



Interface Between Inclusive Corporate Stakeholding Approach And Corporate Social Responsibility

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ABSTRACT

Whether or not a public commercial company should engage in corporate activities positively affecting or beneficial to the interests of the wider constituency groups and decisively or decidedly indulging in ethical practices other than those imposed on them by law has been a 'hot' discourse in recent times with many discussants, writers or advocates branding such a corporate practice or approach varied names like business ethics, corporate citizenship, corporate philanthropy, sustainable business, corporate stakeholding, corporate community involvement, corporate social responsibility and corporate social performance. What appears most popular amongst these names/concepts are corporate social responsibility (CSR) and corporate stakeholding. The writer thus decided to look into the two concepts to see if there is any close relationship between them. This was done using doctrinal research method. It was observed that even though the two concepts may not be identical, there is a very close nexus between them as the two concepts are working towards the same goal – endeavouring to enlighten and encourage the corporate management team on the need to incorporate and integrate the interests of broader corporate constituencies, instead of the usual narrow consideration of the economic interests of just a corporate constituent – the shareholders. The work concluded that it is in the overall interests of the society as a whole if such a inclusive and ethical corporate approach is imbibed or adopted.

Keywords: Corporate social responsibility, corporate stakeholding

INTRODUCTION

In this work, effort is made to see if there is a connection between corporate social responsibility (CSR) practices and 'inclusive' corporate stakeholding approach. Equally, the possible impact of CSR in entrenching corporate inclusivity and ethical practices is also considered. It is suggested that in the absence of effective legal regulations of the corporations, adoption of good CSR practices can serve as good supplements and bring about certain degree of integrative and responsive corporate behaviour.

It is observed that though CSR and corporate stakeholding are not necessarily identical, there are close nexus between them - as both are, loosely speaking, concerned with the integration, protection and promotion of the interests of the broader corporate constituencies. It is concluded that good CSR and inclusive corporate stakeholding, can, if well harnessed, contribute immensely towards enthrone responsible corporate practices and inclusivity or wider/broader corporate approach. The work takes off by attempting to decipher the meaning of CSR.

Meaning of CSR

It is no longer news that public commercial companies are viewed by some people as not solely economic institutions, but social institutions also.¹ This is partly because those companies have control over huge resources and their decisions do have a great deal of impact on stakeholders. This thus triggers consideration of whether company law should ensure that corporations take account of and are held responsible for the consequences of their decisions on affected non-shareholding

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¹ Parkinson, J (2000) "Corporate Governance: The Company Law Review and Question of 'Scope'" 8 Hume Papers of Public Policy 29, at p 42. However, certain scholars, especially those advocating for shareholder primacy, refuse to accept that companies have social responsibilities. A typical example is Milton Friedman. The key issue is therefore the extent to which this perception of the corporation as a social institution is accommodated and reflected in legal frameworks.

stakeholders. But, because of the far-reaching impact of legally imposing such responsibilities on the corporation, some advocates prefer a system whereby companies are encouraged to design their own mechanisms to reduce harms caused by their corporate activities on the stakeholders, consider and integrate stakeholders' interests in their policies and at the same time be 'voluntarily' responsive to the stakeholders' social needs. This is popularly referred to as 'corporate social responsibility'.²

CSR has a number of competing labels that cover the same or similar territory as it (CSR) does. *Viz*: corporate citizenship, corporate philanthropy, business ethics, sustainable business, corporate stakeholding, corporate community involvement, corporate responsibility and corporate social performance. Some of these terms have a close resemblance to each other, but many of these expressions have other connotations as well.³

Currently, the concept has neither a general common definition⁴ nor a set of core principles.⁵ Writers still debate among themselves about, among other things, what it means to be socially responsible and whether companies should have social responsibilities in the first place. Again, researchers are yet to come to agreement on whether CSR is good for business or not. These lacks of consensus gravely affect the theoretical development as well as research into implementation of the concept.⁶ This absence of a consensus on the meaning, understanding and definition of CSR is aptly captured by Votaw when he said: "The term (CSR) is a brilliant one; it means something, but not always the same thing, to everybody. To some it conveys the idea of legal responsibility or liability; to others, it means socially responsible behaviour in an ethical sense; to still others, the meaning transmitted is that of 'responsible for' in a causal mode; many simply equate it with a charitable contribution; some take it to mean socially conscious; many of those who embrace it most fervently see it as a mere synonym for 'legitimacy,' in the context of 'belonging' or being proper or valid; a few see it as a sort of fiduciary duty imposing higher standards of behaviour on businessmen than on citizens at large."⁷ To further buttress the above assertion that there is a spectrum of views on what CSR is and what it ought to be, we are going to give some of the popular definitions of CSR by scholars, most of which borders on different aspects and (individual) perceptions of the concept. This will be followed by an attempt to see if there is any interplay/interface/interrelationship between CSR and corporate stakeholding.

