ARE SHAREHOLDERS REALLY THE 'OWNERS' OF A COMPANY TO JUSTIFY THE PRIMACY OF THEIR INTERESTS OVER EVERY OTHER INTEREST IN THE MANAGEMENT OF PUBLIC COMPANIES?

Abstract

Since the 19th century, the big public commercial companies have become the preferred choice of business for 'passive' investors who want to invest their money in a corporate business enterprise without being personally and actively involved in the management of the company and without the risk of losing their personal assets to creditors in the event of the liquidation of the company. Under this period, the capital market became very well developed resulting in the ability of public companies to raise money from the public with ease. Of course, there is neither a statutory restriction on the number of membership of public companies nor on the transferability of their shares. Shares of these public companies could thus be easily bought and sold in the capital market by any interested investor. This has resulted to the emergence of gigantic public companies with very wide diverse shareholders who are mere investors without active participation in the management and the control of the company which are respectively left in the hands of hired experienced managers and in the hands of government and market forces of demand and supply. This takes public companies away from the region/realm of other forms of business like sole trade, partnership and private companies where the owners are, most often, the managers of the business. It is believed that it is the fusion of ownership and control in the olden-day companies that justified the shareholders/members of the company being regarded as the owners of the company and thus the corporate objective prevalent at that time – which was that companies should be run chiefly for the shareholders' economic well-being or wealth maximisation. As ownership and management or control of these big public companies are now separated, questions are beginning to be asked whether it is still proper for the big companies to be run to advance solely or primarily the economic interests of the shareholders as against those of the other non-shareholding stakeholders. The researcher has decided to look into this issue. In doing so, doctrinal research method was adopted. The work observed that the era of big companies focusing solely on and prioritising the economic well-being of its shareholders is becoming a thing of the past as good, responsible and stakeholder-friendly companies are now considering and inculcating the interests of the non-shareholding constituencies in their corporate policies and programmes and the traditional notion of seeing shareholders as the owners of the company is thus currently withering/weathering.

Keywords: Shareholders, Owners of a Company, Interests, Management of Public Companies

1. Introduction

As can be gathered from the above abstract, big corporation can be said to be an economic vehicle and one which is highly attractive to 'passive' investors who wish to invest money in a corporate business enterprise without being personally and actively involved in the management,[1] and without the risk of losing their personal assets to creditors in the event the company becomes insolvent. It can hardly be doubted that the chief objective of most commercial public companies is the pursuit of profit, and shareholders invest accordingly in order to make profits through dividend payment and through appreciation in the value of their shares. Thus, the International Accounting Standard Board stated that 'to an equity investor, an entity is a source of cash in the form of dividends (or other cash distribution) and increase in the price of shares or other ownership interests.'[2] Under shareholder primacy approach,[3] the board is permitted to do whatever it can legally do that will maximise the company's profit for the shareholders of the company. The directors will be in breach of their duties if they

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[1] Ireland is of the view that the concepts - separate personality and limited liability of corporation are designed to protect and further the interests of dormant shareholders who are solely interested in the economic return attached to their shareholding and are not concerned with the exercise of wider governance role in the company. Ireland, P (1996) 'Capitalism without the Capitalists: The Joint Stock Company Share and the Emergence of the Modern Doctrine of Separate Corporate Personality' 17 Legal History 41.

[2] International Accounting Standards Board, 'Discussion Paper on Preliminary Views on an Improved Conceptual Framework for Financial Reporting: The Objective of Financial Reporting and Qualitative Characteristics of Decision-useful Financial Reporting Information' (2006), www.investmentfunds.org.uk/news/research/2006/topic/corporate_governance/imaresponsetoiasbdponconcentualframework.pdf

[3] The term 'shareholder primacy' or 'shareholder wealth maximisation approach' represents the corporate objective position whereby companies are run principally to promote, enhance and maximise the economic interests or investment returns of the shareholders. The interests of the non-shareholding stakeholders are accorded little or no attention. For a better understanding of this approach, see Eze, J.A (2017) 'The Corporate Objective Question: In Whose Interest should a Company be Run?' 3(1)COOULJ 147.

