well as the institutionalisation of stakeholder-oriented corporate governance and through active sensitisation and re-orientation of the board – which is widely viewed as the 'corporate conscience - on the need to do so.

Key Words: Shareholders, Companies, Stake holders, Legal Duty, Board, CAMA

1. Introduction

It is almost incontrovertible that a number of Nigerians strongly believe that big companies, especially multinational oil companies operating in Nigeria are living far below expectations in the area of care and concern to the impacts of their corporate activities not only on the environment but also on the non-shareholding stakeholder constituencies. These companies have always been accused of environmental pollutions and degradations. They are accused, among other things, of causing oil spillages, flaring of gas, adoption of practices far below the world best practice in the industry, especially in the usage of out-of-date technologies which is believed to have contributed to the spillages. They are also accused of not being philanthropic enough – in terms of giving back to the society, otherwise loosely called corporate social responsibility (CSR). It is known that Nigerian corporate objective is more of shareholder primacy approach whereby maximisation of the economic interests of the shareholders is the primary duty or concern of the board of directors[1] as the board owe their directorial duty not to the non-shareholding stakeholders but to the company itself[2] which has severally been interpreted to mean the collective interests of the shareholders.[3] This has been so under the fiduciary duties of the directors. Nigerian current corporate legislation - Company and Allied Matters Act (CAMA) 2020 (hereinafter referred to as CAMA 2020) adopted and codified this common law duty.[4] It only added that while discharging their directorial duties - which they owe to the company - the board should "have regard" to some non-exhaustively listed

* **J.A EZE, PhD,** Lecturer, Faculty of Law, Chukwuemeka Odumegwu Ojukwu University, Igbariam, Anambra State. Email: ja.eze@coou.edu.ng; aribest01@yahoo.com. 07038583499.

1 For a detailed treatment of shareholder primacy approach, see JA Eze (2018) "To Whom Do Company Directors Owe their Directorial Duties? The Position in Nigeria and the United Kingdom" 1 COOUJCPL 1, 112.

2 See *Percival v Wright* [1902] 2 Ch 421.

3 E Ferran, Corporate *Law and Corporate Governance*, (London: OUP, 199) at p 123.

4 CAMA 2020, Section 305 (3) and (4).

interests.[5] Obviously, the expression 'have regard' does not legally mandate the board to be integrative of those interests. As their primary constituency and concern is the shareholders and their economic interests, the board can therefore have regard or consider those listed interests only if doing so will enhance the economic interests of the shareholders. It is believed in some quarters that this is one of the reasons why the board does not pay much attention to the interests of the non-shareholder constituencies – as they are not duty-bound to do so. There has thus been agitation in some quarters that the board should be compulsorily mandated to discharge their duties to these constituencies. This work is aimed at looking at the possibility of imposing such a legal duty on the board. While considering the possibility of such an imposition, the researcher is conscious of the fact that caution should not be thrown to the wind while doing so as a 'damned' too strict imposition and enforcement of duties, fiduciary or otherwise, on the corporate board may have harmful effects on managerial discretionary powers and, by so doing, destroy that which it is targeted at preserving to the detriment of both the company itself and other stakeholders.

2. Challenges of Imposing Enforceable Duties on the Board as per Stakeholders' Interests

Shareholder primacy advocates strongly believe that a company belongs to and should be run for and on behalf of the shareholders.[6] The company is theirs and should thus be run to further purely their economic interests.[7] Stakeholder or pluralist approach is more of an opposite of shareholder primacy approach. While shareholder approach insists that the economic interests of the shareholders and shareholders alone should be the primary and ultimate concern of the board of directors, the stakeholder or pluralist advocates strongly maintain that other non-shareholding stakeholders equally have a stake on the company.[8] Their interests therefore deserve integration. The pluralist model tends to encourage the imposition of enforceable legal duties on the board obliging the directors to integrate the interests of the non-shareholding stakeholder groups as the best way to foster productive corporate relationships. Providing an enforceable mechanism has, however, been problematic for the pluralist theory, and devising its enforcement process is far from easy.[9] Enforcing adherence to this theory has been identified as a problem ever since the time of the popular scholarly debates entered into between Berle and Dodd in the 1930s. Berle[10] indicated that he favoured an 'inclusive' approach, just like Dodd, but confessed that he could not see it being workable. He therefore came to a resolute but inevitable conclusion that he could not abandon the view that companies "exist for the sole purpose of making profits for their shareholders until such a time as you (*ie* Dodd) are prepared to offer a clear and reasonably enforceable scheme of responsibilities to someone else,"[11]