As there is no generally accepted definition of the concept, we are going to give some definitions proffered by certain scholars. What, however, is inherent in most of the definitions is the voluntary nature of CSR.⁸ This⁹ is however, not without serious contention amongst scholars.¹⁰ The European Commission¹¹ has accepted this voluntariness by defining it as a concept whereby "companies decide

² According to Silberhorn and Warren, CSR is a normative, multi-level concept whose meaning depends on various perspectives; and it changes in response to social trends. They noted that there is a change in the notions of CSR from what it used to be in that while the earlier notion did have "a regional, person-centred philanthropic focus" the current ideas of it are "inclusive, broad and diverse." Silberhorn, D and Warren, R.C (2007) "Defining Corporate Social Responsibility: A View from Big Companies in Germany and the UK" 19(5) European Bus Rev 352.

³ *Ibid*, at p 352.

⁴ "There is no strong consensus on a definition for corporate social responsibility."- McWilliams, A *et al* (2006) "Corporate Social Responsibility: Strategic Implications" 43(1) Journal of Mgt Studies 1; Moon, J, *et al*, (2005) "Can Corporations be Citizens? Corporate Citizenship as a Metaphor for Business Participation in Society", 15(3) Business Ethics Quarterly 427: they wrote that CSR is an "essentially contested concept." Thus, Sethi bemoaned that "the phrase *corporate social responsibility* has been used in many different contexts that it has lost all meaning." Sethi, P.S (1975), "Dimensions of Corporate Social Performance" 17(3) California Mgt Rev 58, at p 58.

⁵ Crane, A *et al* (2008) *The Oxford Handbook of Corporate Social Responsibility*, New York: OUP at p 4.

⁶ It affects the operationalisation and measurement of CSR practices, affects empirical research on it as it makes it difficult to evaluate and compare the findings from different studies as they usually refer to different dimensions of CSR. See Williams, C.A and Aguilera, R.V (2008) "Corporate Social Responsibility in a Comparative Perspective" in A Crane *et al*, *The Oxford Handbook of CSR*, Oxford: OUP 452.

⁷ Votaw, D (1973) "Genius Becomes Rare", in D Votaw and S.P Sethi (eds.) *The Corporate Dilemma – Traditional Values versus Contemporary Problems*, Englewood Cliffs: Prentice-Hall, 11-41, at p 11.

⁸ Manne, H.G and Wallich, H.C (1972) *The Modern Corporation and Social Responsibility*, Washington: American Enterprise. (See especially pp 4-6, and 40). See also Walton, Clarence C (1967) *Corporate Social Responsibility*, Belmont: Wadsworth Publishing (especially at p 18). She emphasised that one of the cardinal ingredients of CSR is a degree of voluntarism, as against coercion.

⁹ That is, 'voluntariness' notion of CSR.

¹⁰ See Lozano, J, *et al*, (2008) *Government and Corporate Social Responsibility* Palgrave: Macmillan.

¹¹ Commission of the European Communities, Green Paper *Promoting a European Framework for Corporate Social Responsibility* (Brussels, 2001) COM(2001) 366 final.

voluntarily to contribute to a better society and a cleaner environment.”¹² This apparent voluntary inclination of CSR appears important to Nigeria as regulating - through legal means - the activities of big corporations in Nigeria seems not to be very effective and efficient in bringing about corporate inclusivity approach and corporate responsible and ethical behaviour. As CSR seemingly operates, or rather, is aimed at operating on the conscience of the corporate management team by conscientising and sensitising them of the wide impacts of the corporate activities on the stakeholders, optimistically, it (CSR) has the potentials of augmenting or supplementing the weaknesses of legal regulation of corporate activities in the country and usher in a more responsive and responsible corporate regime/approach.

CSR has been defined as “a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with stakeholders on a voluntary basis.”¹³

It is the “firm’s consideration of issues beyond the narrow economic, technical and legal requirements of the firm...to accomplish social benefits along with the traditional economic gains which the firm seeks.”¹⁴ In other words, CSR can be viewed as a kind of corporate self-regulation integrated into a business model. Companies would conscientiously promote the public interest by encouraging community growth and development, integrating the interests of non-shareholding stakeholders, and consciously avoiding practices that harm the public sphere, regardless of legality. That is, it refers to a deliberate inclusion of the interests of the public into corporate decision-making.¹⁵

It involves a company going extra mile beyond its immediate interests and legal requirements. Brudney defined it as “incurring uncompensable costs for socially desirable but not legally mandated action.”¹⁶

It entails corporate behaviour that involves “voluntarily sacrificing profits, either by incurring additional costs in the course of the company’s production process, or by making transfers to non-shareholder groups out of the surplus thereby generated, in the belief that such behaviour will have consequences superior to those flowing from a policy of pure profit maximisation.”¹⁷

The conception of the meaning and entailments of CSR is evolving. In the past, CSR is seen basically as comprising two major things: corporate compliance with the law and ‘giving something back’ to the society. But, at present, CSR stands for companies being more aware of and understanding the society in which they operate.¹⁸ It entails firms appreciating that their day-to-day operating practices affect stakeholders in various ways and that it is in those impacts that responsibility lies, not solely in efforts to abide by the law.¹⁹ Thus, Davies avers that “the substance of social responsibility arises from concern for the ethical consequences of one’s acts as they might affect the interests of others,”²⁰ adding that “social responsibility begins where the law ends. A firm is not being socially responsible if it merely complies with the minimum requirements of the law, because this is what any good citizen would do.”²¹

¹² Currently, the EC defined it as “the responsibility of enterprises for their impacts on society.” COM(2011) 681, at p 6 para 3.1. It notes that if enterprises were to fully meet their CSR, it is essential that they should have in place “a process to integrate social, environmental, ethical, human right and consumer concerns into business operations and core strategy in close collaboration with their stakeholders with the aim of: maximising the creation of shared value for their owners/shareholders and for their other stakeholders and the society at large; (and) identifying, preventing, and mitigating their possible adverse impacts.” (*Ibid*).