do not focus their attention in maximising profit for the shareholders/members,[4] with this found expressed in *Dodge v Ford Motor Co,* where the Michigan Supreme Court stated that 'a business corporation is organised and carried on primarily for the benefit of the shareholders. The powers of the directors are to be employed for that end.'[5] There is no legal duty on the directors to prioritise any other interests, except if doing so will ultimately enhance the profits available to the shareholders**.**[6] The major reason behind this special privilege and unique attention the shareholders are enjoying is because they are, traditionally, seen and accepted as the owners of the company. As such, every attention and priority is paid to their economic interests by the company law or corporate legislation in a number of countries as well as under the common law whereby the directors are required to exercise their directorial powers in the interest and for the benefit of the company as a whole.[7] The interest of the company is, most often, interpreted to mean, or rather, to be synonymous with those of the shareholders.[8] Thus, in certain jurisdictions, it is only their interests that is recognised and accepted as the object of corporate activities. Under this situation, the law is concerned primarily with the maximisation of the wealth available to the shareholders. This approach is roundly supported by the shareholder primacy advocates. Berle and Means, for instance, are of the strong opinion that shareholders, between themselves, 'have the complete right to all of the profits which the corporation has made, and moreover were entitled to those profits which the management in reasonable exercise of its powers ought to make.'[9] They further averred that 'the expectation of the entire profit is the precise lure used to induce investment in corporate enterprise' in the capital market.[10] For Berle and Means, the position - that shareholders are entitled to all the profits of the company - is developed by the law by extending the traditional logic of property to the corporate situation, and shareholder primacy is thus justified by shareholders' property rights.[11]

This notion that the managers and directors of the public company should run it squarely for the benefit of the shareholders (who are claimed to be the owners of the company) has, however, been criticised by many scholars[12] who are of the view that big public companies are not merely economic entities generating maximum wealth solely to their shareholders but social entities which should therefore discharge social roles to the wider society. The researcher has, thus, set out to see how justifiable this traditional belief is in the present day corporate world whereby management of these big public companies has been greatly severed from the ownership of those companies as those companies are now run by hired expert corporate managers who may not hold any shares in the company.

[4] Keay, A (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 40. See also Bainbridge, S.M (2008) *The New Corporate Governance in Theory and Practice,* New York: OUP, at p 73, where he pointed out that 'When the directors hire equity capital from shareholders, the directors undertake a contractual obligation to maximise the value of the shareholders' residual claim on the corporation's assets.' This obligation is, of course, implied and not expressly stated in a formal contract.

[5] 170 N.W. 668, 684 (Mich. 1919).

[6] The stakeholder value advocates, however, hold a different view. See for instance, the opinion of Dean, J (2001) *Directing Public Companies: Company Law and the Stakeholder Society*, London: Cavendish Publishing, at p 13. They insist that every constituency must be considered *in its own right*.

[7]See, for instance, CAMA 2020, s 305(3); UK Companies Act 2006, s 172; South African Companies Act, 2008, s 76(c); Lord Greene MR in *Re Smith & Fawcett Ltd* (1942) Ch 304, at p 306. Relying on this approach in their interpretation of directors' fiduciary duties, courts have held, as a general rule, that the power of the directors are vested on them for the benefit of the shareholders as a whole, and not for the benefits of the directors themselves, or a group of shareholders of the company, or any other stakeholder. See *Parker v Daily News Ltd* [1962] 1 Ch 927; *Charterbridge Corporation Ltd v Lloyds Bank Ltd* [1970] 1 Ch 62; *Levin v Clark* [1962] NSWR 686.

[8] See Davies, P (2010) *Introduction to Company Law* (2nd ed.), New York: OUP , at p 159; *Brady v Brady* (1987) 3 BCC 353; [1988] BCLC 20 C.A; *Greenhalgh v Arderne Cinemas Ltd* (ibid); *Park v Daily New* (ibid), at p 963. See also Ferran, E (1999) *Company Law and Corporate Finance*, Oxford: OUP, at p 126.

[9] Berle, AA and Means, GC (1932) *The Modern Corporation and Private Property*, New Brunswick and London: Transaction Publishers, at p 297.

[10] Ibid.

[11] The old theories of the corporation that attributed ownership to shareholders and thereby justifying profit maximising objective has, however, been described as 'outdated, over-abstracted, over-static and far removed from the modern business environment and social reality.' See Letza, S, Sun, X and Kirkbride, J (2004) 'Shareholding versus Stakeholding: A Critical Review of Corporate Governance' 12(3) Corporate Governance 242, at p 243.