---

[5] ibid, S 305(3), provide that "A director shall act at all times in what he believes to be the best interests of the company as a whole ....., in doing so, shall have regard to the impact of the company's operations on the environment....where it carries on business operations." And, s 305(4) went on to list further interests the board will have regard to. It provides: "The matters to which a director will have regard in the performance of his functions include the interests of the company's employees in general, as well as the interests of its members."

[6] See, for instance, E Sternberg (1996) "The Defects of Stakeholder Theory" Corporate Governance" 1, pp. 3-10; J Macey (1991) "An Economic Analysis of the Various Rationales for Making Shareholders the Exclusive Beneficiaries of Corporate Fiduciary Duties." 21 *Stetson Law Rev* 23.

[7] JA Eze (2017) "The Corporate Objective Question: In Whose Interests should a company be Run in Nigeria" *COOULJ* Vol 3 No 1, 147.

[8] JA Eze (2018) "Issues with the Adoption of Corporate Pluralist Approach" *1 COOUJCPL* 1, 231.

[9] A Keay (2010) "The Ultimate Objective of the Company and the Enforcement of Entity Maximisation and Sustainability Model."10(1*) J.C.L.S* 35, at p 71.

[10] AA Berle (1932) "For Whom Corporate Managers are Trustees: A Note" 45 *Harvard Law Review,* 1365.

[11] ibid, at p 1367. According to Berle, Dodd's position on, and support for, inclusive corporate stake holding is a "theory, not practice", as those who control the company do not assume responsibilities towards the wider society, nor do those who influence them, their bankers, or their lawyers. ibid.

pointing out that there is no "mechanism now in sight enforcing the accomplishment of (Dodd's) theoretical function" of the company.[12]

To Berle and Means, shareholder primacy is a second-best solution that can tackle and reduce the boards' opportunistic dealings to the barest minimum, but they believe that it is more practicable when compared with stakeholder or pluralist theory. Dodd accepted that the introduction of strong legal measures to regulate the actions of the management were imperative.[13] The major disagreement between Berle and Dodd was as to how the duty could be enforced.

Recently, while reviewing the UK company law, the Company Law Review Steering Group (CLRSG) said that it does not make much sense to require a board to owe a duty to a group that cannot enforce it.[14] In a similar vein, Dean said that there has to be a power to protect stakeholder expectations and to compensate stakeholders whose interests have been disregarded if non-stake holding theory is to be practically implemented.[15] But, fashioning out workable enforcement mechanism has remained problematic. Acknowledging this, Crespi asserts that any duty on the board in respect to stakeholder interests would be merely an aspirational norm rather than a legal directive.[16] Similarly, Hart concluded that stakeholder theory is not enforceable, and that the idea of requiring the board to take the interests of all stakeholders into account is "essentially vacuous;"[17] even as Schall *et al* suggest that providing non-investing stakeholders with legally enforceable rights in the governance of companies will touch and shake the foundation of corporate law as it will require a fundamental change to the organisation of corporate affairs,[18] and "this might be 'a bridge too far' for Parliament."[19]

One of the reasons why the idea of imposing such a duty on the directors is strongly opposed is because of the indeterminate nature of the people that fall within the corporate stakeholder groups, as the issue of stakeholder identification has "vexed stakeholder theory for decades."[20] Some commentators believe that the people that fall within the group needs defining with some degree of clarity and precision, as there are, currently no generally accepted interests groups that should be categorised as the stakeholders.[21] Difficulties also arise from the proliferation of definitions and explanations of the term 'stakeholder', with some manifestations making it too ambiguous and wide as to accommodate virtually everybody who affects or is affected by corporate activities no matter how remote that may be.[22] This has thus provided powerful

[12] ibid, at p 1367.

