Stakeholder Theory and Lebanese Corporate Law: A Comparative Study(*)

Dr. Haissam Fadlallah
Associate professor of Private Law
Lebanese University, Faculty of law
French Section

Abstract

This article provides a view of the stakeholder theory's doctrinal context, demonstrating how American management and legal doctrines developed such a theory in order to face classical shareholder-oriented theories. The aim is to find a new approach to face current changes in the commercial world and to meet the needs of the various players involved in the corporate world. As a result, this article emphasizes the importance of the benefits that this theory could have on the Lebanese corporate environment once implemented, and it examines the various categories of stakeholders.

This theory, in particular, demonstrates the positive impact it could have on the various stakeholders in the corporate environment if implemented in Lebanon. In fact, implementing this theory will result in a mutual benefit: on the one hand, the various stakeholders will be more loyal and invested in the company's success. On the other hand, the company will make long-term profits.

To achieve these objectives, the stakeholder theory encourages the company's directors to consider not only the interests of the shareholders but also the interests of the various stakeholders during the decision-making process. Hence, the stakeholder theory encourages the director to strike a balance between these various interests rather than establishing a hierarchy among them. This paper invites the Lebanese legislator to reconsider the company's purpose and strike a balance between competing interests when enacting any corporate law text, thus allowing the company to meet the various economic and social challenges.

Keywords: company, creditor, director, employee, interest.

(*) Research submission date: 04 September 2021 its acceptance for publication date: 17 October 2021.

Introduction

When Freeman first introduced his landmark book, he began with a powerful statement: "Current approaches to understanding the business environment failed to take account of a wide range of groups who can affect or are affected by the Corporation, its (stakeholders)"[1].

In the corporate world, the concept of stakeholders is now widely accepted in western academic and professional management literature. Regrettably, it is still little known in Lebanese and Arabic legal literature. As a result, it is critical to shed light on the stakeholder theory and attempt to explore its beneficial implications on the business environment if implemented in the Lebanese context.

As a matter of fact, management science sheds new light on how to govern corporate affairs through the Stakeholder Theory. This Theory has been one of the most often used references in the vast literature on corporate social responsibility since its formalization in 1984. Although this theory is just relatively new, ideas on safeguarding the interests of a larger group than the sole shareholders date back to the beginning of the twentieth century[2].

In reality, the stakeholder theory encourages taking an interest in anyone who is affected by the company's activities and whose actions may have an impact on it. Taking stakeholders' interests into account aims to prevent negative externalities from social activity, that is to say, those that could lead to a civil, criminal, but also social liability. This theory is unquestionably part of a logic of anticipating social and environmental implications, which is at the heart of ethical investors' concerns[3].

Based on the above, the fundamental question that we attempt to answer here is to know what could be the legal impact of the stakeholder theory on Lebanese corporate law? and to what extent should the company's decisions consider the interests of third parties?

We will attempt to address this question by first establishing the doctrinal framework of stakeholder theory (Part I), and then by balancing the interests at stake in the corporate world (Part II).

(1) R. E. Freeman, Strategic Management: A Stakeholder Approach, Cambridge University Press, 2010, p.1.

(2) E. Forget, L'investissement Ethique - Implications en Droit des Sociétés, Revue des Sociétés, Dalloz, Paris, 2015, p.560.

(3) Ibid, p.561.

Part I- The doctrinal framework of the stakeholder theory

This part discusses the stakeholder theory's American doctrinal roots (A), its interest (B), and the nature and categories of stakeholders (C).

A- The American Doctrinal Roots of the Stakeholder Theory

The term "stakeholding" first appears in the Oxford Dictionary in 1708, with the meaning "to have a stake in: to have something to gain or lose by the turns of events, to have an interest in". The term "Stakeholder" was coined as an accidental play on the phrase "Stockholder" (which refers to the shareholder) to suggest that other parties have an interest (Stake) in the company(4).

The stakeholder theory has its roots in modern business science literature and may be traced back to Adam Smith and his masterwork "The Theory of Moral Sentiments"(5).

From an academic standpoint, John Bates Clark's seminal work in 1916 allows for the introduction of organizational ethics, corporate social responsibility, and stakeholder concepts.