[12]Among whom are: Ireland, P (1996) 'Capitalism Without the Capitalists: The Joint Stock Company Share and the Emergence of the Modern Doctrine of Separate Corporate Personality' 17 Legal History 41; Worthington, S (2001) 'Shares and Shareholders: Property, Power and Entitlement (Part 1)' 22 Company Lawyer 258; Stout, L (2002) 'Bad and Not-so-Bad Arguments for Shareholder Primacy' 75 Southern California L.R 1189, at p 1190. Again, in the case of *Short v Treasury Commissioners* [1948] 1 KB 116, at 122, Lord Justice Evershed refused to accept the claim/assertion that shareholders were the owners of a company.

The work will now continue by looking at the old corporate position when owners of the company were also deeply involved in its management thus justifying the traditional viewpoint, and will progress to consider the current situation whereby big public company shareholders are hardly involved in its managements. Conclusions will be drawn at the end of these analyses.

2. Corporate Ownership and Control: The Old and the New Orders

Unlike the general acceptance today that a company is a legal person distinct from its members,[13] barely two centuries ago, it was, to some people, unimaginable to think of it in that way. To them, the corporation was merely seen as an aggregation of natural persons and was in no sense different from a partnership. It had no identity distinct from those of its owners.[14] This notion must have moved a US Court[15] to say that 'to deprive a corporation of its property, or to burden it, is, in fact, to deprive the corporators of their property or to lessen its value....' The company was thus viewed mainly from the perspective of partnership, and partnership attributes and laws were, to a great extent, extended to it by analogy.[16] Again, like sole traders and partners in a partnership, the investors in many of the companies were equally the managers of the company.[17] They bore the risk by investing their wealth into the company and were still actively involved in the management of the business.[18] This seemingly justified the common law position which permitted them to be the chief (if not the sole) reapers of the fruits of the enterprise, just like sole traders and partners.[19] But eventually, increasing growth in corporate size and activities made more capital acquisition imperative. The companies went to the public (through the capital market) to seek for funds. This, in turn, resulted to wider dispersal of share ownership. It equally necessitated the need for new managerial expertise which the shareholders might not readily have, or might not have the time to offer to the company. Consequently, a professional class of corporate managers and directors surfaced to meet that challenge. Corporate ownership of those big public companies is thus divorced from control.[20] As a result, shareholders saw their status changed from active investors to passive investors. They are now foreign or alien to the happenings in (as well as passive in the management of) the company. In the words of Millon, they 'become a large, anonymous mass of investors, changing in composition and barely involved in the corporate business.'[21] Generally, rights and responsibilities most often go hand-in-hand.[22] Here, however, the shareholders are no longer responsible for the active and day-to-day management of the company: this is now in the hands of a hired management team. These fundamental and substantive developments in corporate operation and culture have long raised issues of whether the traditional legal position – with shareholders as the sole reapers of company's benefits – should still remain the same. Wilson has

[13] This was first established in Salomon v Salomon (1897) AC 22; 45 WR193.. To stakeholder advocates, such as Leader, the postulation/formulation of the corporation as a legal entity distinct from its members and other stakeholders made it possible for the legal conception of the corporation to be hugely in accord with the stakeholder conception. See Leader, S (1995) 'Private Property and the Corporate Governance Part 1: Defining Interests', in F Patfield (ed.), *Perspectives on Company Law: 1*, London: Kluwer Law Int'l, at p 86.

[14] See, for instance Morawetz, V (1886) *A Treatise on the Law of Private Corporation at iii* (Little Brown, 2nd ed.) where he said that a corporation is 'really an association formed by agreement of its shareholders, and…..the existence of the corporation as an entity, independent of its members, is a fiction.' See also Taylor, H.O (1884) *A Treatise on the Law of Private Corporation Having Stock iv,* New York, where he said that 'by dismissing this fiction [of the 'legal person'] a clearer view may be had of the actual human beings interested, whose rights may then be determined without unnecessary mystifications.'

[15] *The Railroad Tax Cases*, 13 F. 722, 747-48 (C.C.D. Cal. 1882). See also *Santa Clara v Southern Pacific Railway,* 188 U.S. 394 (1886).

