



RECONCILING THE DISCONNECT BETWEEN THE STATEMENT OF CORPORATE OBJECTIVE AND CORPORATE STRUCTURE UNDER THE NIGERIAN CORPORATE LAW *

Abstract

The matter of the corporate objective is particularly important for its bearing on the duties of directors and their enforcement. Through doctrinal research, this paper explored the disconnect between the statement of corporate objective and the corporate structure supported by the Nigerian corporate law. While the law requires the company director to consider the best interests of the company in making corporate decisions, thereby suggesting an entity maximisation approach to management, the law has further set corporate structure against this end by arming only the board of directors and the general meeting with leverage to participate in, as well as influence, the decision making process, to the exclusion of company employees, who have also been identified as entitled to the director's consideration. This arguably helps in perpetuating the shareholder primacy norm. Corporate objective and corporate structure are therefore, not in sync. To reconcile the corporate objective statement with a corporate structure appropriate to it, employees need to be accommodated in terms of participation as well as complainant status, with respect to corporate decisions.

Keywords: Corporate Objective, Corporate Structure, Corporate Governance, Directors, Shareholder Primacy, Employees

1 Introduction

The company is often structured by law in a manner that ensures its powers are divided between its shareholders in a general meeting and a board of directors which appoints managers responsible for its daily running. This style of corporate governance, also referred to as the 'Anglo-Saxon' model, is the more common type world-wide, and the one to which Nigerian company law apparently subscribes.¹ However, corporate governance templates are changing. There is increasingly a wider appreciation of the impact of corporate decisions on stakeholders.² Even modern captains of industry are recognising the importance of requiring the corporation to contribute to the common good.³ The danger of shareholder primacy in the boardrooms has since been acknowledged in several quarters,⁴ so that a more stakeholder approach is now encouraged not only by corporate codes of ethics⁵ but to some extent, even corporate law. For instance, most states in the United States have enacted so-called stakeholder statutes which relieve corporate directors from the duty to treat the 'interests of the company' as analogous with the interests of its shareholders, while the UK's Companies Act 2006 in s172 requires directors to consider a host of factors before making decisions.

* **Hannatu Adamu** LL.M (ABU), LL.B (ABU), BL, Lecturer, Department of Commercial Law, Faculty of Law, Ahmadu Bello University Zaria. Email: hannatuadamu@abu.edu.ng.

¹ See Companies and Allied Matters Act No. 3 of 2020, (hereinafter, CAMA), s87. Unless otherwise stated, all sections cited refer to this law. See further, Elewechi Okike and Peace Okougbo, 'Corporate Governance in Nigeria' in Elewechi Okike (ed), *Corporate Governance in Commonwealth Countries* (CENTRAG, 2019), 7; Samuel E. Ojogbo and Nwanneka V. Ezechukwu, 'Shareholder Protection: A Comparative Review of the Corporate Legal/Regulatory Regimes in the UK and Nigeria' [2020] (64)(3) *Journal of African Law*, 399-424, 420.

² Blanaid Clarke, 'The EU takeovers Directive: A shareholder or Stakeholder Model' in Cynthia A. Williams Peer Zumbansen (eds), *The Embedded Firm: Corporate Governance, Labour and Finance Capitalism* (Cambridge, 2011), 247.

³ *The Economist* 'What Companies are for: Competition, Not Corporatism, is the Answer' (August 23 2019)

<<https://www.economist.com/leaders/2019/08/22/what-companies-are-for?cid1=cust/ednew/n/bl/n/2019/08/22n/owned/n/n/nwl/n/n/a/296844/n>> (accessed 2022-08-08)

⁴ Virgile Chassagnon and Xavier Hollandts 'Who are the owners of the firm: Shareholders, employees or no one? [2014] (10)(1) *Journal of Institutional Economics* 47-69, 48.

⁵ Such as the Financial Reporting Council of Nigeria Code of Corporate Governance 2018 (FRCN); OECD Principles of Corporate Governance 2015.



The modern company has become quite influential as the dominant business activity today, with the consequences of its decisions and the services it provides affecting the lives of many people across national borders, in terms of privacy, communication, essential commodities, politics and even national security.⁶ In view of this, the increasing interest in reevaluating its role in society and rethinking its purpose in corporate law discourse, is justified.⁷ The recently reviewed Nigerian company law, the Companies and Allied Matters Act 3 of 2020 (CAMA), requires the company director to act in the best interests of the company as a whole in order to preserve its assets, further its business, and promote the purposes for which it was formed in s305(3). Under the same legislation, however, corporate powers do not reflect this arrangement. Although s305(4) requires the director to consider the interests of the company's employees along with the company's members in decision making, the latter clearly have the support of the law to pressure directors to consider their interests, thereby encouraging shareholder primacy management, whereas employees and any other stakeholders of the company have no such legal support.

Considering the interests of members of the company are clearly not 'primary' from the statement of corporate objective under s305(3), it is curious that the corporate structure supported by s87 grants members important decision-making powers to the exclusion of all other stakeholders of the company, including employees who have been mentioned under s305(4). This divergence between the statement of corporate objective and corporate structure, is what this paper seeks to explore, towards bridging the gap created by this disconnect.

2 The Company and Corporate Structure

The company has been identified as 'a mere legal fiction that exists only in the eyes of the law.'⁸ Its artificial nature makes a discussion of the company's structure highly imperative, especially since an understanding of the entity cannot be complete without an understanding of the fact of the company's organs which lawfully exercise its powers. In other words, the corporate structure—'who' the company is in factual terms—significantly manifests in the company's organs. The registered company, particularly within the Anglo-Saxon jurisdiction, is traditionally structured with a general meeting consisting of all its members, and a board of directors, a body chiefly responsible for the governance and control of the company. S87(1) CAMA provides that 'a company shall act through its members in general meeting or its board of directors or through officers or agents, appointed by or under authority derived from the members in general meeting or the board of directors.' S89 CAMA further assumes any act of the general meeting, the board, or the managing director, to be the act of the company itself. Hence, these have generally been considered the 'organs' or 'alter-ego' of the company,⁹ effectively, 'the company'.