More precisely, the shareholder-stakeholder debate may be traced back to articles published in the Harvard Law Review in the 1930s by Berle and Dodd. The debate took place in the aftermath of the stock market crash of 1929(6). "However, stakeholder theory as a management concern can be traced back to at least 1963, where the Stanford Research Institute used the theory in an internal memorandum on management to signify "those groups without whose support the organization would cease to exist"(7).

Thus, in the early 1960s, the stakeholder theory emerged from the disciplines of strategy and organizational theory. This idea significantly developed in the mid-1980s(8), with Freeman's Landmark book "Strategic Management:

(4) S. Mercier, Aux Origines de La Stakeholder Theory: 1916-1950», p.1, Available at: https://www.researchgate.net/publication/4875351 Aux_origines_de_la_Stakeholder_Theory1916-1950/link/00463535041c38f4d3000000/download (Last visit on 28 September 2021, 11:00 PM).

(5) S. K. McGrath and J. Whitty, Stakeholder Defined, International Journal of Managing Projects in Business, Emerald Publishing, Vol.10, No. 4, (2017), p.723.

(6) A. Berle, For Whom Corporate Managers Are Trustees: A Note, Harvard Law Review, Vol.45, (1932), p.1365; E. M. Dodd, For Whom Are Corporate Managers Trustees?, Harvard Law Review, Vol.45, (1932), p.1145.

(7) B. Sheehy, Scrooge - The Reluctant Stakeholder: Theoretical Problems in the Shareholder-Stakeholder Debate», University of Miami Business Law Review, Vol.14, (2005), p.200.

(8) R. E. Freeman and J. F. Mcvea, A stakeholder Approach to Strategic Management", SSRN Electronic journal, January 2001, p.1. Available at: https://www.researchgate.net/publication/228320877_A_Stakeholder_Approach_to_Strategic_Management, (Last visit on 31 August 2021 7:00 PM).

A Stakeholder Approach" in response to Friedman's "amoral vision of business"[9], and other profit maximization theorists.

According to Friedman "in a free-enterprise, private-property system, a corporate executive is an employee of the owners of the business. He has direct responsibility to his employers. That responsibility is to conduct the business in accordance with their desires, which generally will be to make as much money as possible"[10].

Therefore, the shareholder theory developed by Friedman, emphasizes that the primary and exclusive responsibility of any company is to maximize shareholder profit[11]. This maximization of wealth is referred to by business scholars as the "corporate objective function"[12].

To have a better grasp of the shareholder theory, it is suggested that the corporation be viewed as a representation of individuals' readiness to associate financially within a legal entity. This technique demonstrates on the one hand, that a company is created on the will of the contributors who will eventually become shareholders; and on the other hand, it argues that shareholders are urged to have a direct role in corporate activities[13]. Moreover, it is advocated that shareholders are the exclusive owners and risk bearers in corporations.

Members of boards of directors are elected by shareholders to control and direct company decisions and activities in this regard. In other words, being the sole owners and risk bearers, the shareholders simply assign the duty of directing and controlling to professionals[14]. Furthermore, the directors should be held accountable to the shareholders, and the corporation should be governed to maximize shareholder wealth. "In sum, the corporation is a bare contractual arrangement made for the benefit and control of the shareholder"[15].

(9) J. Harrison and A. Wicks, Stakeholder Theory - Value and Firm Performance, Business Ethics Quarterly, No.1, (2013), p.100.

(10) M. Friedman, The Social Responsibility of Business is to Increase its Profits, New York Times, 13 Sept.1970, p.17.

(11) U. Bello and M. M. Abu, Shareholder and Stakeholder Theories: Understanding Corporate Governance Practice, Nile JBE, (2021), p.94.

(12) B. Sheehy, Scrooge - The Reluctant Stakeholder: Theoretical Problems in the Shareholder-Stakeholder Debate, University of Miami Business Law Review, Vol.14, (2005), p.209.

(13) A. S. Lynn, The Toxic Side Effects of Shareholder Primacy, University of Pennsylvania Law Review, Vol.161, No.7, (2013), pp.2005-2006.

(14) R. Alhumaymidi, Shareholder Theory Versus Stakeholder Theory, May 2011, pp.3-5. Available at: https://www.researchgate.net/publication/351491876_Shareholder_Theory_vs_Stakeholder_Theory (Last visit on 27 September 2021 10:00 PM).