[13] M E Dodd (1935) "Is Effective Enforcement of the Fiduciary Duties of Corporate Managers Practicable?" 2 *University of Chicago Law Review* 194.

[14] CLRSG, *The Strategic* Framework (London, DTI, 1999), note 31, 40.

[15] J Dean, Directing *Public Company*, (London: Cavendish, 2001) at p 169.

[16] G Crespi (2002-2003) "Redefining the Fiduciary Duties of Corporate Governance in Accordance with the Team Production Model of Corporate Governance" 16 Creighton L.R 623, at p 641.

[17] O Hart (1993) "An Economist's View of Fiduciary Duties", *University of Toronto L.J 299*, at 303.

[18] A Schall, L Miles and S Goulding (2006) "Promoting an Inclusive Approach on the Part of Directors: The UK and German Positions" 6 *J.C.L.S* 299, at p 300.

[19] Keay, (2010) (above, n 9), at p 45.

[20] EW Orts and A Strudler (2009) "Putting a Stake in Stakeholder Theory, *Journal of Business Ethics 60*5, at p 608; F Yves (2009) "Stakeholder Model Redefined" *84 Journal of Business Ethics* 113.

[21] See for instance E Sternberg (1997) "The Defects of Stakeholder Theory" 5(1) Corporate Governance 3.

[22] The design of stakeholder model was originally influenced by the traditional input-output model of managerial capitalism in which the company is related to only four groups: suppliers, employees and shareholders providing the basic resources of the company; which are transformed into products of services for the fourth group- clients. Freeman added other constituencies that are affected by the company's activities and saw the corporation as a centre of a series of interdependent two-way relationships. See Yves (above, n 20), at p 115. Freeman's original

ammunition for its detractors to attack the approach, and has prompted commentators such as Fassin to note that "legitimate criticism continues to insist on clarification.....on stakeholder definition, stakeholder identification and categorisation."[23]

Further complication arises from considering the likely difficulties the board may face in its bid to balance the divergent and (most likely) conflicting interests of the stakeholder groups. There are, of course, very real issues arising from how a board might assess the respective stakeholders' 'stake' in the company so as to know how to balance those morasses of interests. This is likely to be taxing in any case, and could well cause confusion to the already overburdened board,[24] especially given that the board does not necessarily have the right to prioritise any of those interests over others; and the likely wrath, and possible legal action which might follow from those stakeholders who have a different view on what the board's priorities ought to be.[25] It may thus discourage managerial entrepreneurship.[26] The potential exposure of a board to court actions by the aggrieved stakeholder groups and the resultant considerable resource implications on the coffers of the company, with financial/material resources reflected in legal costs and other associated expenses, and human ones associated with longer working hours and increased stress. Thus, Blair wrote that advocates of pluralism have failed "to give clear guidance to help managers and directors set priorities and decide among competing socially beneficial uses of corporate resources, and [provide] no obvious enforcement mechanism to ensure that corporations live up to their social obligations."[27] Similarly, Berle argued that directors' exclusive responsibility to the shareholders should continue until a reliable enforcement scheme to other stakeholders is established.[28] Initially, Berle and Means were expectant of the working out of a "convincing system of community obligations"[29] on the corporation/directors to replace the duty to act solely in the interests of the shareholders, but, later in his article, Berle[30] came to the conclusion that if it were to be so, then there is the need for a system to be imposed on directors from the outside as they are unlikely to do so in the course of their unaided management practice.

framework included eleven stakeholders on a non-exhaustive basis (Freeman, 1984, *Strategic Management: A Stakeholder Approach*, Boston: Pitman, at p 25). But he kept on changing who those stakeholder groups are in his subsequent works. However, his definition of stakeholders as any group or individual that can "affect or is affected by the achievement of any organisation's objective" (Freeman, (1984) Ibid, at p 46) seems to be the most accepted definition of a stakeholder; although not without some criticisms as lacking in precision as per scope, and subject to misinterpretation. Thus, E.W Orts and A Strudler ((2002) "The Ethical and Environmental Limits of Stakeholder Theory" 12(2*) Business Ethics Quarterly*, 215) pointed out that as a result of globalisation and technological evolution, with improved communications and information systems, virtually everybody and everything, everywhere, can "affect or be affected" by the decisions and actions of a big corporation. See also R.K Mitchell, B.R Agle and D.J Wood (1997) "Towards a Theory of Stakeholder Identification and Salience: Defining the Principle of Who and What Really Counts" 22 Academy of Mgt Rev 853; E Sternberg (1997) "The Defects of Stakeholder Theory" 5(1) Corporate Governance 3.