¹³ Commission of the European Communities, *Green Paper Promoting a European Framework for Corporate Social Responsibility* (Brussels, 2001) COM(2001) 366 final, at para 20.

¹⁴ Davis, K (1973) “The Case For and Against Business Assumption of Social Responsibilities” 16(2) *Academy of Mgt Journal* 312, at p 312.

¹⁵ (EC 2001a).

¹⁶ Brudney, V (1982) “The Independent Director – Heavenly City or Potemkin Village?” 95 *Harvard Law Rev* 597, at p 605. See also Herman, E.S (1981) *Corporate Control, Corporate Power*, New York: CUP, at pp 255-257.

¹⁷ Parkinson, J (1993) *Corporate Power and Responsibility*, New York: OUP, at pp 260-261.

¹⁸ Andriof, J, *et al*, (2002) *Unfolding Stakeholder Thinking*, Sheffield: Greenleaf Publishing, at p 10.

¹⁹ Waddock, S, Bodwell, C and Samuel, B (2002) “Responsibility: The New Business Imperative” 16(2) *Academy of Mgt Executive* 132. Thus, Jones pointed out that CSR stands for the notion that “corporations have an obligation to constituent groups in society other than shareholders and beyond that prescribed by law or union contract.” Jones, T.M (1980) “CSR Revisited, Redefined” 22(3) *California Mgt Rev* 59, at p 59.

²⁰ Davis, K (1967) “Understanding the Social Responsibility Puzzle” 10(4) *Business Horizons* 45, at p 46.

²¹ Davis, K (1973) “The Case For and Against Business Assumption of Social Responsibilities” 16(2) *The Academy of Management Journal* 312, at p 313. This is in accord with an earlier view of Wallich: “I take social responsibility to mean a condition in which the corporation is at least in some measure a free agent. To the extent that any of the foregoing social

CSR is currently attracting growing attention in the business, civil society, and government arenas. Thus some companies are giving it a distinctive organisational status - in the designation of CSR managers, staff team, board-level responsibilities *etc* from where CSR programmes, reports and other forms of corporate communications are being issued. Available evidence suggests that about 90 per cent of the largest European companies currently publish substantial information on their social and environmental impacts.²² Similarly, over 50 per cent of the world largest companies produce a stand-alone CSR report under one label or the other.²³ Again, there has been a rise in the number of CSR consultancies and service organisations, as well as in CSR standards, watchdogs, auditors and certifiers aimed at institutionalising and harmonising CSR practices globally. Government and intergovernmental organisations are also playing great parts in attempting to encourage investment in CSR, improve corporate reporting on corporate social impacts, and the implementation of CSR initiatives that complement government's broader public policies. Again, series of activists and NGOs endeavour not only to promote CSR but also to bring critical perspectives to bear and to raise CSR standards.²⁴

As said above, CSR is largely viewed as a voluntary initiative of the corporation aimed at contributing to sustainable economic and social development enabling companies to address both their own competitive (economic) interests and the interests of the wider society. International politics have, however, drawn attention to business impact on the triple bottom line,²⁵ and have produced a number of international and regional agreements which, in turn, have encouraged governments to implement them through legislation. The resulting laws and regulations, which impose on companies increasing and wide-ranging obligations concerning environmental, social and governance issues, are gradually formalising what were once voluntary corporate actions into legal requirements.²⁶ This remarkable shift is not widely appreciated by some corporate managers and academic researchers, as they continue to emphasise the voluntary nature of CSR.²⁷ Nonetheless, increasing judicial recognition and acceptance of the importance of CSR as a matter of public policy²⁸ have been progressing just as fast as legislative development in the area. Consequently, companies' voluntary initiatives in CSR can have significant legal implications. For example, codes of conduct and compliance programmes can set the standards of care that are legally expected of companies. Again, when these CSR initiatives are published, the court can hold them to be binding on the company and, if what has been publicised is found to be untrue, it may attract legal liability to the company involved for misrepresentation or false advertising.²⁹ Thus, Buhmann has stressed that legislation influences the substance, implementation and communication of CSR, and that the current normative CSR may constitute pre-formal law.³⁰

objectives are imposed on the corporation by law, the corporation exercises no responsibility when it implements them." See Manne, H.G and Wallich, H.C (1972) *The Modern Corporation and Social Responsibility*, Washington: American Enterprise, at p 40.

²² See Context (2006) *Global Corporate Responsibility Reporting Trends*, London: Context; Crane, A, *et al*, (2009) *The Oxford Handbook of CSR*, Oxford: OUP, at p 4.

²³ KPMG (2005) *International Survey of Corporate Responsibility Reporting*, Amsterdam: KPMG.

²⁴ Crane, A, *et al* (above, n 22), at pp 4-5.

²⁵ Elkington, J (1998) *Cannibals with Forks: The Triple Bottom Line of the 21st Century Business*, Gabriola Island, Stony Creek: New Society Publishers.