Although the law recognises the board as the proper organ to exercise the company's management powers as well as all powers not exercisable by the general meeting as a default rule, the articles which contain the regulations governing the company, can generally decide the body or officers in charge of management powers.¹⁰ Hence, the general meeting can theoretically influence

⁶ Consider for instance, how social media companies such as Twitter Inc. and Meta Platforms Inc. of Facebook and co., removed certain politicians, including the then President of the United States, Donald Trump, from their platforms, in order to contain the historic insurrection by his supporters at the Capitol Building in Washington, of 6 January 2021. See Dan Barry, Mike McIntire and Mathew Rosenberg, "'Our President Wants Us Here": The Mob that Stormed the Capitol' *New York Times* (New York, 9 January 2021) <<https://www.nytimes.com/2021/01/09/us/capitol-rioters.html>> accessed 3 February 2023.

⁷ Beate Sjaafjell and others, 'Shareholder Primacy: The main barrier to sustainable companies' in Beate Sjaafjell and Benjamin J. Richardson (eds), *Company Law and Sustainability: Legal Barriers and Opportunities* (Cambridge, 2015), 80.

⁸ *Ladejobi v Odutola Holdings Ltd.* (2002) 3 NWLR (Pt.753) 121,153.

⁹ See *Ladejobi v Odutola Holdings Ltd.* supra; *Faith Enterprises Ltd. v Basf (Nig) Ltd.* (2001) 8 NWLR pt. 714, 244.

¹⁰ S87(2) and (3). The articles are further important because, once registered, they are as a deed between the company and its members and officers and between the members and officers themselves. See s46(1).



the directors in the exercise of their board power by altering the articles or even threatening to remove them or refusing to re-elect them.¹¹ Thus, any company can decide to allocate any corporate power to the board or the general meeting as it thinks fit. However, if the board acts in good faith and with due diligence in the lawful exercise of its powers, it is not bound to obey the directions or instructions of the general meeting.¹² The board is equally allowed to, and in fact often does, delegate some or all of its powers to the managing director,¹³ who thereby occupies a special office.¹⁴ To balance power sharing in the corporation, however, the general meeting has equally been armed with power to act and in some instances, even encroach upon the powers of the board, such as where the board deliberately refuses to act,¹⁵ or where directors do not act in good faith or with due diligence.¹⁶

One of the most important incidents of legal personality for the corporation, is the ability to sue and be sued.¹⁷ The duties directors usually owe the company¹⁸ translate to rights in favour of the company against the directors and therefore, as since established by *Foss v Harbottle*¹⁹ and now codified,²⁰ the company has always been the proper plaintiff in any action enforcing its rights. Any other person attempting to sue on its behalf would normally encounter the problem of *locus standi*. However, because it is possible for the directors who are in breach to also constitute a majority in the board or the general meeting²¹—the organs of the company through which it may be moved to sue, —corporate law has had to recognise exceptions to this general rule by means of permitting direct and derivative actions by members where they can prove the existence of certain conditions²² with respect to the management of the company. Outside of these however, no other individuals or groups can sue the directors for breaches of duties they owe the company.

3 The Question of the Corporate Objective

All purposeful behaviour requires the existence of a single value objective function.²³ Every societal invention presumably targets a useful purpose. One fundamental question of corporate governance is that regarding the corporate objective. It is asked, ‘what is the benefit that companies exist to provide and who should be the beneficiaries?’,²⁴ ‘Who should receive the profits of industry?’,²⁵ ‘What is a company for?’,²⁶ ‘To whom and for what ends is corporate management responsible?’,²⁷ ‘For Whom should corporations be run?’²⁸ The matter of the corporation’s best interests, corporate purpose, and fiduciary duties of directors, are three related subjects in corporate law,²⁹ which

¹¹ See Greer L.J. in the ancient case of *Shaw & Sons (Scalford) Ltd. v Shaw* (1935) 2 K.B. 113, 134.

¹² S87(4).

¹³ S88(b).

¹⁴ *Adebayo v Johnson* (1969) All NLR, 171 at 187.

¹⁵ S87(5).

¹⁶ S87(4).

¹⁷ S42.

¹⁸ See ss 305-309.

¹⁹ (1843) 2 Hare 461, 67 ER 189.

²⁰ S341.

²¹ Indeed, this would generally be the rule rather than the exception for most private companies.

²² S343 (a) to (g) and s346(2)(a) to (f).

²³ Michael C. Jensen, ‘Value Maximisation, Stakeholder Theory, and the Corporate Objective Function’ [2010] (22)(1) *Business Ethics Quarterly* 32-42.

²⁴ John Argenti, ‘Defining Corporate Objectives’ [1969] *Society for Long Range Planning* 26-27.

²⁵ Adolf A. Berle and Gardiner C. Means, *The Modern Corporation and Private Property* (The Macmillan Company, 1932), 333.

²⁶ Charles Handy, ‘What is a Company For?’ [1993] (1)(1) *Corporate Governance*, 14-17, 14.

²⁷ Eugene V. Rostow, ‘To Whom and For What Ends is Corporate Management Responsible?’ in Edward S. Mason (ed) *The Corporation in Modern Society* (Harvard University Press, 1959), 46.

²⁸ Margaret M. Blair, ‘For Whom Should Corporations be Run?: An Economic Rationale for Stakeholder Management’ [1998] (31)(2) *Long Range Planning* 195-200.

²⁹ Andrew Wicks and F.A. Elmore and David Jonas, ‘Connecting Stakeholder Theory to the Law and Public Policy’ in Jefferey S. Harrison and others (eds), *The Cambridge Handbook of Stakeholder Theory* (Cambridge University Press, 2019) 105.



continue to encourage debate *ad nauseam*.³⁰ The idea is to identify the utility of the corporation. The question of the corporate objective is particularly important for its bearing on the duties of directors and their enforcement,³¹ for the duties must necessarily be towards achieving the corporate objective.

The corporation being a feature of capitalism, that ideology has generally shaped the perception of company law, and indeed the courts,³² as to what a corporation must aim to achieve. Business schools and even law schools,³³ often teach that profit maximisation is the purpose of the corporation in society and that as their agents, it is the duty of directors to pursue this end on behalf of shareholders.³⁴ The corporate objective therefore more popularly features in terms of the economic function the company has been created to perform. However, in terms of substantive law, it is often provided that the chief responsibility of the director in the company, is to achieve its best interests³⁵ or promote its success.³⁶ But the company is also an artificial, intangible, abstract legal construct.³⁷ How then can we tell what its best interests are, or determine its idea of success? It is also generally agreed that long-term value creation is a legitimate purpose of the corporation,³⁸ but for whom? Essentially due to this dilemma, the spirit of the Berle-Dodd debate³⁹ persists,⁴⁰ which greatly influenced two prominent competing theories of corporate governance later popularised in corporate law, economics and business management discourses: the shareholder primacy theory and the stakeholder theory.