[16] See Millon, D (2001) 'The Ambiguous Significant of Corporate Personhood' 2 Stanford Agora 39. The aggregate theory, for instance, 'analogised the corporation to a partnership, and the stockholders to the owners of the business.'- Lee, I (2006) 'Corporate Law and the Role of Corporation in the Society: Monism, Pluralism, Markets and Politics' 85 Canadian Bar Review 1, at p 6. This analogy is associated with the shareholder value model and enjoyed prominence during the 1800's.

[17] In a partnership, each partner, as a general rule, has equal right to participate in management of the firm. They are also entitled to share in the profits and losses of the firm, thus giving them essentially identical interests in the firm, i.e., higher profits.

[18] In the 19th century, UK companies were largely closely-held companies or family-owned, that is, private companies. The ownership and management were thus fused. See Cottrell, P.L (1980) *Industrial Finance, 1830-1914*, London and New York: Methuen.

[19] At present, ownership and management remain fused in a number of private companies.

[20] Berle and Means (above, n 9). Unlike in partnership and private companies where partners and members (respectively) are bonded together by mutual trust and personal loyalties, these are generally wanting in a modern public corporation. Arguably, the only common interest shared by (dispersed) members of big corporation is maximum returns from their investment in the company.

[21] Millon (2001) (above, n 82), at p 47. See also Attenborough, D (2012) 'Giving Purpose to Corporate Purpose Debate: An Equitable Maximisation and Viability Principle' 32(1) Legal Studies 4, at p 12.

[22] In the words of the former US President, Barack Obama: 'We have come to realised that with rights come responsibilities.....' Metro Newspaper, Thursday, 17th January, 2013, at p 19.

proposed that the current corporation with wide dispersed shareholding ownership does not fit in properly with the traditional private corporate institution owned and managed by its shareholders, as the shareholders in the modern corporation are nothing but passive property holders who are 'in reality rentiers interested only in the dividend income stream from their investment.'[23] Berle and Means have earlier posited that the above premise qualifies the modern giant corporation to be seen and treated as a social institution and, as such, it should act in the interests of all its stakeholders and the wider society.[24]

For some decades now, there is in most countries, though in varying degrees of intensity, the agitation and pressure that corporate economic powers be subjected to public benefit tests.[25] While this agitation is most pronounced in the communist regimes - where all corporate powers and privileges are required to be used only in the common interests, and in less extreme form of socialist dogma, transfer of economic powers to the State for public service is demanded. Capitalist states are not without this pressure as demand is consistently made that the directors/managers of public companies be made to be more responsive to the well-being of those who are subject to them - workers, consumers, local community and other stakeholders.[26] This demand is increasingly becoming more intense and wide-spread, as exemplified by the 'Occupy' movement which spread from Wall Street (to) across the world, cutting across nations, race, age, religion, creed, social, economic and political ideologies. This is an important illustration of current appetite for decrying excessive capitalism, ever-increasing corporate influence on government, and seeking to address the growing disparity in wealth distribution, and the absence of legal repercussions following the recent or rather recurring global financial crises.

As already noted, companies traditionally 'belong' to the shareholders. As such, only their interests were recognised as the sole concern of the company. Having regard, however, to the current character of corporate ownership highlighted above – whereby corporate ownership and control are now divorced, as well as the gradual changes in the strict perception of property rights overtime, should this traditional position still be strictly adhered to? Much revolves around the issue of 'ownership' of the company which some people believe to be a right of the shareholders. Blair refuses to accept this belief, arguing that the age-long notion of ownership and control that the company is an asset of the shareholders should be dismissed.[27] In its place, a company should be seen as 'a governance structure whose social role is to administer the resources and investments made by all the company's stakeholders.'[28] She claims that in lieu of ownership, the shareholders are actually in a 'residual claim position.....that provides the economic and moral rationale for giving them certain residual control rights.'[29] She avers that it should not be the fact that we casually call them 'owners' as it is impossible to ascribe ownership to a given party or another in this kind of corporate governance without asking questions as to 'which parties in the corporate enterprises are contributing what resources and which ones are bearing what risks'[30] She talks about *de facto* control,[31] that is, there are other stakeholders other than shareholders who have made investments in the modern companies and bear risks similar to those of the shareholders even though they do not invest equity capital in the company, for instance, specialised employees - with specific skills - whose skills are needed only in a given or limited companies. These skills, she pointed out, may not be very valuable if taken somewhere else outside the company.[32]