²⁶ See for instance, Companies and Allied Matters Act (CAMA) 2020, s 305(3) which 'asks' the company directors to "have regard" to the effects of their corporate activities on "the environment, in the community where it carries on business operations." CAMA *ibid*, s 305(4) extends the matters on which the directors should have regards to the interests of the company's employees. There is a similar provision in The UK's Companies Act 2006, s 172. This appears to be at variance with the position under the common law where the directors are under a singular duty to promote solely the interest of the company as a whole. See Eze, J.A (2018) "To Whom Do Company Directors Owe Their Directorial Duties? The Position in Nigeria and the United Kingdom" 1(1) COOUJCP 112, See also *Multinational Gas and Petroleum Co* [1983] Ch 258, at p 288, per Dillon LJ.

²⁷ See Dyllick, T and Hockerts, K (2002) "Beyond the Business Case for Corporate Sustainability" 11 *Business Strategy and the Environment* 130; Steuerer, R, *et al* (2005) "Corporations, Stakeholders and Sustainable Development: A Theoretical Exploration of Business-Society Relations" 61 *Journal of Business Ethics* 263.

²⁸ Petkoski, D and Twose, N (2003) *Public Policy for Corporate Social Responsibility*, Washington, D.C: World Bank Institute.

²⁹ See generally Nakajima, C (2011) "The Importance of Legally embedded Corporate Social Responsibility" 32(9) *Company Lawyer*, 257. He noted that legal implications of corporate codes of conduct and other firm-level mechanisms point to the emerging situation where compliance becomes of utmost importance in CSR. He argued that though mandating CSR practices has the tendency of creating institutional constraints on managerial discretions and shift emphasis from strategic choices to legal and regulatory compliance, by internalising CSR, management may convert these institutional

But, while regulation/legislation can facilitate the embedding of CSR in countries where the rule of law is certain and strongly upheld, it is doubtful the extent it can do so in emerging economies (such as Nigeria) where such a vital institution is missing or deficient.³¹ The voluntariness of CSR practices, it has been alleged, is a response to the ‘voids’ created by absence of strict regulatory control of companies occasioned by institutional ‘voids’ in a country, for instance - the level of government’s corruption and poor enforcement of corporate law.³² In other words, the laxity in enforcement of rules and laws in a given country (and corruption in the ‘high places’ – like law enforcement agents and members of the judiciary) can still allow companies operating in such a jurisdiction to elect whether or not to abide by any given legislation/regulation made to mandate compliance to CSR practices. In some cases, the institution(s) or individuals responsible may not make the necessary legislation in the first instance so as to protect their vested interests. Thus, Waagstein³³ observes that the stricter the regulatory control within a given country, the less (the) room (that) exists for companies to develop voluntary CSR policies. At the same time, he avers that the more intervention the state exercises in corporate activities, the more room exists for abuse by the state, leading to corruption. Frye and Shleifer shared a similar view, alleging that in corrupt countries, the ‘regulating hand’ of the government strengthens the ‘grabbing hand’ of the corrupt entities.³⁴ While this assertion of theirs may be true - especially to the developing countries where corruption is at its rife, it may not be applicable to every country, as there are some countries with a good, developed and strong judicial system and other relevant institutions that can tame, to a great extent, the monster called corruption. Thus, in the opinion of Demirbag, Mellahi and Wood, increase in corruption is not caused by regulation *per se* but by inefficient judicial system, institutionalisation of corruption and weak enforcement mechanisms.³⁵ Their findings highlight the importance of rule of law in bringing about compliance with corporate legislations, mandatory CSR practices, inclusive. But, in other economies where rule of law is not strongly entrenched, voluntary CSR (and other forms of corporate self-regulations), arguably, have the chances of acting as a good substitute to legal regulations to bring about inclusive and good business behaviour.³⁶

One of the central aims of this work is to find out/consider the best way of enthrone inclusive and ethical corporate behaviour, especially in Nigeria. In the course of this analysis, two concepts – ‘CSR’ and ‘corporate stakeholding’ - do stand out. It therefore becomes necessary to see if there is any interplay between the two concepts.

The Interrelationship between CSR and Inclusive Corporate Stakeholding Approach

An increasing interrelationship is noticed between the concept of stakeholder theory and CSR.³⁷ Stakeholder theory is a foundation for the concept of CSR. It is connected with the literature on CSR as it provides a suitable theoretical framework for analysing the relationship between business and society.³⁸ In other words, the stakeholder concept has become a platform for the analysis of corporate

constraints into facilitators of corporate goals that are aligned with the interests of a wider community and long term corporate interests. He pointed out that the pursuit of such goals may previously have been constrained by a narrower perspective on shareholder primacy. (*ibid*) at p 258.

³⁰ Buhmann, K (2004) “Corporate Social Responsibility: What Role for Law? Some Aspects of Law and CSR” 6 Corporate Governance 188.

³¹ Fulop, G, Hisrich, R.D and Szegedi, K (2000) “Business Ethics and Social Responsibility in Transition Economies” 19 Journal of Mgt Development 5.

³² See Khanna, T and Palepu, K (2000) “The Future of Business Groups in Emerging Markets: Long-Run Evidence from Chile” 43 Academy of Mgt Journal 268.