Shareholder primacy refers to the idea of directors putting the interests of the shareholders first before any other group or factors, so that the corporation serves no public purpose, unless the purpose furthers the financial interests of the shareholders.⁴¹ This idea has had a strong normative force in shaping management practices,⁴² resulting in the shareholder primacy norm (SPN), by which managers feel compelled, even sans legal requirements, to make decisions that further the interests of shareholders.⁴³ Since the interest of shareholders is to maximise return on investment, SPN would

³⁰ Henry N. Butler and Fred S. McChesney, 'Why They Give at the Office: Shareholder Welfare and Corporate Philanthropy in the Contractual Theory of the Corporation' [1999] (84)(5) *Cornell Law Review* 1195-1226, 1195.

³¹ John Quinn, 'The Corporate Objective: Reinterpreting Directors' Duties' [2016] PhD Thesis, *Dublin City University*, 3 <http://doras.dcu.ie/20959/1/The_Corporate_Objective_and_Reinterpreting_Directors%27_Duties.pdf> accessed 2 February 2023.

³² Consider, for instance, the famous cases of *Hutton v West Cork Railway* (1883) 23 Ch. D. 654 particularly at 673; *Dodge v Ford Motor Co.* (1919) 170 N.W. 668; *Parke v Daily News Ltd.* (1962) Ch. 927; and *Re W & M Roith Ltd.* (1967) 1 W.L.R. 432.

³³ Darrell West 'The Purpose of the Corporation in Business and Law School Curricula' [2011] *Governance Studies at Brookings*, 18 <https://www.brookings.edu/wp-content/uploads/2016/06/0719_corporation_west.pdf> accessed 2 February 2023.

³⁴ Mary C. Gentile, 'Corporate Governance and Accountability: What Do We Know and What Do We Teach Future Business Leaders' [2004] *The Aspen Institute Business and Society Program* 5 <<https://www.aspeninstitute.org/content/uploads/files/content/docs/bsp/EABIS.GENTILE.2004-1.DOC>> accessed 2 February 2023; Sumantra Ghoshal, 'Bad management theories are destroying good management practices' [2005] (4)(1) *Academy of Management Learning and Education* 75-91.

³⁵ Consider for instance Australian Corporations Act 2001 s181(1); Canada Business Corporations Act 1985 s122(1)(a); CAMA s305(3).

³⁶ UK Companies Act 2006 (CA) s172(1).

³⁷ Peter Nobel, 'Stakeholders and the Legal Theory of the Corporation' in Michel Tison and others (eds) *Perspectives in Company Law and Financial Regulation* (Cambridge University Press, 2009), 170.

³⁸ Wicks and Elmore and Jonas fn29, at 103.

³⁹ Also known as "the debate on corporate governance". Irene Lynch Fannon, *Working within Two Kinds of Capitalism: Corporate Governance and Employee Stakeholding: US and EC Perspectives* (Hart Publishing, 2003), 7; Jean Jacques Du Plessis and others, *Principles of Contemporary Corporate Governance* (Cambridge University Press, 2011), 300.

⁴⁰ Clarke fn 2, at 239.

⁴¹ Thomas P. Byrne, 'False Profits: Reviving the Corporation's Public Purpose' [2010] (57) *UCLA Law Review Discourse* 25-49, 36.

⁴² David Millon, 'Corporate social responsibility and environmental sustainability' in Beate Sjaafjell and Benjamin J. Richardson (eds), *Company Law and Sustainability: Legal Barriers and Opportunities* (Cambridge University Press, 2015), 56.

⁴³ David Ronnegard and N. Craig Smith, 'Shareholders vs. Stakeholders: How Liberal and Libertarian Political Philosophy Frames the Basic Debate in Business Ethics' [2013] (32)(3-4) *Business and Professional Ethics Journal*, 183-220, at 184.



result in shareholder value maximisation (SVM).⁴⁴ Managers thus assume that the company exists first and foremost to maximise the value of the shareholders' investments.⁴⁵

Stakeholder theory, in contrast, proposes the idea that the corporation as an entity, acting through its directors, owes a duty to consider the interests of all its stakeholders. Its advocates demand a new approach to corporate governance, which acknowledges companies as much more than simply vehicles for the maximisation of shareholder value but also institutions in themselves, where the interests of other disparate stakeholder groups are vested.⁴⁶ Stakeholders include groups or individuals who benefit from or are harmed by, and whose rights are violated or respected by, corporate actions; those groups which have a stake in or claim on the firm.⁴⁷ Stakeholder theory thus attempts to dilute the arguably excessive importance given to maximizing shareholder wealth in favour of a joint welfare of stakeholders.⁴⁸

However, both theories have detractors. The SPN has been criticised⁴⁹ as resulting in directors focusing mostly on share price maximisation, often leading to short-term⁵⁰—rather than long-term—success, by neglecting the contributions of groups vital to the overall success of the company (stakeholders)⁵¹ and employing business practices that are often unethical, immoral or even illegal, to achieve that end. On the other hand, critics describe stakeholder theory as simply 'thinly veiled socialism'⁵² 'incompatible with business,'⁵³ challenging its normative foundation as explicitly and unabashedly moral, having to be defended in moral terms.⁵⁴ They argue that stakeholder theory tampers with the rights of the capital owner, undermines private property and generally destroys wealth.⁵⁵ They assert that it risks leaving directors accountable to no one, since there is no clear yardstick for judging their performance.⁵⁶ And when multiple interests are divergent, there is still the question of how the director is to decide. In spite of the criticisms however, stakeholder theory has moved from the margins to the mainstream of business conversations, both among academics and practitioners,⁵⁷ so much so that codes of ethics and modern company legislation now appear to

⁴⁴ Above, at 185.

⁴⁵ Millon fn 42, at 53.

⁴⁶ Janet Williamson, 'The Road to Stakeholding' [1996] *The Political Quarterly*, 209-217, 212.

⁴⁷ R. Edward Freeman, 'Stakeholder Theory of the Modern Corporation' [2001] *General Issues in Business Ethics*, 38-48, at 39 and 41 <<http://academic.udayton.edu/lawrenceulrich/Stakeholder%20Theory.pdf>> accessed 4 February 2023.