[23] Yves (above, n 20), at p 113.

[24] See A Sundaram and A Inkpen (2004) "The Corporate Objective Revisited" 15(3) Organisation Science 350.

[25] Sundaram and Inkpen (ibid). Thus, Sternberg (above, n 15), at p 4, believed that the idea of balancing stakeholders' benefits is unworkable. The reason, according to her, is that the number of people and groups whose benefits need to be taking into account is indefinite. For a balance to be struck, she argued, the number must be limited.

[26] Sundaram and Inkpen (ibid).

[27] M Blair (1995) *Ownership and Control: Rethinking Corporate Governance for the Twenty-First Century*, Washington, at p 203.

[28] A A Berle (1932) "For Whom are Corporate Managers a Trustee: A Note" *45 Harvard L. Rev*1365, at p 1367.

[29] A Berle and G Means (1932) *The Modern Corporation and Private Property*, (rev ed. 1967) at p 312.

[30] See Berle (above, n 28). See also J.LWeiner (1964) "The Berle-Dodd Dialogue on the Concept of the Corporation" 64 Columbia L.R 1458; C Kaysen (1959) "The Corporation: How Much Power? What Scope?" in E.S Mason (ed.), *The Corporation in Modern Society* (Harvard: CUP, 1959) 85, at p 104.

Subsequently, Parkinson acknowledged the existence of the problems (especially the issue of enforcement) highlighted above, and appreciated the need for the board to be made to owe enforceable legal duties to stakeholder groups.[31] According to him, there are clearly:

> [I]mportant implications for the legal regulation of companies if society would be served better by corporate socially responsible behaviour than by companies seeking to maximise their profits within the law.....The law should be employed to modify corporate objectives to allow third-party interests to be given precedence over maximum profits in appropriate cases. In doing this, a relaxation of the obligation of management to operate the business in the interests of the shareholders would be required, and it would be desirable to design mechanisms that would ensure that the various components that make up 'the public interest' were properly weighted in the decision-making process.[32]

Parkinson however doubted the feasibility of imposing such legal duties. According to him, "it must be accepted that it would not be feasible to impose an enforceable duty,"[33] as it will give rise to a situation where the court will be required to adjudicate on moral and social policy issues, which the court/judicial process is not well suited to do. He also feared that imposing such a legal duty will give rise to huge business uncertainties which will not augur well for the economy.[34] He therefore noted that a pluralist duty would be feasible as a subjective duty only, pointing out that it will be neither realistic nor probably desirable to expect a court to sit in judgment as would be required by an objective duty: objective duties require court's adjudication on whether or not the directors had struck what the court considers to be an appropriate balance of the respective stakeholders' interests. Unfortunately, such matters do not readily lend themselves to legal analysis.[35]

Parkinson, however, pointed out that the absence of enforceable duties does not necessarily mean that the only option left is that companies should seek to maximise their wealth in disregard of the consequences to others and instead argued that it will serve the public best if companies should pursue their economic goals subject to ethical and social constraints. He solicited that public policy should be channelled towards the promotion of such (ethical and social) corporate behaviours. In other words, Parkinson is in support of corporate self-regulation and not the imposition of inflexible legal rules/duties as "it does not follow that a legal response is necessarily required" before companies can act ethically and integratively.[36] He proffered two ways of eliciting such corporate behaviours. One is by making company legislation in such a way as to give the directors enough freedom to observe and carry out what they perceive to be the company's social and ethical responsibilities, stressing that though company law is not capable of obliging the managements to act responsibly socially and ethically, it can provide a supportive framework. The second means of achieving such a corporate behaviour is through sensitising companies and directors on the impact of their