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[23] Wilson, G (2011) 'From Black box to Glocalised Player? Corporate Personality in the Twenty-first Century and the Scope of Law's Regulatory Reach' 62(4) N.I.L.Q 433, at p 443.
[24] Berle and Means (above, n 9), see the preface of the book.
[25] This belief is not universally accepted as there are still some supporters of the traditional duty of the company.
[26] Kuras, for instance, solicits that corporate law should 'confront the harmful effects on stakeholders that shareholder wealth maximisation produces.' Kuras, R.O (2002) 'Corporate Social Responsibility: A Canada – US Comparative Analysis' 28 Man Law Journal 303, at p 306.
[27] Bainbridge held a similar view. He even made a case that it is the board of directors, as against the shareholders as is widely accepted, that is better placed to be identified as the owners of the public company. See Bainbridge, S.M (2006) 'Director Primacy and Shareholder Disempowerment' 119 Harvard Law 1735.
[28] Blair, M (1995) 'Ownership and Control: Rethinking Corporate Governance for the Twenty-First Century' Brookings Centre for Law, Economics and Politics, www.brook.edu./PA/pressurel/ownership.Htm, at p 1. See also Blair and Stout 'A Team Production Theory' (above, n 11).
[29] Blair, M (1996) 'Wealth Creation and Wealth Sharing', Brookings Institution- Excerpt Published by US News Culture and Ideas, at p 1. This is the key to modern economic reasoning - law and economic nexus.
[30] Ibid, at p 2.
[31] Ibid.
[32] Freedman has a similar line of thought. He believes that there are more than just shareholders who contribute to a corporation. Freedman, E (1984) *Stakeholder Management: Stakeholder Approach*, Boston: Pitman/Ballinger. Keay also argues that shareholders are not necessarily the corporate constituency most affected by the company's decision. Keay, A (2007) 'Corporate Directors Behaving Poorly: Disciplining Options for Shareholders' Journal of Business Law 656.

Berle and Means seem to have accepted that shareholders who are now passive in the management of the company cannot claim the sole benefit of the corporate activities as they have surrendered the right to such exclusive claim by their passivity,[33] noting that by so doing, the shareholders have released the community of the obligation to protect them to the full extent implied in the doctrine of strict property rights. This clears the way for the pressure for more inclusivity of the interests of other non-shareholding stakeholders to be mounted. Berle and Means conceded that the claims of the shareholders can neither 'stand against the paramount interests of the community'[34] nor 'stand in the way of the modification of these rights in the interests of other groups.'[35] They accepted that the passive property right must one day surrender to the larger interests of the society.[36] The right time for that to happen is unarguably now when the government - no matter how benevolent and people-oriented it is - cannot adequately cope with or meet up with the social needs of her people especially in the areas of infrastructural provision, good health-care system, security demands/provisions, funding of education and other ever-increasing welfare demands of her citizens. The institution or organisation that is well organised and has the capacity, financial muscles and means to assist the government in meeting these societal demands is the big public corporation. This (corporate assistance or intervention) is most needed in poverty-stricken African and Third-World countries with weak state economy that can hardly provide the basic needs of her citizens.

Consequently, the apparent 'over concentration' of the board, in a shareholder primacy regime, on furthering the interests of the company - widely seen and equated with those of the shareholders[37] and therefore considered met once the shareholders are made happy, of course, through maximising investment returns for them - is becoming objectionable to many.[38] These campaigners[39] argue that the stakeholders contribute immeasurably (in varied ways) to the success of the company, pointing out that the corporation is itself a product and part of the society[40] and not one existing in isolation[41] solely as a means of making profit for the shareholders and nothing else.[42] Undoubtedly, what a company does and how it does it affects and is affected by a lot of stakeholders: the company's employees and their dependants are dependent on the company; its customers; suppliers and the local community are equally affected by the company's business activities and decisions. Furthermore, the company's products and the way they are made impact on the environment.[43] It may, therefore, not be out of place for a 'responsible' and broader-thinking board to be mindful of these facts and adopt a more stakeholder-oriented approach in its activities.[44] The advocates of this inclusivity approach are convinced that it can assist the company in creating and maintaining an effective relationship with its stakeholders to the benefit of both the company (the shareholders) and non-investing stakeholders.[45] Thus, Andriof *et al*[46] argue that the interactivity and mutuality of relationship between the company and its stakeholders point clearly to the fact that companies

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[33] In their own words, as shareholders in big public companies have become passive property owners, they have 'surrendered the right that the corporation should be operated in their sole interest.' Berle, A.A and Means, G.C, *The Modern Corporation and Private Property* (1932, rev. ed. 1967) at p 312.