⁴⁸ Arjya B. Majumdar, 'The Fiduciary Responsibility of Directors to Preserve Intergenerational Equity' [2017] (159)(1) *Journal of Business Ethics* 149-160, at 151.

⁴⁹ For a brief summary of the major points, see Andrew Keay, 'Ascertaining the Corporate Objective: An Entity Maximisation and Sustainability Model' [2008] (71)(5) *The Modern Law Review* 663-698, at 669-672.

⁵⁰ Or "short-termism," defined as "seeking short-term gain to the exclusion of long-term achievement." David W. Mullins, "Foreword" in Michael T. Jacobs *Short-Term America: The Causes and Cures of Our Business Myopia* (Harvard Business School Press, 1991) iv; and "foregoing economically worthwhile investments with longer-term benefits in order to increase reported earnings for the current period." John Grinyer and Alex Russell and David Collison, 'Evidence of Managerial Short-Termism in the UK' [1998] (9) *British Journal of Management*, 13-22, at 15.

⁵¹ Poonam Puri and Tuvia Borok, 'Employees as Corporate Stakeholders' [2002] (8) *JCC*, 49-61, at 50.

⁵² Robert Phillips and R. Edward Freeman and Andrew C. Wicks, 'What Stakeholder Theory is Not' [2003] *Business Ethics Quarterly*, 479-502, at 491.

⁵³ Elaine Sternberg, 'The Defects of Stakeholder Theory' [1997] (5)(1) *Corporate Governance: An International Review*, 3-10, at 4.

⁵⁴ Thomas M. Jones and Andrew C. Wicks, 'Convergent Stakeholder Theory' [1999] (24)(2) *Academy of Management Review* 206-221, at 215.

⁵⁵ Sternberg fn 53, at 9.

⁵⁶ Len Sealy and Sarah Worthington, *Sealy and Worthington's Cases and Materials in Company Law* (Oxford University Press, 2013) 324.

⁵⁷ Paul C. Godfrey and Ben Lewis, 'Pragmatism and Pluralism: A Moral Foundation for Stakeholder Theory in the Twenty-First Century' in Jeffrey S. Harrison and others (eds), *The Cambridge Handbook of Stakeholder Theory* (Cambridge University Press, 2019), 32.



encourage the adoption of at least some of its principles.⁵⁸ Yet, the criticisms against it remain fundamental and cannot be easily overlooked.

Interestingly, the UK Companies Act 2006 (CA) adopted the principle of Enlightened Shareholder Value (ESV), after rejecting stakeholder theory for some of the reasons stated above. However, while ESV appears to require directors to consider a host of stakeholder interests, it nevertheless requires this solely in aid of the overarching duty of achieving the success of the company for the benefit of its members.⁵⁹ For this reason, critics point out that it is hardly any different from the shareholder primacy principle.⁶⁰ It is perhaps also significant to note that although UK company legislation has often been something of a model to other jurisdictions, particularly within the Commonwealth, none among those which reviewed their laws in recent times adopted its ESV principle.⁶¹

Another concept somewhat different from those mentioned above, is known as the entity maximisation theory, attributed to Andrew Keay⁶² and Daniel Attenborough.⁶³ In fact, even before them, scholars advanced the notion of the company as an end in itself;⁶⁴ an institution in its own right.⁶⁵ This derives from the distinct personality of the company as separate from its creators or associates.⁶⁶ It has been argued, 'if the firm is a fiction, the shareholders who profit by the agent's services ought to bear the burden of his negligence. If it is a real person, it is evident that it must be held to account,'⁶⁷ which it is. Surely, the corporation exists independent of its members and officers, who come and go. Directors are appointed to serve the corporation and are answerable only to it.⁶⁸ The corporation is thus considered a real person with its own interests,⁶⁹ incapable of being owned.⁷⁰ Hence, members have no right to the corporation's assets⁷¹ and can only, at most, claim a series of benefits arising from share ownership.⁷² Keay thus argues for the entity maximisation and

⁵⁸ Consider, for instance, FRCN Code Principle 27 and OECD Principles of Corporate Governance 2015 Principle IV.

⁵⁹ UK CA s172.

⁶⁰ Paul Davies and Sarah Worthington, *Gower & Davies: Principles of Modern Company Law* (Sweet and Maxwell, 2012), 543; John Birds and others, *Boyle and Birds' Company Law* (Jordan Publishing Limited, 2011), 638; Andrew Keay, 'The Duty to Promote the Success of the Company: Is It Fit for Purpose?' [2010] *Working Paper, Centre for Business Law and Practice, University of Leeds* 36 <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1662411> accessed 4 February 2023.

⁶¹ For instance, Irish Companies Act 2014, Indian Companies Act 2013, Ghanaian Companies Act 2019 and Nigerian CAMA 2020.

⁶² Andrew Keay, *The Corporate Objective* (Edward Elgar, 2011); Keay fn 49; Andrew Keay, *Company Directors' Responsibilities to Creditors* (Routledge-Cavendish, 2006); Andrew Keay, 'Formulating a Framework for Directors' Duties to Creditors: An Entity Maximisation Approach' [2005] (64)(3) *Cambridge Law Journal* 614-646.

⁶³ Daniel Attenborough, 'Giving Purpose to the Corporate Purpose Debate: An Equitable Maximisation and Viability Principle' [2012] (32)(1) *Legal Studies* 4-34, who proposed the Equitable Maximisation and Viability principle, and won the SLS Annual Conference Best Paper Prize 2011 for it.

⁶⁴ John Kay and Aubrey Silberston, 'Corporate Governance' [1995] (153)(1) *National Institute Economic Review*, 84-107, at 95.

⁶⁵ E. Merrick Dodd, 'For Whom are Corporate Managers Trustees?' [1932] (45)(7) *Harvard Law Review*, 1145-1163, at 1162-3; Waino W. Suojanen, 'Accounting Theory and the Large Corporation' [1954] (29)(3) *The Accounting Review*, 391-398, at 392.

⁶⁶ William W. Bratton, 'The New Economic Theory of the Firm: Critical Perspectives from History' [1989] (41)(6) *Stanford Law Review*, 1471-1527, at 1475.

⁶⁷ Max Radin, 'The Endless Problem of Corporate Personality' [1932] (32)(4) *Columbia Law Review*, 643-667 at 662.

⁶⁸ S 305(9).