³³ Waagstein, P.R (2011) “The Mandatory Corporate Social Responsibility: Problems and Implications” 98 Journal of Business Ethics 455.

³⁴ Frye, T and Shleifer, A (1997) “The Invisible Hand and the Grabbing Hand” 87(2) American Economic Rev 354.

³⁵ Demirbag, M, Mellahi, K and Wood, G (2012) “Regulatory Context and Corruption: Rethinking the Effects of Government Intervention” 42 Int’l Studies of Mgt & Organisation 13.

³⁶ See Parkinson, (above, n 1) , at pp 43-44.

³⁷ Valor, C (2005) “CSR and Corporate Citizenship: Towards Corporate Accountability” 110(2) Business and Society Rev 191, at p 193; Garriga, E and Mele’, D (2004) “CSR Theories: Mapping the Theory” 53(1/2) Journal of Bus Ethics 51, at p 61.

³⁸ See Clarkson, M.B.E (1995) “A Stakeholder Framework for Analysing and Evaluating Corporate Social Performance” 20(1) Academy of Mgt Rev 92; Waddock, S.A and Graves S.B (1997a) “Quality of Management and Quality of Stakeholder Relations: Are they Synonymous?” 36(3) Bus & Society 250.

responsibility. As noted earlier, stakeholder model was originally conceived as a strategic instrument for companies to broaden their vision of management, turn their attention to the participants in the company beyond the shareholders and to take into account the interests of the surrounding business community and the socio-economic region.³⁹ This equally entails that, in appropriate situations, the interests of the shareholders may be overridden by those of the stakeholders. Thus, Mitchell *et al*, defined stakeholder approach as “a powerful heuristic device, intended to broaden management’s vision of its roles and responsibilities beyond the profit maximisation function to include interests and claims from non-stockholding groups.”⁴⁰ Obviously, the stakeholder concept is concerned with (and is considering) how company law might be used to alter corporate decision-makings to induce, facilitate or mandate corporate conducts that are in tandem with the wider public interest.⁴¹ The communitarian theory on which the stakeholder approach is strongly embedded is concerned essentially with the ‘common good’.⁴² From this ‘common good’ notion sprang the communitarian discipline known as ‘CSR’ - a ‘common good’ philosophy applicable to modern corporations.⁴³ CSR takes (on board) this notion of ‘common good’ and is endeavouring to incorporate it into the ethical, environmental and social agendas of the corporation.⁴⁴

In summary, CSR and stakeholder approach are inter-related. While CSR aims at defining what responsibilities companies ought to fulfil, the stakeholder concept addresses the issue of whom corporation is or should be accountable to.⁴⁵ The stakeholder approach offers a practical alternative for assessing the performance of companies *vis-a-vis* major stakeholder groups and hence (it is) also indirectly gauging their corporate social performance.⁴⁶ While CSR and corporate stakeholding, on one hand, are championing the integration of wider interests of the corporate constituencies and encouraging long-termism, on the other hand, shareholder primacy is principally concerned with the interests of the shareholders, and allegedly encourages short-termism - a practice which negates or discourages constituency CSR practices and subverts sustainable business strategy or considerations upon which CSR and inclusive corporate stakeholding are embedded.⁴⁷ The two concepts (that is, shareholder primacy approach and stakeholder/CSR approach), as such, are apparently antithesis and ‘antagonistic’ with each other. We are now going to place the two concepts side-by-side with the aim of seeing how shareholder primacy impedes stakeholder/CSR approach.

CSR/Stakeholder Approach versus Shareholder Primacy

Advocates of shareholder primacy insist that companies should operate on the basis of ‘profit maximisation within the law’. One of the most popular proponents, Friedman, thus argues that the

³⁹ See Yves, F (2009) “The Stakeholder Model Refined”, 84 *Journal of Bus Ethics* 113, at p 128.

⁴⁰ Mitchell, R.K, Agle, B.R and Wood, D.J (1997) “Towards a Theory of Stakeholder Identification and Salience: Defining the Principle of Who and What Really Counts” 22 *Academy of Mgt Rev* 853.

⁴¹ But, stakeholder concept (especially pluralist aspect of it) is more concerned with the issue of ‘mandating’ or legally obliging such inclusivity practices than CSR which, as we have seen above, is more inclined towards voluntarism. Similarly, in a pluralist approach, non-shareholding stakeholders arguably have equal stake in the company with the shareholders. But, with regard to CSR, a company can be socially responsible without the managers having necessarily to treat the non-shareholding stakeholders as having equal claims with the shareholders on the company’s resources.

⁴² In other words, the message at the heart of the theory is that corporate power, influence (and even profits) should be used in the broader public interest. See Sandel, M “A New Citizenship, A New Politics of the Common Good” (Reith Lecture, BBC Radio, 30 June 2009) [unpublished]; Bone, J (2011) “Legal Perspectives on Corporate Responsibility: Contractarian or Communitarian Thought?” 24 *C.J.L&J* 277, at p 294.

⁴³ As noted in Chapter Three above, Communitarianism perceives the corporation as an individualist entity with the rights and corresponding responsibilities of a natural person. As such, communitarians maintain that legal constraints are necessary to ensure that companies are accountable to the society in which they operate. They thus believe that the special privilege of corporate personhood requires the company to observe socially responsible conduct. See Etzioni, A (1993) *The Spirit of Community: The Reinvention of American Society*, New York: Simon & Schuster.