[34] Ibid.

[35] Ibid.

[36] If there were any time this should be done, the (right) time is now when the government is becoming increasingly unable to meet up with the ever-increasing social, economic, educational, environmental and security and other demands of her citizens, warranting or necessitating assistance from a very organised and properly managed and wealthy entity like big corporations.

[37] See Davies, P (2010) *Introduction to Company Law* (2nd ed.), New York: OUP, at p 159; *Brady v Brady* (1987) 3 BCC 353; [1988] BCLC 20 C.A.

[38] Cassidy, for instance, argued that 'all businesses must discard the simple concept of maximising shareholder value and instead focus on the optimisation of shareholder value by satisfying the legitimate but revolutionary needs of its stakeholders.' Cassidy D (2003) 'Maximising Shareholder Value: The Risk to Employees, Customer and the Community' 3(2) Corporate Governance 32, at p 33. Emphasis in original.

[39] See for instance, Lipton, M and Rosenblum, S (1991) 'A New System of Corporate Governance: the Quinquenial Election of Directors' University of Chicago L.R 187; Arsalidou, D (2007) 'Shareholder Primacy in Clause 173 of the Company Bill 2006' 28(3) Company Lawyer, 67.

[40] Dine, J (2000) *The Governance of Corporate Groups* CUP, at p 1.

[41] Croucher, R and Miles, L (2010) 'Corporate Governance and Employees in South Africa' 10(2) J.C.L.S 367; Ireland, P (1996) 'Corporate Governance, Stakeholding, and the Company: Towards a Less Degenerated Capitalism?' 23(3) J.LS 287.

[42] The statement of American court in *A P Smith Manufacturing Co v Barlow* 39 ALR 2d 1179 (1953) at p 1187 is instructive. Here, the court said that 'just as the conditions prevailing when corporations were originally created required that they serve public as well as private interests, modern conditions require that corporations acknowledge and discharge social as well as private responsibilities as members of the communities in which they operate.'

[43] Davies pointed out that 'the substance of social responsibility arises from concern for the ethical consequences of ones acts as they might affect the interests of others. Davies, K (1967) 'Understanding the Social Responsibility Puzzle' 10(4) Business Horizons 45, at p 46.

[44] See Wallace, J (2003) 'Value Maximisation and Stakeholders' Theory: Compatible or Not?' 15(3) J.A.C.F 120.

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

[46] Andriof, J *et al* (2002) *Unfolding Stakeholder Thinking,* Sheffield: Greenleaf Publishing, at pp 9-10 and 16.

and stakeholders share power and responsibility of influencing the profit potentials of the company and benefits of the company's success to the society.[47] Similarly, the Commission on Public Policy and British Business observed, *inter alia*, that 'maximising long-term profit, which accrues to shareholders, will generally require co-operation with employees, suppliers and others.....'[48]

Thus, there seems to be a general appreciable understanding that the positive reputation of a company as a responsible and responsive corporation and the integration of the non-shareholding stakeholders' welfare are essential to members' wealth maximisation and long-term survival of the company.[49] Tirole[50] argues that 'stakeholder value' acknowledges that company's activities have the tendency of creating negative externalities which need to be counterbalanced, either by institutional rules or by corporations themselves. Andriof *et al*[51] noted that the agitation for wider and inclusive stakeholder approach does not mean that shareholders are no longer pivotal and important or that profitability has ceased to be vital to corporate success: the issue, rather, is that - in order to survive and be profitable, a company should engage with a range of stakeholders - who unfortunately may have a widely varied view of what it means for a company to be successful.[52] Thus, while not under-playing the contributions of the companies to the generation of wealth and the need to promote competitiveness and enterprise, Parkinson[53] noted that it remains crucial that measures should be put in place to ensure that corporate activities are conducted on terms consistent with broader social values. This is similar to a position adopted by Williams[54] who avers that while we enjoy the obvious benefits of global capitalism, it is important to introduce 'constraints - respect for human rights, protection of individual autonomy, fairness in human relations and environmental sensitivity - into otherwise 'mindless' capitalism.'