⁶⁹ Emiliano Di Carlo, 'The Real Entity Theory and the Primary Interest of the Firm: Equilibrium Theory, Stakeholder Theory and Common Good Theory' in Sandro Brunelli and Emiliano Di Carlo (eds), *Accountability, Ethics and Sustainability of Organizations* (Springer Nature, 2020), 4.

⁷⁰ John Parkinson, 'Model of the Company and the Employment Relationship' [2003] (41)(3) *British Journal of Industrial Relations* 481-509, at 483; Chassagnon and Hollandts fn 4, at 58; Paddy Ireland, 'Capitalism Without the Capitalist: The Joint Stock Company Share and the Emergence of the Modern Doctrine of Separate Corporate Personality' [1996] (17)(1) *Legal History*, 41-73, at 48.

⁷¹ Chassagnon and Hollandts fn 4, at 49.

⁷² Murray A. Pickering, 'The Company as a Separate Legal Entity' [1968] (31)(5) *Modern Law Review*, 481-511, at 509.



sustainability theory (EMS),⁷³ proposing that management should focus on the entity and what will maximise its long-term position, with any benefits to investors then flowing from that very object.⁷⁴

Attenborough, improving on Keay's model, described his version of the theory as the Equitable Maximisation and Viability (EMV) principle, whereby the objective of the corporation becomes providing enhanced safeguards to the demonstrable, legitimate *intra* corporate interests against adverse impacts that its activities engender, facilitating the corporation's longevity and viability as a separate juridical entity.⁷⁵ But directors must also consider the legitimate interests and expectations of the constituent groups that contribute to the entity. In what he described essentially as 'a duty not to harm,' Attenborough advanced the argument that corporations must owe duty, like states, to safeguard against actual and potential adverse impacts caused by their activities, as well as the imbalance in bargains between constituency groups and the company.⁷⁶

Long-term value creation is a legitimate purpose of the corporation.⁷⁷ Achieving this is central to the aim of the two entity maximisation theories described above. The proposed models differ considerably from the shareholder primacy theory in that shareholders' interests are not central to the objective, and unlike stakeholder theory, the interests of the corporate entity and its perpetuity supersede those of its various constituents, including shareholders.⁷⁸

4 The Disconnect between Corporate Objective and Corporate Structure

The Nigerian company law has its corporate objective statement substantially captured by s305(3) CAMA thus:

A director shall act at all times in what he believes to be the best interests of the company as a whole so as to preserve its assets, further its business, and promote the purposes for which it was formed, and in such manner as a faithful, diligent, careful and ordinarily skillful director would act in the circumstances and, in doing so, shall have regard to the impact of the company's operations on the environment in the community where it carries on business operations.

This statement of the director's utmost fiduciary duty signifies the utility that the Nigerian state hopes will be derived from allowing companies exist. Considering the descriptions of both the shareholder primacy and stakeholder theory principles presented above, it appears s305(3) does not completely fit with either.

In the first place, the sub-section begins by requiring the director to act in 'the best interests of the company as a whole', which is not referring to any particular constituency of the company, much less its members. In fact, nowhere are members mentioned, so that the 'whole' must be understood to refer to the total undertaking. The term is also instructive in the sense that, assuming the company is made up of several parts—or interests—then it is not referring to any one part of it, but the entirety, as an indivisible entity. The statement thus depicts the entity theory, completely dedicated to the corporation as a separate, independent, distinct person. This reification of the

⁷³ Keay fn 49, at 663-698.

⁷⁴ *Ibid.* at 685-6.

⁷⁵ Attenborough fn 63, at 6.

⁷⁶ *Ibid.* at 15

⁷⁷ Wicks and Elmore and Jonas fn 29, at 103.

⁷⁸ However, it is noteworthy that both theorists appear to have been hampered by the same problem often encountered by stakeholder theorists in terms of means of enforcement, as both proposed leaving that to future research. See Attenborough fn 63, at 34 and Keay fn 49, at 698.



corporation recognises it as having all the powers of a natural person of full capacity,⁷⁹ with assets to its name as well as interests exclusive to it. This fact is made clear by the sub-section further suggesting what ‘the best interests of the company’ could entail, that is, preserving its assets, furthering its business, and promoting the purposes for which it was formed. This suggests a strategy towards sustainability and long-term value creation. Of course, companies, once registered, assume the attribute of perpetual succession,⁸⁰ until winding up. Directors must thus not squander the company’s assets, which belong to it,⁸¹ in order to satisfy its present constituents for some short-term gain, but must have a vision for the future.

While shareholder primacy essentially focuses on shareholders, members were not mentioned here, till s305(4) thus: ‘The matters to which the director of a company is to 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.’ Thus, although the interests of members did eventually feature in the statement of the director’s fiduciary duties to the company, they were mentioned in a different sub-section as to be clear that they are not at all the same as the interests of the company itself. In fact, they were mentioned after the interests of employees, which further confirms the supposition that there was no special treatment intended to be conferred on members. Clearly, therefore, ‘the company as a whole’ in sub-s (3) did not contemplate members in any sense but was directing our minds to the corporation itself. Otherwise, why the repetition in the very next subsection? It is submitted that, by mentioning ‘the best interests of the company’ and ‘the interests of its members’ in different, successive subsections, the law thereby implies that these are divergent.⁸²

It would also appear to be deliberate that members did not feature at all in s305(3) because the CAMA allows several types of companies to be incorporated.⁸³ The company limited by guarantee is a special type meant for the promotion of certain non-pecuniary objects and so, its income and property are to be applied solely towards their promotion, with no portion paid or transferred directly or indirectly to the members.⁸⁴ The statement in s305(3) is couched in terms that are not exclusive to any particular type of company, hence applicable to all types of companies registered in Nigeria. Thus, the interests of members are clearly not ‘primary’ from the statement of the law. One is therefore unable to immediately get the impression of shareholder primacy from that sub-section, unlike the UK law mentioned earlier, for instance.⁸⁵ As to the stakeholder question, apart from the environment and members, employees are the only other corporate constituents mentioned directly as entitled to the director’s consideration, even though the phrase ‘include’ potentially acknowledges more. This gives directors limited direction on the variety of considerations they should bear in mind, a rather poor representation of the stakeholder theory principle, which values inclusiveness.⁸⁶

However, since there cannot be an exhaustive list of matters to which a director should advert his mind in making decisions, as situations and circumstances are varied,⁸⁷ it is submitted that leaving the statement open enough to admit any matter the director could consider in good faith, is in fact the better approach. It would be unwise to fetter the discretion of the director—an entrepreneur—in this

⁷⁹ S43.