(15) B. Sheehy, Scrooge - The Reluctant Stakeholder: Theoretical Problems in the Shareholder-Stakeholder Debate, University of Miami Business Law Review, Vol.14, (2005), p.209.

The stakeholder theory aims to put the company at the center of a set of relationships with partners that aren't just shareholders, but also stakeholders interested in the company's activities and decisions, such as employees, creditors, and suppliers. By portraying the company as a mix of cooperating and competitive interests, this theory speaks to the organization's fundamental principle of community(16).

It is worth noting that laws governing stakeholders were enacted in approximately thirty American states beginning in the 1980s. These specific laws altered corporate legislation to recognize the power of directors to consider the interests of other stakeholders during decision-making.

More recently, the stakeholder theory's normative foundation has been defined in current mainstream legal thinking since the 1990s. The report Principles of Corporate Governance by the American Law Institute is an example of this (1992). The relevant section of this document begins by reiterating the basic corporate goal of "improving corporate profit and shareholder gain," but it quickly adds certain qualifications: "the modern corporation by its nature creates interdependencies with a variety of groups with whom the corporation has a legitimate concern, such as employees, customers, suppliers, and members of the communities in which the corporation operates". Furthermore, the report adds that a corporation's reaction to social and ethical concerns is usually accompanied by long-term increases in profit and value(17).

In this regard, it is worth mentioning that corporate governance essentially asks and strives to answer four questions. These questions are as follows: "(1) what is the entity being governed? (2) who should rule the entity? (3) what is the best way to govern the entity? and (4) in whose interests should the entity be governed?".

The shareholder-stakeholder debate is one way of framing these issues while also providing several solutions(18). The stakeholder theory has, without a doubt, found its most obvious legal translation in the debate over corporate governance, with one of its goals being to restore some balance between directors, shareholders, and certain stakeholders, including employees.

(16) T. Donaldson and L. E. Preston, The Stakeholder Theory of the Corporation: Concepts, Evidence and Implications, Academy of Management Review, Vol.20, No.1, (1995), p.65.

(17) D. Danet, Pour en Finir avec Le Financialisme: La Doctrine de L›entreprise, In L›entreprise dans La Société du 21e Siècle, Larcier, Bruxelles, (2013), p.51.

(18) B. Sheehy, Scrooge - The Reluctant Stakeholder: Theoretical Problems in the Shareholder-Stakeholder Debate, University of Miami Business Law Review, Vol.14, (2005), p.194.

Other American authors who subscribe to this school of thought are attempting to bridge the gap between stakeholder theory and legal theory. Greenfield formulated new concepts for American corporate law, the most important of which is that companies must serve society "as a whole"(19).

In addition, Mitchell emphasizes that it is in the best interests of American joint-stock companies to consider partners other than shareholders who are a need for associations of funds(20). In this regard, it should be noted that Maryland was the first American state to propose the "Benefit Corporation", a new type of joint-stock company that incorporates the normative conception of stakeholder theory, in 2010(21).

B- The Interest of Stakeholder Theory

Since the establishment of the Code of Obligations and Contracts in 1932, Lebanon's definition of a company has been constant. Article (844) of the Code of Obligations and Contracts establishes the legal nature of the company by referring to its contractual aspect. As a result, it specifies that the company is a synallagmatic contract in which two or more persons place something in common with the intention of sharing the profit that may emerge. In this context, "synallagmatic" or "bilateral" refers to a contract in which the contractual parties bind themselves to one another.

Based on the definition of the company, we can see that the shareholder theory has a strong influence on Lebanese company law for two reasons. First, article (844) of the Code of Obligations and Contracts, which serves as the company's foundation, regards this entity simply as a contract. It is, more exactly, a synallagmatic contract that demonstrates a high level of contractual commitment. This approach to the company concept emphasizes the importance of the founder, who will eventually become stockholders.

In other words, there is no firm if there are no shareholders. Second, as stated in article (844) of the Code of Obligations and Contracts, the primary and sole goal of the company is to allow shareholders to enjoy any profits that may arise. In other words, this definition is based solely on profit maximization.

This is no longer the case, as seen by French legislation, which seeks to

(19) K. Greenfield, The Failure of Corporate Law: Fundamental Flaws and Progressive Possibilities, The University of Chicago Press, (2006), p.123.