⁴⁴ Sandel (above, n 42); Bone (above, n 42), at pp 291-292; Millon, D (2011) “Two Models of CSR” 46 *Wake Forest L.R* 523.

⁴⁵ Jamal, D (2008) “A Stakeholder Approach to CSR: A Fresh Perspective into Theory and Practice” 82 *Journal of Business Ethics* 213, at p 228.

⁴⁶ *Ibid*.

⁴⁷ See Millon (above, n 44), at p 536.

only social responsibility a company has is to increase its profits.⁴⁸ This is, however, in sharp contrast with the view of some other scholars such as Davis who insist that companies need to consider issues beyond the narrow economic, technical, and legal requirements; and beyond the sole interests of the shareholders.⁴⁹ Similarly, an economist, Samuelson argues that “a large corporation these days not only may engage in social responsibility, it had damn well better try to do so.”⁵⁰ The questions are - which of these two views is a more realistic one? And, which one is likely to produce a more viable and sustainable society?

Davis came to the conclusion that CSR has “become the hallmark of a mature global civilisation. It is necessary for an interdependent world. Values have changed to require it.”⁵¹ He adds that corporations should move decidedly toward integrating social values into their decision-making machinery. Cautioning that any corporation which “vacillates or chooses not to enter the arena of social responsibility may find that it gradually will sink into customer and public disfavour.”⁵²

Strictly speaking, shareholder primacy or profit-maximisation objective does not support CSR agenda.⁵³ If directors were to owe their duties solely to the shareholders and were pre-occupied with furthering shareholders’ interests - as advocated by shareholder primacy approach, this induces short-term corporate approach (as managers will be pre-occupied with quarterly earnings and current share price),⁵⁴ and negates the spirit of CSR which is normally built around long-term corporate goals and sustainability.⁵⁵ Put in another way, to shareholder primacy advocates, CSR practices violates the ultimate end of business - which is profit maximisation for the shareholders - as such social practices apparently have inroads into the profits available for the shareholders and also reduce short-term profits and may thus have a negative effect on current share price. Being socially responsible and pursuing inclusivity agenda, they believe, would jeopardise (or rather, put a rein on) the pursuit of profit and will, in turn, reduce the money that will be available for shareholders to share at the end of the corporate year as dividends. CSR, however, is closely aligned with stakeholder approach in that they both talk about and champion treating all the key corporate stakeholder constituencies fairly, and giving them their fair share of the company’s profit - based on each stakeholder’s contribution to the

⁴⁸ Friedman, M (1970) “The Social Responsibility of Business is to Increase its Profits”, *New York Times*, Sept. 13, 1970, 6 (Magazine), at p 32. See also his book: *Capitalism and Freedom* (1962), Chicago: University of Chicago Press, especially at p 133.

⁴⁹ Davis, K (1973), “The Case For and Against Business Assumption of Social Responsibility” 16(2) *Academy of Mgt Journal* 312, at p 312.

⁵⁰ Samuelson, P.A (1971) “Love that Corporation”, *Mountain Bell Magazine*, Spring, 1971, at p 24.

⁵¹ Davis (above, n 49), at p 321.

⁵² *Ibid.*

⁵³ See Millon “Two Models of CSR” (above, n 47), at pp 536-8. This shareholder primacy hostility to CSR notwithstanding, a board operating in a shareholder primacy jurisdiction but is desirous of being integrative can still make certain substantial departures from the profit-maximisation objective without the risk of judicial intervention.

⁵⁴ See Fiesel, C (2004) “Fiduciary Duties of Directors, Corporate Governance and the End of Shareholder Primacy” in P Puri and J Larsen (eds.), *Corporate Governance and Securities Regulation in the 21st Century*, Toronto: Butterworths, 61, at p 79.

⁵⁵ Stakeholder-oriented practices are a more patient corporate approach that is willing to wait for potentially greater returns in the future. That is, it may be viewed as a way of protecting corporate profitability in the long term.

success of the company.⁵⁶ While shareholder primacy is principally concerned about a single constituency approach, corporate stakeholding and CSR are about multi-constituency agenda.⁵⁷ Supporters of shareholder primacy insist that any social activities company will engage in is acceptable only if they are prescribed by law or they will add to the economic value of the shareholders' investments.⁵⁸ On the other hand, supporters of corporate wider responsibility are of the view that companies have much power and power entails responsibilities. Companies should therefore have responsibilities beyond the legal and economic stipulations.⁵⁹ They maintain that companies should allow their corporate decisions to be influenced not only by economic gains, but also by social policy considerations. They therefore canvass for a loosening of the directors' legal duties - which define the objective of management decision-making, which, as far as Nigeria is concerned, emphasises on the maximisation of shareholder wealth⁶⁰ - to enable broader range of purposes to be pursued. In some cases, there seem to be some justifications and support for more elaborate reforms to ensure that social-welfare considerations are given appropriate weight in corporate decision-making and are not just left at managerial discretions.