⁸⁰ S42.

⁸¹ Margaret M. Blair and Lynn A. Stout, ‘A Team Production Theory of Corporate Law’ [1999] (85)(2) *Virginia Law Review*, 247-328, at 250-251.

⁸² Hannatu Adamu, ‘Analysis of the Director’s Duty to Act in the Best Interests of the Company: A Proposal for Amendment’ [2015] (7)(1) *Ahmadu Bello University Journal of Commercial Law*, 166-184, at 177.

⁸³ S21.

⁸⁴ S26.

⁸⁵ CA s172.

⁸⁶ Richard B. Freeman and others, *Stakeholder Theory: The State of the Art* (Cambridge University Press, 2010), 26.

⁸⁷ Keay fn 49, at 698; Raymond T. Nimmer and Richard B. Feinberg, ‘Business Governance: Fiduciary Duties, Business Judgment, Trustees and Exclusivity’ [1989] (6)(1) *Bankruptcy Developments Journal*, 1-72, at 33.



province.⁸⁸ Since the law allows him to ‘act in what he believes,’ this must be left to his good business judgment, after ascertaining that he has acted in good faith in the best interests of the company. Though generously used in corporate law and literature, the terms ‘interest of the firm’ and ‘best interests of the company’ are rarely defined.⁸⁹ With good reason therefore, the court normally would not interfere with the director’s good faith judgment on the best interests of the company, if there is, on the face of it, no reason to believe that he had acted *mala fide*, even where this results in disaster for the company.⁹⁰ This is the case, even though Bowen LJ clarified, back in 1883,⁹¹ that *bona fide* cannot be the sole determinant of the discharge of this duty.⁹² Some objective element is still retained in the test of *bona fides*. There must be some connection between the *bona fides* of the director and the benefit or interests of the company.⁹³

Employees and members obviously make the list in s305(4) due to their strategic importance. In fact, the human capital theory posits that employees are investors of human capital with corporate expectations equivalent to those of shareholders who are investors of financial capital.⁹⁴ Nonetheless, it is curious that employees are mentioned before members, as to give the impression that they are intended to be more important or at least, as important as members. This juxtaposition is certainly misleading⁹⁵ and results in a disconnect between the corporate objective statement and the corporate structure under the law, considering other sections within the law arm shareholders to an extent to be able to influence directors to focus on shareholder interests, to the detriment of any other constituents of the company—even the company’s own best interests—should they care to do that, while this is not the case for employees.

Nigerian corporate law is basically structured to make directors accountable to members for how they run the company. Directors present reports for members’ scrutiny at the general meeting in each financial year,⁹⁶ whereas employees are not even entitled to attend such meetings, much less receive the directors’ reports. Furthermore, members are entitled to alter the company’s articles and memorandum,⁹⁷ receive notices of, and attend general meetings,⁹⁸ appoint proxies,⁹⁹ propose resolutions and requisition meetings,¹⁰⁰ vote,¹⁰¹ appoint and remove directors¹⁰² as well as determine their remuneration.¹⁰³ Clearly, the shareholders—as members of the general meeting and the only other organ of the company apart from the board¹⁰⁴—are the only ones statutorily armed to ensure that the directors consider their interests as paramount. Thus, although the interests of employees and potentially other stakeholders may legally form part of the director’s concern, shareholders as members are the only ones armed to ensure directors consider their interests as paramount. *A fortiori*,

⁸⁸ Michael J. Whincop, ‘A Theoretical and Policy Critique of the Modern Reformulation of Directors’ Duties of Care’ [1996] (6)(1) *Australian Journal of Corporate Law*, 72-92, at 83.

⁸⁹ Di Carlo fn 69, at 4.

⁹⁰ See *Re Smith and Fawcett Ltd.* (1942) Ch. 304; *Howard Smith Ltd. v Ampol Petroleum Ltd.* (1974) A.C. 821; *Re Regentcrest Plc. v Cohen* (2001) 2 BCLC 80; *Shepherd v Williamson* (2010) EWHC 2375, Ch.

⁹¹ *Hutton v West Cork Ry. Co.* (1883) 23 Ch.D. 654, 671 (CA).

⁹² *Hutton v West Cork Ry. Co.* supra-672.

⁹³ David Bakibinga, ‘Director’s Duty to Act Bona Fide in the Interest of the Company’ [1990] (39)(2) *The International and Comparative Law Quarterly*, 451-460, at 454.

⁹⁴ Puri and Borok fn 51, at 51.

⁹⁵ Adamu fn 82, at 176-179.

⁹⁶ Ss235(2), 238 and 342.

⁹⁷ Ss50 and 53.

⁹⁸ Ss243(1) and 251.

⁹⁹ Ss242(4) and 254.

¹⁰⁰ Ss235(9) and 239(2).

¹⁰¹ S248.

¹⁰² Ss271, 272, and 288.

¹⁰³ S293(1).

¹⁰⁴ S87 generally.



s305 contemplates only the company enforcing the duties listed thereunder,¹⁰⁵ which implies the board, or shareholders through the general meeting or derivative actions.¹⁰⁶

The dearth of judicial interpretation notwithstanding,¹⁰⁷ s305(3) and (4) combined, clearly give the impression of an entity theory of corporate governance intended, although other sections of the law tend to encourage shareholder primacy norm. It is here submitted, that this ought not to be. Although traditionally regarded as belonging to the Anglo-Saxon jurisdiction in terms of corporate governance,¹⁰⁸ Nigerian company law by its s305(3) and (4) clearly deviated from that norm by expressing the interests of the company as paramount. The corporate objective statement has thus been properly captured. In fact, it is rather commendable that the drafters of the new CAMA 2020 did not adopt the UK's ESV which ties the success or best interests of the company to shareholder benefits. Directors thus have more room for long-term focus to imbibe sustainability principles and practices. What remains to be done, however, is aligning the corporate objective statement with a proper corporate structure under the law.

5 Syncing the Corporate Objective to a Proper Structure

As observed, the corporate objective statement in s305(3) is entity-centric, focusing on the interests of the whole entity as 'the company,' while s305(4) further singles out interests of employees and members for special mention, all in aid of the main duty in s305(3) immediately above. There is then the need to reconcile the corporate objective statement with an appropriate corporate structure, so that employees are accommodated in a manner similar to members in terms of participation, to achieve the best interests of the company.