(20) L. E. Mitchell, A Theoretical and Practical Framework for Enforcing Corporate Constituency Statutes, Texas Law Review, Vol.70, (1992), p.599.

(21) D. Danet, op.cit., p.51.

move away from management that is solely focused on maximizing profit by requiring employees to have a reason for being "raison d'être". According to Article (1835) of the Civil Code, as amended by the PACTE law of 2019, "statutes can specify a reason for being, which is made up of principles in which the company believes and for which it intends to exert influence in the conduct of its business"[22].

"Given shareholder theorists' justification for their theory as producing the greatest social welfare, one should ask whether this social benefit has occurred. Economic studies do not support the increased welfare premise"[23]. Indeed, if this theory revealed anything in Lebanon, it was that corporate operations enhanced the concentration of wealth and the imbalance between the rich and the poor.

That is why the interest of the stakeholder theory can be found in management sciences, and it is thus a part of a pragmatic approach aimed at accurately outlining the prerequisites for good corporate management. "A central premise of much of the literature on stakeholder theory is that focusing on stakeholders, specifically treating them well and managing for their interests, helps a firm create value along with a number of dimensions and is therefore good for firm performance"[24].

The company, in whatever form it takes, should thus be managed not only in the best interests of the shareholders, but also in the best interests of the stakeholders[25]. According to some scholars, the legitimate interests of each stakeholder must be considered in management decisions without giving preference to one of them or the shareholders[26].

At the legal level, we find that the French doctrine conducted its own analyses of this stakeholder reality. In fact, the French doctrine gave birth to the "enterprise theory", the originality of which lies in a broadening of the interests considered in the corporate framework.

The enterprise theory, to a considerable part, produces the same outcomes as

(22) B. Dondero, Droit des Sociétés, 7e ed., Dalloz, Paris, 2021, p.22.

(23) B. Sheehy, Scrooge - The Reluctant Stakeholder: Theoretical Problems in the Shareholder-Stakeholder Debate, University of Miami Business Law Review, Vol.14, (2005), p.215.

(24) J. Harrison and A. Wicks, op. cit., p.104.

(25) N. Mathey, Recherches sur La Personnalité Morale en Droit Privé, Thèse, Paris II, (2001), p. 165.

(26) F. G. Trebulle, Stakeholders Théorie et Droit des Sociétés, Bulletin Joly sociétés, No.12, (2006), p.1337.

the stakeholder theory. According to the French doctrine, a company is not a group of partners, but rather a legal technique for forming a company. As a result, the company would show itself as a human and economic community, bringing together all those involved in the same economic activity.

For example, the shareholders would bring their capital, the employees their labor force, and the banks their loans. The shareholders would have a common interest in enriching themselves; however, because they are only a subset of a larger collectivity, it is the interest of the whole, the interest of the enterprise, that should prevail(27). This interest is the interest of the company itself, meaning for a given company at a given moment what favors or hinders the protection of its patrimony as well as the pursuit and development of its activities(28).

In this context, the stakeholder theory extends the abovementioned view by proposing that the company's main objective is no longer to produce a profit, but rather to reconcile several objectives. In this sense, stakeholder theory is a broadening of the company concept, where groups with multiple interests are no longer exclusively the dominant nuclei inside the company, but also communities outside the company exist.

Stakeholders are the "interest bearers" that companies must consider in addition to shareholders. It is nothing less than redefining the interests of the company from a perspective that is no longer closed to the shareholding of companies.

Indeed, the generation of income and jobs is no longer the exclusive criterion for judging an enterprise. Its social obligation necessitates a new formulation of performance indexes based on three key axes: economic growth, environmental protection, and social equality. The 3 Ps formula summarizes the catchphrase in company management: "People, Planet, and Profit"(29).

It must be accepted that a company cannot survive and grow if it relies solely on the capital contributions of its shareholders and ignores the input of other stakeholders such as employees, creditors, suppliers, and customers. As a result, Lebanese corporate law must consider stakeholders' interests because their investment directly influences the corporation's performance and wealth.

(27) T. Massart, Contrat des Sociétés, Rep. Des Sociétés, Dalloz, Paris, (2006), §112.