[31] See J E Parkinson *Corporate Power and Responsibility*, (Oxford: Clarendon Press, 1993) at pp 260-263.
[32] ibid, at p 261.
[33] J Parkinson"Corporate Governance and Question of 'Scope'" 8 Hume Papers on Public Policy, 2000 29, at p 46.
[34]ibid, at pp 45-46.
[35] ibid.
[36] ibid, at p 45.

activities on others.[37] Apparently, these two ways have the tendency of yielding a richer, more socially-oriented notion of corporate objective.[38]

Although, Parkinson appreciated the importance of legal mechanisms in ensuring that companies behave responsibly to all concerned, he is convinced that it is "not a complete solution,"[39] as it is fraught with certain weaknesses. Such limitations or weaknesses include: the inevitable delay in the legal response to new sources of harm; asymmetries of information and expertise between companies and regulators;[40] the general unsuitability of law as a means of eliciting the highest standards of performance, as opposed to securing compliance with minimum baseline standards; and problems of agreeing and enforcing standards internationally. He noted that it may not be easy for nations to bring big companies under control through legislations based on the huge resources under the control of the corporate empires: "When there are companies that have a turn-over larger than the GNP of sizeable countries.....it can no longer be assumed, if it ever could, that corporate behaviour can with any problem be brought into line with society's expectations through the exercise of state sovereignty."[41]

Though corporate governance and corporate stakeholding are two distinct concepts, an increasing link is noticed between them.[42] Some commentators are of the view that both concepts, if well harnessed, can help us put in place a more strategically corporate responsible behaviour and corporate inclusivity approach.[43] Arguably therefore, even where there is no enforceable duty in place, a good corporate governance framework has a high tendency of promoting inclusive stakeholding practices.[44] This is arguably so in that corporate stakeholding issue came in as a result of the shortcomings in corporate governance; and it (i.e., corporate stakeholding) is aimed at serving as a corrective to the perceived defects of business ethics and

[37] ibid. Wilson also seems to be of the opinion that imposing binding and enforceable duty on the board to be integrative of the interests of the non-shareholding stakeholders may not be the best option. This, according to him, can be better achieved "through an attempt to change the operating culture of business....." G Wilson (2011) "From Black Box to Glocalised Player? Corporate Personality in the Twenty-First Century and the Scope of Law's Regulatory Reach" *NILQ* 62(4) 433, at p 446. In other words, efforts should be made to bring about corporate behavioural change by/through re-orienting the mindset of the board members so that they will appreciate the need, importance and possible benefits accruable from inclusiveness. Millon is also of the opinion that pluralist/legal duty is unlikely the best solution. He is, instead, interested in how extra-legal pressures (from product, labour and capital markets, as well as from other social monitors, activist groups *etc*) can aid in achieving stakeholder approach. See D Millon (2012) "Enlightened Shareholder Value, Social Responsibility and the Redefinition of Corporate Purpose without Law" in P M Vasudev and S Watson (eds) *Corporate Governance after the Financial Crisis*, GB: Edward Elgar Publishing (2012) 68, at p 70.

[38] They may not however be enough to re-order board's priority as pressures – both internal and external such as corporate managerial remuneration/compensation practices, social norms and pressure from institutional shareholders *etc* – do drive the board towards shareholder value (i.e., profit maximisation) and its associated short-termism. Hence the need to find a means of countervailing these pressures becomes apparent.

[39] Parkinson, "Corporate Governance and Question of 'Scope'" (above, n 33), at p 44.

[40] That is, absence of necessary information, sufficient knowledge and expertise on the side of the company regulators that are needed to enable them effectively regulate the corporation.

[41] Parkinson, "Corporate Governance and Question of 'Scope'" (above, n 33), at p 44.

[42] S Young (2013) "Governance and CSR Links" available at http://www.probonoaustralia.com.au/news/2021/05/governance-and-csr-links, accessed 24 August, 2022.

[43] S Young and M Marais (2012) "A Multi-level Perspective of CSR Reporting: The Implications of National Institutions and Industry Risk Characteristics" 20(5) *Corp Governance* 432.