For advocates of shareholder primacy, directors should be allowed to engage (the corporation) in the free market economy in an efficient manner, thereby increasing the wealth of the shareholders and all market participants. This, to them, is the social responsibility of the company:⁶¹ that is, the company will achieve aggregate social interests, by doing so. Thus, Berger argues that capitalism is the most efficient and practically reliable system of creating wealth.⁶² The above view accords with certain economic theory which holds that companies contribute to the maximisation of society's total wealth when they seek to maximise their own profit. If this were to be so, it then follows that in order to serve the public interests, companies should be permitted, or rather, required to pursue vigorously the profit maximisation goal. That is, maximising profit should be the single and sole factor that guides management discretion and the exercise of decision-making power by companies.

Some commentators however strongly opine that uncontrolled, unregulated and unrestrained profit maximisation is not favourable to the public interest.⁶³ Thus, Bakan finds it reproachful that the company's "legally defined mandate is to pursue, relentlessly and without exception, its own self-interest," regardless of the often harmful consequences it might inflict on others.⁶⁴ Though efficient wealth creation may be seen by some people as a high social priority, it should also be appreciated

⁵⁶ Thus, Bone noted that the basis of the stakeholder theory is that corporate stakeholders who contribute to the corporation should receive "returns commensurate to their investments" in the company. Bone (above, n 42), at p 287. Again, the view of Blair and Stout is instructive here. They came up with what they called 'Team Production Model' (TPM). Under this model, the objective of corporate governance is to find an efficient solution to the team production problem whereby directors have to adequately address the claim of all the corporate stakeholder groups. According to the TPM approach, corporate profit is the product of different stakeholders contributing their 'firm specific' resources in the business of the company: Blair, M and Stout, L (1999) "A Team Production Theory of Corporation Law" 85 Virginia L.R 247, at p 249. As such, each stakeholder group is part of the collective effort to produce output from the company. That being the case, they argue that (i) each stakeholder should be entitled to compensation based on his or her original investment in the company, and (ii), the directors should effectively find a fair distribution among the stakeholder groups in accordance with their 'opportunity costs'. Ibid, at pp 265-266. This suggests that the function of the board is to mediate the allocation of corporate profits in a fair distribution to all corporate stakeholders, and to enhance corporate profitability as an independent board with sole allegiance to the corporation itself and not to any stakeholder group, such as the shareholder group, as shareholder primacy preaches.

⁵⁷ Stakeholding theory sees the company as a community of constituencies with the board owing duties to all stakeholders. The approach hugely reduced shareholders from the dominant constituent to simply one of the many competing interests in the corporation. See Bone (ibid), at p 293.

⁵⁸ See, for instance, Sternberg, E (1997) "The Defects of Stakeholder Theory" 5 Corporate Governance 1.

⁵⁹ Thus, Davis set out "Iron Law of Responsibility". This holds that "social responsibilities of businessmen need to be commensurate with their social power." Davis, K (1960) "Can Business Afford to Ignore Social Responsibilities?" 2(3) California Mgt Rev 70, at p 71. He further asserted (at p 73) that - if social responsibility and power were to be relatively equal, "then the avoidance of social responsibility leads to gradual erosion of social power" on the part of the company.

⁶⁰ See Eze, J.A (2017) "The Corporate Objective Question: In Whose Interests Should a Company be Run in Nigeria?" 3(1) COOULJ 147.

⁶¹ See Friedman (above, n 48); and Henderson, P.D (2001) *Misguided Virtues: False Notions of Corporate Social Responsibility*, London: Institute of Economic Affairs.

⁶² Berger, P.L (1987) *The Capitalist Revolution*, Gower: Aldershot, ch 2.

⁶³ Parkinson noted that the company's right to pursue profit cannot be an unqualified one. See Parkinson, J (1993) *Corporate Power and Responsibility*, Oxford: OUP, at p 260.

⁶⁴ Bakan, J (2005) *The Corporation: The Pathological Pursuit of Profit and Power*, (rev. ed.), New York: Vintage, at pp 1-2.

that individual and collective interest and value should not be sacrificed in its pursuit.⁶⁵ It is also doubtful if 'aggressive' pursuit of profit will necessarily lead to maximisation of societal wealth. Thus, Parkinson noted that owing to the inherent defects in the market operations, the strict maximisation of profit will, in many cases, fail to lead to the maximisation of aggregate wealth.⁶⁶

In the opinion of some 'stakeholderists', it is acceptable and proper that law should be directed towards restraining corporate conducts that are privately profitable to the company but socially, ethically or environmentally improper, damaging or objectionable, and it should also be employed to make certain modifications to the corporate objectives so as to allow third-party interests to be given precedence over profit maximisation in appropriate cases.⁶⁷ To do this, it becomes necessary that there would be a relaxation of the obligation of the board to operate the corporation's business only in the interests of the shareholders. This will entail putting in place the necessary mechanisms that will permit or ensure that the interests of the stakeholder constituencies are adequately considered in the corporate decision-making process. Berle and Means themselves shared a similar view as they were expectant of the working out of a "convincing system of community obligations"⁶⁸ to replace the duty to act solely in shareholders' interests.