(28) D. Schmidt, Intérêt Commun Des Associés et Intérêt Social: Indépendance ou Subordination?, Recueil Dalloz, Paris, 2020, p.2273.

(29) T. Massart, Contrat Des Sociétés, Rep. Des Sociétés, Dalloz, Paris, 2006 §113.

C- The Nature and Categories of the Stakeholder

There is no legal definition of the term "stakeholder". Nonetheless, it has been defined by Anglo-Saxon doctrine, specifically Freeman, who defined stakeholders as "any group or individual who is affected by or can affect the achievement of an organization's objectives"[30]. In other words, a company must consider the expectations of all people influenced by its activities, not just those of its shareholders[31].

Moreover, if a group of individuals has the potential to affect the company, directors should be concerned about that group, as it requires a clear strategy for dealing with it[32].

Based on the above, all individuals involved in the company's economy (employees, customers, suppliers, shareholders), those who observe the company (unions, NGOs, banks, media), and those who it influences more or less directly (civil society, local communities, etc.) are considered stakeholders.

As a result, socially responsible companies are not only upfront with their stakeholders, but also make sure to service all of their interests. In this, they are in opposition to companies whose exclusive focus is on short-term results[33].

It's vital to keep in mind when analyzing the legal consequences of the stakeholder theory that the individuals engaged are in very varied legal situations. Since the company is flexible and volatile, these stakeholders, who are important agents for the production of value, are numerous, diverse, and variable. Each type of stakeholder thus has a legal relationship with the company, either certain or potential, that has consequences.

We will go over eight of the most significant ones here:

1- The shareholders are the owners of the firm. In a traditional approach, they collectively have all of the power since they own it. They delegate their power to one or more directors who are only responsible to them. As a result, directors negotiate on behalf of shareholders, with employees, customers, suppliers, and other partners[34].

(30) R. E. Freeman and J. F. Mcvea, op. cit.

(31) R. Quenaudon, Responsabilité Sociale Des Entreprises, Rep. Droit du travail, Dalloz, Paris, 2017, § 5.

(32) R. E. Freeman, The Stakeholder Approach Revised», Zeitschrift für Wirtschafts- und Unternehmensethik, January 2004, p.229.

(33) V. Mercier, Le Rôle Des Parties Prenantes Dans L›évolution Du Droit Des Sociétés», Bulletin Joly Sociétés, No. 11, (2019), p.45.

(34) B. Brunhes, Reflexions Sur La Gouvernance, Dalloz Droit social, Paris, 200, p.115.

In recent years, some stakeholders, particularly investors (shareholders) are not hesitant to speak with directors and suggest, or even impose, draft resolutions aimed at modifying company management to be more sustainable. This trend, also known as shareholder activism, is a process in which responsible investors are given a significant normative role. In fact, increased shareholder activism has characterized the emergence of investor capitalism, ranging from investor confrontations with managers to formal interventions to affect corporate strategy and performance(35). This encourages changes in the behavior of companies by actively using the voting rights by tabling resolutions at general meetings and engaging in dialogue with companies' directors.

For instance, for several years, multinational oil companies have been the subject of resolutions at general meetings relating to their climate strategy. As a result, on May 21, 2019, BP's general meeting was marked by a resolution that brought together a record number of investors. A resolution has been co-filed by 58 international investors representing roughly 10% of the capital, asking the oil group for more transparency on its plan to align with the Paris Agreement's goals. This is the first time that shareholders with such a big stake in a public corporation have proposed a climate change resolution(36).

2- The company's directors occupy a position that places them at the heart of the company's decision-making process in terms of their ability to associate with both employees and shareholders. According to proponents of stakeholder theory, changes in corporate management and company legislation should be made to ensure that company directors consider the interests of all persons with a "stake" in the firm when making decisions and formulating policies(37).

As a result, Lebanese corporate law may impose a legal requirement on directors to consider shareholders' interests. In fact, various legislations have already begun to nurture a corporate decision-making process that considers the interests of stakeholders. For example, in the United States, "nearly all states have enacted laws known as stakeholder statutes

(35) M. Goranova and L. Ryan, Shareholder Activism: A Multidisciplinary Review, Journal of Management, 2013, p.1230.

(36) V. Mercier, Le Rôle Des Parties Prenantes Dans L›évolution Du Droit Des Sociétés», Bulletin Joly Sociétés, No.11, (2019), p.48.