For some decades now, there has been an evident trend of increased societal concern for and attentiveness to corporate activities and policies.[55] Emphasis is being placed on corporate inclusivity with this being reflected in a number of scholarly commentaries about the corporation and corporate activities. Anthony is strongly against the idea of profit maximisation, viewing it as 'immoral' since it favours the shareholders at the expense of the other non-shareholding stakeholders.[56] Further, Drucker accuses the concept to be the cause of the apparent contradiction between profit and company's ability to make a social contribution.[57] The corporate stakeholder approach is 'premised on the theory that groups in addition to shareholders have claims on a company's assets and earnings because those groups contribute to a company's capital.'[58] Advocates of stakeholder approach thus maintain that no group that has made contribution to corporate success should find itself going unrecognised.[59] They insist on achieving a balance of risks and rewards, of rights and responsibilities that is inclusive and is seen

[47] See also Keay (above, n 3), at p 341.

[48] *Promoting Prosperity: A Business Agenda for Britain* (London, 1997) at p 105. The European Commission holds a similar view, stressing that *by addressing their wider/social responsibilities, corporations 'build long-term employee, consumer and citizen trust as a basis for sustainable business models. Higher levels of trust in turn help to create an environment in which enterprises can innovate and grow.'* See E.C, Brussels, 25.10.2011 COM(2011) 681 final, at p 3.

[49] See Becchetti, L *et al* (2009) 'Income, Relational Goods and Happiness' Applied Economics 1. ALI was very emphatic about a company behaving ethically and responsibly that it insisted that companies ought to do so whether or not it will positively enhance the profit of the firm: '.....Even if corporate profit and shareholder gain are not (thereby) enhanced, the corporation, in the conduct of its business.....may take into account ethical considerations that are reasonably regarded as appropriate to the responsible conduct of business.' *American Law Institute (ALI), Principles of Corporate Governance* (Philadelphia, 1994), para 2.01(b).

[50] Tirole, J (2001) 'Corporate Governance' 69(1) Econometrica 1.

[51] Andriof J *et al* (2002) Unfolding Stakeholder Thinking, Sheffield: Greenleaf Publishing,, at p 9.

[52] See also Bone J (2011) 'Legal Perspective on Corporate Responsibility: Contractarian and Communitarian Thoughts?' 24 CJLJ 277, at p 287.

[53] Parkinson, J (2003) 'Disclosure and Corporate Social and Environmental Performance: Competitiveness and Enterprise in a Broader Social Frame' 3 J.CL.S 3; Parkinson, J (2002) 'Inclusive Company Law' in John de Lacy (ed.) *The Reform of United Kingdom Company Law*, London: Cavendish Publishing.

[54] Williams, C.A (1999) 'The Securities and Exchange Commission and Corporate Social Transparency' 112 Harvard L.R 1197, at p 1296.

[55] This got to its peak since the recent global economic crisis and its (social and economic) consequences. The economic meltdown has 'to some extent damaged consumer confidence and level of trust in business. It has focused public attention on the social and ethical performance of enterprises.' – European Commission, Brussels, 20.10.2011 COM(2011) 681 final, at p 4. Again, this societal attentiveness is also traceable, *inter alia*, to the growing environmental concerns and global warming to which corporate and industrial activities are believed to be one of the chief contributors.

[56] Anthony, R.N (1966) 'The Trouble with Profit Maximisation' in M.S Wadia (ed.) *The Nature and Scope of Management*, Chicago: Scott, at pp 47-55.

[57] Drucker, P.F (1973) *Management: Task – Responsibilities – Practices*, New York: Harp & Row.

[58] Karmel, R.S (1993) 'Implications of the Stakeholder Model' 61 George Washington L.R 1156, at p 1171.

[59] See Kiarie (above, n 3), at p 332; Dean, J (2001) 'Stakeholding and Company Law' 22 Company Lawyer 66, at p 69.

to be fair and equitable to all concerned.[60] It seems reasonable to think that the success of a company depends on (the) care for the people who work for the company and for the wider community. Thus, Stephen Timms MP alleges that a corporation's 'pursuing the interests of shareholders, and recognising wider responsibilities, is complementary to each other.....'[61] with this being echoed by Margaret Hodge MP.[62] Parkinson seems to have a similar thing in mind when he advised that making legal provision for a frame-work of rules to promote the creation and maximisation of shareholder wealth is not and should not be the only public policy goal in relation to companies, pointing out that the law should also recognise that companies are important social actors whose decisions have major impacts, for good or ill, on a wide range of groups.[63]