One means of including employees is by granting them complainant status. Since shareholders can now sue regarding directors' duties directly and derivatively under ss343(f) and 346(2)(a), employees likewise, could be so enabled under the law. Already, s352(d) grants the court the discretion to allow 'any other person' whom it thinks is a proper person to make an application for derivative action under s346. While the Act has not mentioned employees, it is submitted here that employees are proper applicants in this situation, considering their position in the corporation. *A fortiori*, employees are likely to learn of directors' breaches of duties long before members and are more likely to be privy to certain information critical to initiating proceedings. In fact, it has been argued that a company's employees are often better situated than its investors to oversee management effectively.¹⁰⁹ Members, in contrast, at most meet once a year and their only source of information regarding the company's affairs may be the directors' report, which may not relay complete information. Employees could also be enabled to file applications with respect to unfair prejudice and oppressive conduct under s353, on the ground that the affairs of a company are being or have been conducted in an illegal or oppressive manner. In fact, the court has discretion to permit 'any other person' it considers proper to make that type of application¹¹⁰ apart from the usual parties mentioned. It is submitted employees are proper persons within the meaning and intention of corporate law on this matter, considering their special recognition under s305(4).

¹⁰⁵ S305(9).

¹⁰⁶ Ss346-351.

¹⁰⁷ Unfortunately, there are very few reported local decisions central to directors' duties generally, and the main fiduciary duty in particular, for some reasons. See Hannatu Adamu, 'A Comparative Analysis of Directors' Duties of Care and Skill and Fiduciary Duties of Loyalty and Good Faith under the Companies' Acts of Nigeria and the United Kingdom' [2015] LL.M. dissertation, *Ahmadu Bello University Zaria*, 84-86 <<http://kubanni.abu.edu.ng>> accessed 1 February 2023.

¹⁰⁸ S87; Okike and Okougbo fn 1; Ojogbo and Ezechukwu fn 1.

¹⁰⁹ Henry Hansmann, *The Ownership of Enterprise* (Harvard University Press, 1996), 89. Though it is also conceded that employees are far more likely than shareholders to differ among themselves concerning the company's policies.

¹¹⁰ S353(1)(e).



Following from this, an area in urgent need of reforms for employees, is access to information. Pursuant to ss377 and 385, the directors' annual report is expected to contain statements regarding the interests of the company's employees.¹¹¹ In fact, employees have been identified as one of the most important user groups having reasonable right to receive information on the company,¹¹² more so the directors' report. Employee matters are likely to be of interest only to the employees. Members are thus unlikely to draw attention to any misinformation in that part of the report. Yet, the report is essentially for the consumption of the general meeting. Employees are not entitled to it as of right and may thus never know of its content until it is made public, perhaps, at the company's website. Should it contain untrue statements, therefore, the employees cannot contradict the information given to the shareholders and the public. Clearly, therefore, employees—individually or through their union—ought to be entitled to receive the directors' report before the meeting at which it is to be considered. This right to information is crucial for employees to be able to properly enjoy any complainant status.

Employee voice in information and consultation arrangements can also adjust the distribution of power between management and employees, as it facilitates increase in information flow, thereby rendering decision-making processes more transparent.¹¹³ Although the law requires companies to introduce, maintain or develop arrangements aimed at providing employees systematically with information on matters of concern to them as employees, as well as consulting employees or their representatives on a regular basis so that the views of employees can be taken into account in making decisions which are likely to affect their interests,¹¹⁴ the modalities for this arrangement have not been delineated under the law. In order for such an arrangement to be effective, there needs to be an institutional structure, a consultative body, and some rules of conduct or constitution in place¹¹⁵ required by law, all of which are clearly missing under the CAMA.

However, nothing quite helps employees as the ability to determine their own fate by voting power. One thing that can put employees within the decision-making structure at the top of the company's hierarchy, is co-determination,¹¹⁶ the legislated requirement to seat voting employee representatives on corporate policy-making boards,¹¹⁷ so that shareholders and employees share control.¹¹⁸ If shareholder primacy management style puts shareholders first, even to the detriment of the company's other stakeholders, then co-determination is an alternative governance style that could potentially allow employees share in some of the limelight. Rights to information and consultation, although guarantee some meaningful engagement between employees and the management, still do not afford them leverage to be able to influence corporate decisions.¹¹⁹ Employee representation on boards could do just that.¹²⁰

¹¹¹ Para 9(a) and (b), Fourth Schedule, CAMA.

¹¹² See Charlotte Villiers, *Corporate Reporting and Company Law* (Cambridge University Press, 2006), 86, for a particularly in-depth discussion on the topic of users of corporate reports.

¹¹³ Graham Dietz and Marion Fortin, 'Trust and Justice in the Formation of Joint Consultative Committees' [2007] (18)(7) *International Journal of Human Resource Management*, 1159-1181, at 1163.

¹¹⁴ Para 9(a) and (b), Fourth Schedule, CAMA.

¹¹⁵ Mark Hall and John Purcell, *Consultation at Work: Regulation and Practice* (Oxford University Press, 2012), 3.

¹¹⁶ Kent Greenfield, *The Failure of Corporate Law: Fundamental Flaws and Progressive Possibilities* (The University of Chicago Press, 2006), 23.

¹¹⁷ Giuseppe Benelli and Claudio Loderer and Thomas Lys, 'Labour Participation in Corporate Policy-Making Decisions: West Germany's Experience with Codetermination' [1987] (60)(4) *The Journal of Business*, 553-575, at 556.

¹¹⁸ Grant M. Hayden and Matthew T. Bodie, 'Codetermination in Theory and Practice' [2021] (73)(2) *Florida Law Review*, 4.

¹¹⁹ Martin Upchurch and others, 'Employee Representation and Partnership in the Non-Union Sector: A paradox of Intention?' [2006] (16)(4) *Human Resource Management Journal* 393-410, at 402 and 407.

¹²⁰ Monray Marsellus Botha 'Responsibilities of Companies Towards Employees' [2015] (18)(2) *Potchefstroom Electronic Law Journal*, 1-67, at 51.