[44] ibid.

corporate governance.[45] Effective corporate governance and inclusive stakeholding tend to go hand in hand as considerate managers always appreciate the fact that their corporate decisions impact either positively or negatively on the wider stakeholders.[46] It can bring about good functional relationships between the company, its management, the shareholders and other stakeholders.[47] Thus, Sir Adrian Cadbury noted that the aim of corporate governance is to "align as nearly as possible the interests of individuals, corporations and society."[48] Litigation ought to be the last resort as a means of ensuring that directors and their companies are integrative of the stakeholders and are mindful of reducing the hazardous effects of their operations. Providing corporate governance frameworks that enhance corporate inclusivity, and help reduce the breach of directors' duties as well as avert the risk of negligent corporate behaviour from arising in the first instance is thus highly advocated and preferred.[49] Obviously, the more ingrained such a system of (effective) corporate governance is in a business community, the less the need for detailed legal regulation to bring about effective, responsive and positive compliance with good standards of corporate behaviour.[50]

In such a situation where there are no enforceable duties, commentators have reflected that integrating the interests of non-shareholding stakeholders may depend on the values and moral principles held by the managerial team in the company.[51] This raises the issue of what would be the case if the directors were amoral.[52] Individual members of a management team do, of course, have their own personal attitudes, perceptions, inclinations and preferences across a range of issues, including corporate stakeholding practices. This affects positively or negatively the inclusivity practices in the company in that it may reflect in the manager's contributions to policies and decisions in this area.[53] It will depend also on the (established) corporate culture, values or norms

[45] E Sternberg (1999) "The Stakeholder Concept: A Mistaken Doctrine" Foundation of Business Social Responsibilities, Issue Paper No 4, November 1999, at p 1, available at: papers.ssrn.com/sol3/papers.cfm?abstract_id=263144d, accessed on 24 August, 2022,

[46] Thus, Jamal *et al* maintain that corporate governance and corporate stakeholding/CSR are closely related as "they reflect a firm's commitment to its stakeholders and the nature of its interaction with the community at large." D Jamal, A Safieddine and M Rabbath (2008) "Corporate Governance and CSR: Synergies and Inter-Relationships" 16(5) Corporate Governance 443. See also L Mitchell "The Board as a Path Towards CSR" in D McBarnet, A Voiculescu and T Campbell (eds.), *The New Corporate Accountability: CSR and the Law*, Cambridge University Press, 2007) p 279, at pp 280-281.

[47] Effective corporate governance "legally structures stakeholder relations and prioritises the interests that corporate managers are required to serve." Konzelmann *et al* (2006) "Corporate Governance and Human Resource Management" 44(3*) B.J.I.R 541*, at p 543.

[48] Sir Adrian Cadbury, at the Global Corporate Governance Forum, World Bank, 2001.

[49] P T Muchlinski (2001). "Human Right and Multinationals: Is There a Problem?" 77(1) Int'l Affairs, 31-48.

[50] See Financial Reporting Council (FRC) "The UK Approach to Corporate Governance" October 2010, at p 1. Available at www.frc.org.uk/getattachement/1db9539d-9176-4546-9/The-UK-Approach-to-Corporate-Governance-aspx accessed on 25 August, 2022.

[51] C A Hemingway and P W Maclagan (2004) "Managers' Personal Values as Drivers of CSR" 50. Thus, in a research conducted by Egri and his colleagues on the individual and national effects on managerial attitudes towards corporate social responsibility in 28 countries, they found, *inter alia*, that personal values have a direct relationship with a manager's support of corporate social responsibilities. C.P Egri *et al* (2006) "The Influence of Personal Values and National Contexts on Attitudes towards Corporate Responsibility" Third B.C Organisational Behaviour Conference, Vancouver, Canada.

[52] R E Freedman, AC Wicks and B Parmar (2004) "Stakeholder Theory and 'the Corporate Objective Revisited'" 15(3*) Organisation Science* 364, at p 367.