Thus, while reacting to Berle's articles, Dodd argues that public opinion is moving towards a view that public company is "an economic institution which has a social service as well as a profit-making function."⁶⁹ Continuing, he said that public opinion is changing towards "a point of view which will regard a business as affecting a public interest."⁷⁰ He notes that there is a growing feeling amongst corporate leaders not only that corporation has responsibilities to the community but that the corporate managers should "voluntarily and without waiting for legal compulsion" manage it in such a way as to fulfil those responsibilities.⁷¹ He believes that "an attempt by business managers to take into consideration the welfare of employees and consumers.....will in the long run increase the profits of shareholders."⁷²

This Dodd's assertion, at first glance, seems incompatible with the ultimate goal of the corporation under shareholder primacy approach. But, on a deeper consideration/analysis, it appears to be correct and not inimical to the overall interests of shareholders. Obviously, discharging social responsibilities will increase operating costs of the company. But, it has the potential of enhancing its financial performance more than its costs – as it aids the company (to) build up differentiation strategic advantage, although it weakens costs advantage. There is an even more advanced competitive advantage a company gains/earns by embedding discharging wider responsibilities directly into its corporate strategy as an integral part of wealth maximisation.⁷³

Generally, government in Nigeria and in most other countries have not adopted mandatory CSR policies. This may not be unconnected with the government's quest to promote enterprise and competitiveness, which will otherwise be gravely affected if companies were to be compelled into discharging social responsibilities, and may also be difficult and expensive to enforce.⁷⁴ They have however preferred and resorted to stimulating and promoting CSR practices.⁷⁵ Agreeably however, the activeness of government in these regards differs from country to country.

⁶⁵ See Hawkins, D (2006) *Corporate Social Responsibility: Balancing Tomorrow's Sustainability and Today's Profitability*, New York: Palgrave Macmillan.

⁶⁶ Parkinson *Corporate Power and Responsibility* (above, n 63), at p 42.

⁶⁷ See Eze, J.A (2022) "The Possibility of Imposing Enforceable Legal Duty on the Board with Respect to the Interests of Non-Shareholding Stakeholder Groups" 13(2) NAUJILJ 40.

⁶⁸ Berle, A and Means, G (1932) (rev. ed.) 1967) *The Modern Corporation and Private Property*, at p 312.

⁶⁹ Dodd, E.M (1932), "To Whom are Directors Trustees?" 45 Harvard LR, 1145, at p 1148.

⁷⁰ Ibid. It should be recalled that he pointed out that "business is permitted and encouraged by law primarily because it is of service to the community rather than because it is a source of profit to its owners." Ibid, at p 1149).

⁷¹ Dodd (above, 69), at pp 1153-1154.

⁷² Ibid, at p 1156. (Emphasis added).

⁷³ See Berman, S.L *et al* (1999) "Does Stakeholder Orientation Matter? The Relationship between Stakeholder Management Models and Firm Financial Performance" 42(5) A.M.J 488. (They conducted an empirical research on a strategic level showing how integrating CSR into corporate strategy could help improve financial performance). See also Davies (above, n 59), at p 70.

⁷⁴ Moon, J (2004) "Government as a Driver of Corporate Social Responsibility: The UK in Comparative Perspective" Int'l Centre for CSR Research Paper Series, No 20, 2004, at p 15.

⁷⁵ Ibid. He claims that government's encouragement of CSR "can clearly be linked to its inability to solve social problems alone." Ibid, at pp 10 and 14.

As can be gathered from the above discussions, there are on-going debates as to whether or not companies' discharging of CSR negates the ultimate end of business. If it does, what then is the rationale behind the clamouring for companies to discharge it? If it does not, how is CSR integrated into profit maximisation? These questions literally bother on the issue (of) whether embarking on CSR practices are in company's best interest. It should be pointed out that at the moment, a number of investors are no longer solely focused on how a company is doing financially (which may be referred to as 'corporate financial performance' (CFP)). They are also concerned about its response to social interactions ('corporate social performance' CSP).⁷⁶ Hence, there is the need for a smart corporate management team to strike a good balance between profit maximisation and discharging wider responsibilities.⁷⁷

CONCLUSION

As can be gathered from the above discussions, the importance of big public companies engaging in good CSR practices as well as integrating the interests of the wider stakeholder constituencies can never be over-emphasised. It is in the company's best interests to do so for its sustainability and profitability especially in the long run. It does not necessarily matter whether corporation's integration of the interests of the wider stakeholders is labelled CSR or corporate stakeholding approach or any other related nomenclature as all of them have a common target – which is, causing or sensitising the company's directors and management to realise that what they do and how they do it affects and is affected by a wider constituency group, not just the company's shareholders. They should, therefore be mindful and integrative of the interests of those stakeholders also in their corporate decision-makings and implementations. It is, in the overall interests of the company and its shareholders as well as those of the wider society when the directors adopt such an inclusive and broad-minded corporate approach.

⁷⁶ See Wood, D (1991) "Corporate Social Performance Revisited" 16(4) *Academy of Mgt Rev* 691.

⁷⁷ See Wallace, S (2003) "Value Maximisation and Stakeholder Theory: Compatibility or Not?" 15(3) *J.A.C.F* 120. Thus, Jamal maintains that company-stakeholder relationships are essential assets company directors and managers must manage. Depending on how well these relationships are handled, it can either make or mar the company: Jamal, D (2008) "A Stakeholder Approach to CSR: A Fresh Perspective into Theory and Practice" 82 *Journal of Business Ethics* 213, at p 228.