(37) S. Marshall and I. Ramsay, Stakeholders and Directors' Duties: Law, Theory and evidence, University of New South Wales Law Journal, Vol.35, No.1, (2012), p.293.

that allow corporate directors and executives to consider stakeholders' interests without breaching fiduciary obligations to shareholders".

Furthermore, stakeholder meeting statutes should be considered in addition to stakeholder statutes. Stakeholder meeting statutes would force company leaders and directors to meet with stakeholder groups regularly. "The purpose of these meetings would be to close the physical and psychological distance between corporate leaders and stakeholders and, in turn, cultivate more regular and earnest consideration of stakeholder interests inside corporate board rooms"(38).

3- Employees are the most numerous stakeholders, and it is unanimously agreed that they have an impact and influence over the company. Employees do not form a homogeneous population: On the one hand, there are those in the core, who are open-ended contract holders who are fully integrated into the production process and are seen as being at the heart of it by the company's management. Others, on the other hand, include fixed-term contracts, temporary workers, trainees, and subcontractor employees, all of whom are by definition unstable(39).

Employee engagement can take several forms, including employee co-ownership, power separation through works councils, and the selection of directors who are also employees[40]. More precisely, the participation of employees on companies' boards has been proposed as a means of promoting employees' interests. For example, the French commercial legislation adopts this solution.

According to the Employment Security Act of 2013 (Law n. 2013-504), large corporations(41) must have a system of mandatory employee participation on the board of directors (article L. 225-27-1 of the French Code of Commerce)(42).

(38) K. Hale, Corporate Law and Stakeholders: Moving Beyond Stakeholder Statutes, Arizona Law Review, Vol.45, (2003), pp.825-828.

(39) B. Brunhes, op.cit., p.116.

(40) I. Esser, Stakeholder Protection: The Position of Employees, Tydskrif vir Hedendaagse Romeins-Hollandse Reg, Journal for Contemporary Roman-Dutch Law, Vol. 70, No. 3, (2007), p.414.

(41) The companies targeted by the law of June 14, 2013, are those that employ at least five thousand permanent employees at the end of two consecutive periods, in the company and its subsidiaries, whose headquarters are located in France, or at least ten thousand permanent employees in the company and its subsidiaries, whose headquarters are located in France or abroad, and who are required to form an enterprise committee.

(42) J. Monet et D. Gallois-Cochet Sociétés Anonymes. – Conseil d'administration. – Statut des administrateurs", Fasc.1377, J.-Cl. Commercial, 2020, §23.

In the United States, at the federal level, several legislative vehicles have lately advocated a requirement for worker representation on corporate boards. Workers would elect one-third of board seats under the Reward Work Act of 2018. Additionally, the Accountable Capitalism Act (2017-2018) stipulates that employees elect 40% of board seats.

Therefore, employee representation on corporate boards could be suggested by Lebanese corporate law as a manner of promoting employees' interests, which might have several advantages, such as motivating employees to work hard and stay loyal to the company even during difficult times(43).

4- The customers are the category of persons who constitute the business's raison d'être. "It follows that companies and their directors would need to think on how to survive and attract customers for the purpose of making profits"(44). Needless to say, the most important goal for directors is to ensure that customers and clients are satisfied(45).

The viewpoint is that if a customer is dissatisfied with a company's approach or excessive fees, the customer is not obligated to support the company. The way a company treats its customers has a long and medium-term impact on its profits. Customers will continue to support the company if it acts fairly and reasonably toward them.

The Lebanese Consumer Protection Law of 2005 gives substantial protection to customers in Lebanon, and this legal protection that stakeholders obtain through legislation, other than corporate law, should play a significant part when determining in whose interests' directors should manage a company(46).

5- Creditors are the persons who contribute funds for the organization's expansion and growth. "The stakeholders' idea was always present in corporate legislations. The proof of this fact is the creditor protection scheme which is one of the fundamental principles"(47). One of the most

(43) J. Harrison and R. E. Freeman and M. Cavalcanti Sa De Abreu, Stakeholder Theory as an Ethical Approach to Effective Management: Applying the Theory to Multiple Contexts», Review Business Management Review, São Paulo, Vol. 17, No.55, (2015), p.859.