[53] H Hung (2011) "Directors' Role in CSR: A Stakeholder Perspective" 103 Journal of Business Ethics 385. He argues that directors' thinking, perception and orientation about corporate stakeholding influence the directors' decisions on stakeholders' issues. (ibid), at p 386. See also J Wang and D H Dewhirst (1992) "Boards of Directors and Stakeholder Orientation" 11(2) Journal of Business Ethics 123; H Hung ((1998) "A Typology of the Theories of the Roles of Governing Boards" 6(2) Corporate Governance 10; R Hay and E Gray (1974) "Social Responsibility of Business Managers" 17 *Academy of Mgt Journal* 135; Hemingway and Maclagan

of the particular company in question. Empirical research findings support the view that directorial individual values and the corporate values, regardless of country-level factors, "are significant predicators of CSR managerial behaviour."[54] Thus, Williams and Aguilera asserted that "individual and organisational context do matter" in corporate integrative practices.[55] They also anticipated "a wide range of variations" in the way respective managers react to and value stakeholding issues.[56] Enthroning a good corporate governance structure, and channelling some efforts towards 'conscientising'/sensitising the boards on the (potential) wide-ranging effects of their companies' activities on the stakeholders therefore seem worthwhile.

It is suggested that the possibility of imposing enforceable duties on the board to be integrative of stakeholders' interests should be deeply considered - as the extent the said board's sensitisation and other extra-legal pressures can go in re-ordering and broadening management's focus away from shareholder wealth maximisation to a richer notion of responsibility to non-shareholding stakeholders is doubtful. Again, the absence of such duties coupled with court's characteristic non-interventionist approach to board's directorial activities,[57] and the wide perception (especially in the nineteenth and twentieth century) that a company should be a self-regulator,[58] seems to have resulted in the corporation becoming principally "a black box.....largely isolated from its broader social and political environment."[59] As Bauman puts it, this has resulted in "the emancipation of the business interests from all extant socio-cultural institutions of ethically inspired supervision and control.....and consequently the immunisation of business pursuits against all values other than the maximisation of profit."[60] This non-interventionist conception of the company is chiefly as a result of the fact that it was, historically, market forces - demand and supply - which predominantly regulated the corporate economic activities as against legal/state regulations. This virtually left the company to become "an institutional reflection of the principles of *laissez faire* capitalism."[61] There are, therefore, increasing calls for this 'inappropriate' conception of non-interventionist approach to the corporation as the best option to be changed;[62] so also (is) the notion in some quarters that

(above, n 51); CA Hemingway, (2005) "Personal Values as a Catalyst for Corporate Social Entrepreneurship" 60(3*) Journal of Business Ethics* 233; Strike, V.M, Gao, J and Bansal, P (2006) "Being Good while Being Bad: Social Responsibility and the International Diversification of US Firms" 37 *Journal of Int'l Business Studies* 850; D.A Waldman, M Sully de Luque, N Washburn and R.J House (2006) "Cultural and Leadership Predicators of Corporate Social Responsibility Values of Top Management: A GLOBE Study of 15 Countries" *37 Journal of Int'l Business Studies* 823; P Bansal and K Roth (2000) "Why Companies Go Green: A Model of Ecological Responsiveness" 43 *Academy of Mgt Journal* 717.

[54] C A Williams and R V Aguilera (2006) "Corporate Social Responsibility in a Comparative Perspective", at p 12, available at www.business.illinois.edu/aguilera/pdf/Williams Aguilera OUPfinaldec2006.pdf accessed on 26 August, 2022. See also S J Vitell, and J G Paolillo (2004) "A Cross-Cultural Study of the Antecedents of the Perceived Role of Ethics and Social Responsibility" 13(2-3) *Business Ethics* 185 (This research shows that managerial CSR decisions and likelihood of success are shaped by the managers' individual perceptive and their organisational culture); D.A Waldman *et al* (ibid) - the research suggests that both CEO's visionary leadership and individual integrity are principal factors associated with CSR values.

[55] ibid, at p 13.

[56] ibid, at p 13.

[57] The courts are generally unwilling to review the business judgments of the board. This is in-line with the business judgment rule. Thus, Lord Wilberforce said in *Howard Smith Ltd v Ampol Petroleum Ltd* 1974] AC 821, at p 832 that "[T]here is no appeal on the merits from management decisions to courts of law: nor will the courts of law assume to act as a kind of supervisory board over decisions within the powers of management honestly arrived at."

[58] Of course, there cannot be a society where corporate activities are completely devoid of State regulations.