3. Conclusion

As can be gathered from the above discussions, the original notion or premise under/upon which shareholders of the company were deemed to be the owners of the company and, as such, entitled to the business to be run purely in their own interests and to ensure that they make optimal profits or returns for their investments in the company is/was because just like in the case of sole trade and partnership, ownership of companies was, at that time, fused with control. As corporations grew bigger and the need for them to raise more money to run their businesses coupled with its apparent inordinate quest to make huge wealth and dominate the market, and in some cases, control the society, most of them went public by selling their shares in the stock/capital market enabling any member of the public who wishes to be a shareholder/member of the company to do so by purchasing its shares. Shares of such a company are also freely transferable as the restriction on the transferability of shares of private companies were removed once the company becomes a public company, making it very easy for public companies' shares to be easily bought and sold in the capital market. This resulted to a very diverse shareholding and shareholders.[64] Shareholders thus, became mere contributors of money for the big corporation with little or no managerial roles. Corporate ownership thus became divorced from control. To make matter worse, institutional investors eventually emerged with a number of them having little or no interests in the management of the corporation, insofar as enough dividend is paid to them at the end of the year and the worth of the company's shares is appreciably appreciating. The same applies to most individual investors. A corporation thus become a huge, roomy and spacious economic vehicle to carry and accommodate a huge number of investors who are solely after wealth maximisation, leaving the management of their wealth in the hands of hired managers. All these combined to make it highly questionable whether such class of shareholders still qualify to be viewed or called 'owners' of the company, thereby justifying the traditional position of company law that the primary corporate objective should be to run such a company in their own economic benefits, which, of cause, is to generate maximum wealth for them, oftentimes, this is done in disregard to the interests of other non-shareholding stakeholders. Under this setting, attention should and can be paid to the interests of these non-shareholding constituencies only if doing so will maximise the shareholders' wealth.

The researcher is consequently of the opinion that presently, it appears improper to regard shareholders as the sole owners of the corporation as some other corporate stakeholders have a tangible stake in the company which therefore requires recognition and protection also by both the nation's corporate legislation and the managers/directors of the company. Some of these non-shareholding stakeholders, for instance - employees, may even end up suffering more when such a company goes into liquidation/insolvency. There is no gainsaying the fact that some of these shareholders may have made enough returns for their investment in the company.[65] Some other shareholders came about their shareholding in the company through inheritance and may therefore not feel much pain in the occurrence of such insolvency. Most employees, on the other hand, have subsisting employment interests in the company and would not want anything untoward to happen to the company as it is the only source of livelihood for them and their dependants. This is more so in many Third-World countries where scarcity of jobs is the order of the day resulting to almost impossibility of an employee who lost his/her job owing to the liquidation of his/her company to gain a new meaningful employment. It appears apt, therefore, to say that a big public company is and should remain both a social and economic entity, and should be run for the greater good of its stakeholders.

[60] See for instance, Dean, J (2001) *Directing Public Companies*, Cavendish Publishing.

[61] Rt. Hon. Stephen Timms MP, (Minister of Corporate Social Responsibilities, UK), 2008.

[62] When she said: '.....Pursuing the interests of shareholders and embracing wider responsibilities are complementary purposes, not contradictory ones.' (Hon Margaret Hodge MP, *Companies Act 2006, Duties of Company Directors, Ministerial Statements,* at p 2 (London: DTI, June 2007)) Continuing, she said 'I strongly believed that businesses perform better, and are more sustainable in the long term, when they have regard to a wider group of issues in pursuing success. That is a common-sense approach that reflects a modern view of the way in which businesses operate in their community: they interact with customers and suppliers; they make sure that employees are motivated and properly rewarded; and they think about the impact on communities and environment. They do so at least partly because it makes good business sense.' Ibid.

[63] Parkinson (2000) (above, n 8), at p 30.

[64] Even a company can buy shares of/from another company.

[65] The view or opinion of Henry Ford is germane here as it is a good case in point. See *Dodge v Ford Motor Co*. (1919) 170 N.W. 668. Here, Henry Ford was of the view that the shareholders had been very well rewarded on their investment in the company. He therefore proposed to declare no further special dividends but only the regular dividends in order, among other things, 'to employ still more men, to spread the benefits of this industrial system to the greatest possible number, to help them build up their lives and their homes.' Ibid, at p 683.