(44) K. O. Mrabure and A. Abhulimhen-Iyoha, Corporate Governance and Protection of Stakeholders Rights and Interests, Beijing Law Review, No.11, (2020), pp.297-303.

(45) S. Marshall and I. Ramsay, op. cit., p.309.

(46) I. M. Esser, op. cit., p.415.

(47) K. O. Mrabure and A. Abhulimhen-Iyoha, op. cit., p.293.

interesting scenarios of considering the interests of creditors could be found in the context of insolvency. In fact, in this context, the duty to act in the best interests of the corporation includes an obligation for directors to consider the interests of creditors(48).On this point, the Delaware Chancery Court's jurisprudence has explicitly evolved in the case of a conflict of interest between shareholders and other stakeholders of the corporation in its ruling "Crédit Lyonnais "Bank Nederland N.V. v / Pathé Communications Corp.". In fact, the Delaware Chancery Court stated that "the corporation's board or its executive committee ha[ve] an obligation to the community of interests that sustained the corporation, to exercise judgment in an informed, good-faith effort to maximize the corporation's long-term wealth-creating capacity"(49).

In other words, "Credit Lyonnais provided a "shield" to directors against shareholder suits alleging that directors breached their duties to shareholders by acting to protect creditors"(50). Indeed, when a corporation is in financial difficulties, shareholders are shielded from the board of directors' liability for refusing to adopt a high-risk strategy that might harm the company's creditors.

6- National and international groups, as well as non-governmental organizations, are increasingly involved in the economic arena, particularly when they are invested in a specific mission, such as consumer, investor, and, more specifically, environmental protection. Concerns about the environment have grown as a result of scientific disputes (the Intergovernmental Panel on Climate Change), worldwide conferences (such as the Kyoto Protocol), and government responses. As a result, Lebanese legislation should be more concerned with environmental protection, since few texts "questioned the costs of polluting water and air supplies for it seemed as if nature was infinitely self-renewable"(51).

(48) The Bell Group Ltd (in liq) v Westpac Banking Corporation [No 9] (2008) 39 in MAYANJA, J., «Clarifying the object of directors' endeavours: what Australia can learn from the United Kingdom», University of New South Wales Law Journal, Vol. 37, No.3, (2014), p.875.

(49) Credit Lyonnais Bank Nederland, N.V. v. Pathé Communications Corp., 17 Del. J. Corp. L. 1099, 1991 WL 277613 at: 34 (Del. Ch. 1991). Available on: https://corpgov.law.harvard.edu/wp-content/uploads/2007/06/20070606%20Credit%20Lyonnais.pdf (Last visit on 31 August 2021, 8:00 PM).

(50) R. E. Silberglied and J. P. Friedland, Did the Delaware Supreme Court Break the ‹Directors› Shield›?», Vol.24, No.10, (2007), p.1. Available on: https://www.rlf.com/wp-content/uploads/2020/05/Bank06.pdf (Last visit on 24 August 2021, 1:35PM)

(51) R. E. Freeman, op. cit., p.20.

7- Along with the previously mentioned groups, there are individuals who suffer from the consequences of the company's activity, particularly neighbors of its facilities, who are concerned about the corporation's actions as a corporate citizen(52), and who, through their legal actions, can sometimes call the company's very sustainability into question(53). We can mention here the *Shlensky v. Wrigley* ruling from 1968(54).

According to the material facts of the case, while minority shareholders in the company that owns the Chicago Cubs (Baseball team) are calling for lighting to be installed so that games can be played in the evening, "Mr. Wrigley and his fellow directors believed that the installation of lights, and the conduct of night games, would be disruptive to the neighborhood in the immediate vicinity of Wrigley Field".

The competent federal court of appeal, applying the law of the State of Delaware, ruled in favor of the directors because to be fair, the Cubs' board of directors' justification for the decision appeared to give weight to the interests of people other than Cubs shareholders because it specifically addressed the concerns of Wrigley Field's neighbors. Having pleased neighbors, on the other hand, is consistent with the corporation's ability to conduct business without interruption in the long run(55).

8- The Government and, to a lesser extent, local authorities are among those who interact with the company. "The recent past has seen an increase in the awareness of the role of government in the business enterprise. So much so, that public officials have been elected on the promise of curtailing this role and seeking a return to "free enterprise"(56). Whether it is through the enactment of specific rules or the sole observation of the impact of fiscal or employment policies, the State cannot be considered an outsider to the development of companies.