Co-determination is rather common in Europe, where it exists in various forms.¹²¹ The popular German system, *Mitbestimmung*—literally, having a voice in—is often studied as a model.¹²² The German model of co-determination features at two levels: at the establishment through the agency of the works council (or *Betriebsrat*) and at enterprise level through company co-determination (*Unternehmensmitbestimmung*).¹²³ The works council, which is the more important organ of participation,¹²⁴ is the employee representative body at the shop-floor level, in charge of consultation.¹²⁵ Governance is by means of a two-board structure: the management board, composed by executives and chaired by the CEO, and the supervisory board composed by non-executives, which are shareholder and employee representatives, including labour union members.¹²⁶ In the case of Austria with an equally mandatory two-tier board system, one-third parity is applicable, and although employee representatives generally have the same rights as the shareholders on the supervisory board, the shareholder representatives' votes weigh more heavily on the appointment and removal of members of the management board as well as chairperson of the supervisory board.¹²⁷

Co-determination as a democratic process is of value in itself, quite apart from the quality of the decisions reached by the process.¹²⁸ Its non-pecuniary benefits include considerable dignity for workers as well as the strengthening of economic democracy.¹²⁹ It leads to a significant increase in employee bargaining power.¹³⁰ Co-determination has been successful in its role of promoting the broader goals of social cohesion and fairness.¹³¹ It has been found to be associated with favourable financing conditions,¹³² the pursuit of more meaningful, substantive CSR measures,¹³³ and the promotion of greater information flow within the firm.¹³⁴

If the objective of the corporation is much more than making profit for shareholders; if the company exists to create value for all the corporation's many stakeholders, then it ought to not only fairly share the wealth with those who create it,¹³⁵ but also allow them some measure of say in its affairs. Thus, allowing employees participate at the decision level of its governance, is not preposterous. Employee interests shouldn't matter only when satisfying them can be translated into corporate gain.¹³⁶ Co-determination, in combination with the legal requirement for independent

¹²¹ Hayden and Bodie fn 118, at 6.

¹²² Ingrid Artus, 'Precarious Delegates: Irregular Forms of Employee Interest Representation in Germany' [2013] (44)(4) *Industrial Relations Journal*, 409-424, at 409; Andrew Clarke, 'The Relative Position of Employees in the Corporate Governance Context: An International Comparison' [2004] (32)(2) *Australian Business Law Review*, 111-131, at 125.

¹²³ John T. Addison, *The Economics of Codetermination: Lessons from the German Experience* (Palgrave Macmillan, 2009), 5.

¹²⁴ Paul Davies and Wedderburn of Charlton, 'The Land of Industrial Democracy' [1977] (6)(1) *Industrial Law Journal*, 197-211, at 210.

¹²⁵ Hall and Purcell fn 115, at 3 and 167.

¹²⁶ Katharina Pistor, 'Co-determination: A sociopolitical Model with Governance Externalities' in Margaret M. Blair and Mark Roe (eds), *Employees and Corporate Governance* (The Brookings Institution, 1999), 126.

¹²⁷ Susanne Kalss, 'Austria: Legal Framework of Corporate Governance' in Andreas M. Fleckner and Klaus J. Hopt (eds), *Comparative Corporate Governance: A Functional and International Analysis* (Cambridge University Press, 2013), 296.

¹²⁸ Hansmann fn 109, at 89.

¹²⁹ Jens Dammann and Hurst Eidenmüller, 'Codetermination: A poor Fit for U.S. Corporations' [2021] (2020)(3) *Columbia Business Law Review*, 870-941.

¹³⁰ Kornelius Kraft, 'Productivity and Distribution Effects of Codetermination in an Efficient Bargaining Model' [2018] (59)(3) *International Journal of Industrial Organisation* 458-485.

¹³¹ Addison fn 123, at 16-19; Hayden and Bodie fn 118, at 33.

¹³² Chen Lin and Thomas Schmid and Yuhai Xuan, 'Employee Representation and Financial Leverage' [2017] (127)(2) *Journal of Financial Economics* 303-324, at 321.

¹³³ Robert Scholz and Sigurt Vitols, 'Board-Level Codetermination: A Driving Force for Corporate Social Responsibility in German Companies?' [2019] (25)(3) *European Journal of Industrial Relations* 233-246, at 241-4.

¹³⁴ Hayden and Bodie fn 118, 41.

¹³⁵ Lenore Palladino, 'How to End Shareholder Primacy: Moving the US and Global Economies into a More Sustainable and Equitable Future' [2020] *IPPR Progressive Review* 325.

¹³⁶ Greenfield fn 116, at 24.



directors on the boards of public companies,¹³⁷ can further fortify company boards and help promote managerial accountability through attentive monitoring of senior executives.¹³⁸ Independent directors are also important, particularly in terms of safeguarding other stakeholder interests outside of employees and members, who are not represented on the board, thereby balancing conflicting interests.

6 Conclusion

The analysis above has demonstrated how the corporate objective statement under the CAMA clearly presents an entity-centric objective for the corporation, while the corporate structure supported by the law effectively denies this. It has been confirmed that only members have been enabled to encourage directors to consider their interests, leaving the rest of the company's stakeholders, especially employees, without commensurate leverage. It may require not just one, but a combination of mechanisms, for employees to be fully assimilated within the corporate structure, towards harmonizing it with the corporate objective statement, and achieving the overall best interests of the company. Following the discussions above therefore, it is recommended that:

- i) a threshold of one-third of employees in a company should be given complainant status with respect to s305(4), to seek leave of the court to institute derivative actions, in the same manner as shareholders, on behalf of the company;
- ii) the requirement for information and consultation of employees should be regulated by delineating an employee consultative body for companies, such as a works council, with terms of reference, together with rules of conduct in place, on the company's engagement with employees;
- iii) as an important user group, employees should be entitled to information, receive or have access to the directors' report, just like members, before the date of the annual general meeting, particularly with respect to matters of employee interests, concerning which directors are obliged to report.
- iv) Co-determination should be gradually introduced, starting with select industries, so that shareholders and directors can share decision-making powers with employees and independent directors, to bring some objectivity to corporate governance and properly position the company away from shareholder primacy, towards achieving longer-term sustainability in the interest of all stakeholders.

¹³⁷ S275.

¹³⁸ Brian R. Cheffins, 'What Jensen and Meckling Really Said about the Public Company' in Elizabeth Pollman Robert B. Thompson (eds), *Research Handbook on Corporate Purpose and Personhood* (Edward Elgar, 2021), 10.