[59] G Wilson (2011) "From Black Box to Glocalised Player?? Corporate Personality in the Twenty-First Century and the Scope of Law's Regulatory Reach" 62(4) *NILQ 4*33, at p 433.

[60] Z Bauman *Living in Borrowed Time*,(Cambridge: Polity, 2010) at p 61.

[61] J Bakan *The Corporation: The Pathological Pursuit of Profit and Power*,(London: Constable & Robinson, 2004) at p 161.

[62] The recent, if not continuing, economic melt-down of most economies, (the blame of which many commentators placed at the foot of the unregulated capitalism) has added credence to this call.

there is a distinctive dichotomy between the economic and social roles of the company - which has made some people to perceive it essentially as an economic actor.[63] Thus, Sternberg, for instance, asserts that using business resources for non-economic purposes is tantamount to stealing.[64] But, this sort of a notion has the tendency of making the company appear like "a psychopathic creature, an externalising machine only capable of acting in its own self-interest"[65] in utter disregard of other non-shareholding stakeholders' contributions to its (company's) success. There is, instead, "relative connectedness" between the two roles of the corporation – that is, economic and social roles.[66] The notion of separateness between the company's social and economic functions is seemingly the by-product of the corporate self-regulating market, which is hardly adequate in enthroning substantive stakeholder approach.[67] Thus, Wilson has bemoaned that "*laissez faire* ideology and judicial formalism (have) combined to generate a legal vision of a company as a black box divorced from its broader social, political and ethical environment."[68] He argues that the company should, instead, be "a globalised player open to its environment."[69] The company's 'environment' referred to here, we believe, signifies or rather represents the totality of its corporate interactivity with the society - which is not solely economic, but also socially, ethically and politically based. On this reasoning, this is the only way the corporation can attain greater institutional legitimacy.

3. Conclusion

From the foregoing, it becomes apparent that a multi-dimensional approach is needed to instil a corporate responsible and integrative behaviour in any jurisdiction. Be that as it may, it may not be out of place to suggest that legal regulation is needed for an effective implementation of an inclusive corporate stakeholder approach. Providing for some means allowing directorial actions and inactions to be challenged by certain non-shareholding stakeholders when they are not integrative of their interests will operate as a legitimatising mechanism.[70] The mechanism should be such that it will encourage the board to be diligent and mindful of the way they discharge their duties and exercise their powers, and must be effective and can be embraced without excessive costs - financial and time-wise.[71] Providing for an enforcement mechanism/opportunity is important as it can serve both as an incentive for directors to adhere to their duties and can act as a deterrent to the engagement of non-compliant actions. Arguably, the knowledge that directors are being monitored and can be challenged in a law court would thus encourage board activism and diligence. The possibilities of adopting this (pluralist) approach as a means of bringing about integrative and ethical corporate behaviour in Nigeria is therefore encouraged by this researcher.

---

[63] H G Manne (2006) "Multinational Corporate Responsibility" *Wall Street Journal*, November 24, 2006, p 12. He insisted that Milton Friedman was right in his argument that companies have only one social responsibility - making maximum profit for its shareholders.

[64] E Sternberg (2000) *Just Business: Business Ethics in Action 2nd* ed. (*London*: OUP, 2000).

[65] Bakan (above, n 61).

[66] Wilson (above, n 59), at p 434.

[67] S K Polanyi The *Great Transformation* 2nd ed. (Boston: Beacon Press, 2001) at p 71. Though the dimensions and limits of state intervention (in corporate regulation) have continually been a debatable issue, it is beyond dispute that certain rules need to be implemented for an economy to function properly and contribute to the common good. See A G Scherer and G Palazzo *Handbook of Research on Global Corporate Citizenship*, (Cheltenham: Edward Elgar Publishing, 2008) at p 1. These rules, many argue, should be created and enforced by the States. It is believed that if these rules are well defined and enforced it will enable companies to mildly pursue their private profits and, at the same time, contribute to the societal good. Ibid.

[68] Wilson (above, n 59), at p 435.

[69] ibid, at p 433.

[70] S Bottomley The *Constitutional Corporation* (Aldershot: Ashgate 2007) at p 144.

[71] ibid, at p 148.