(52) A. Keay, Stakeholder Theory in Corporate Law: Has It Got What It Takes?, Richmond Journal of Global Law & Business, Vol.3, Iss.9, (2010), p.267.

(53) F. G. Trebulle, Stakeholders Théorie et Droit des Sociétés, Bulletin Joly Sociétés, No.12, (2006), p.1342.

(54) Shlensky v. Wrigley - 95 Ill. App. 2d 173, 237 N.E.2d 776 (1968), in Skeel, A., «The Nature and effect of corporate voting in Chapter 11 Reorganization Cases», Virginia law review, Vol.78, (1992), p.498.

(55) D. A. Demott, «Directors' duty of care and the business judgment rule: American precedents and Australian choices», Bond Law Review, Vol.2, Iss.1, 1992, p.136.

(56) R. E. Freeman, op. cit., p.13.

Part II- Balancing the Interests at Stake in the Corporate World

In this part, we focus on the corporate hierarchy of interests (A), the duality of interests between the stakeholders and the corporation (B), and the legal means of defending the stakeholders' interests (C).

A- Corporate Hierarchy of Interests: An Illusory Primacy of the Shareholders' Interest

It is impossible to create a hierarchy of distinct interests within a company due to their complexity. Nonetheless, article (844) of the Code of Obligations and Contracts, recognizes the shareholders' interest as paramount. In fact, the primacy of shareholders' interest in Lebanese law is essential since it is of the essence of companies. However, it is important to emphasize that this is simply the first interest, it is not the only one, and it may be eclipsed if other stakeholders' interests, such as those of executives or employees.

In all companies, management is subject to the supervision of all participants. Nevertheless, only the shareholders have the power of censorship. The board of directors is subject to the shareholders' control, and if the management of the company does not meet their expectations, the board will be revoked(57). The authors of the widely regarded text "The End of History for Corporate Law", Hansmann and Kraakman, emphasize this idea by arguing that "the best means to this end-the pursuit of aggregate social welfare-is to make corporate managers strongly accountable to shareholder interests, and.., only to those interests"(58).

The French Court of Cassation has confirmed the supremacy of the general meetings of shareholders since the landmark ruling "Motte" arguing that the "joint-stock company is a company whose organs are hierarchical and in which the administration is exercised by a board, elected by the general assembly"(59). Similarly, according to the Lebanese doctrine, in a joint-stock company, the general meeting of shareholders is not only the supreme authority but also the source of its powers.

However, in practice, the general meeting's sovereignty does not appear to be effective, particularly in large corporations where shareholders are limited to investing their money and receiving the profits belonging to their shares or to

(57) T. Massart, Contrat Des Sociétés, Rep. Des Sociétés, Dalloz, Paris, 2006, §117.

(58) H. Hansmann and R. Kraakman, The End of History for Corporate Law, Georgetown Law Journal, Vol.89, Iss.2, (2001), p.439.

(59) Cass. civ., 4 juin 1946, aff. Motte, JCP 1947, II, 3518, note Bastian, D.

buying and selling shares while making a profit resulting from the difference in the price, without paying attention to the company's interests and managing its affairs by attending general meetings, participating in discussions about their operations, and making suitable decisions(60).

As a result, it could be argued that shareholder primacy cannot improve corporate wealth because it only promotes short-term economic success and reduces the work incentives of other stakeholders by ignoring their contributions to companies. This explains why considering stakeholders' interests is crucial in several scenarios. Consequently, as part of their overall management of the organization, directors must make decisions that balance competing interests. Through their decisions, directors must demonstrate their ability to harmonize conflicting interests to serve the corporate interest while also respecting the shareholders' one(61).

B- A Duality of Interests between Stakeholders and the Corporation

The shareholder primacy or profit maximization theory reducing corporate interests to shareholder interests appears to be excessively reductive and does not appear to meet present legal perspectives. In fact, the memorandum of association is distinguished from all other contracts in that it is not limited to the creation of real rights or obligations that end with their performance but goes beyond that to the establishment of a new legal entity, which is the company. The creation of a new legal person, a moral person, is thus what distinguishes the company's contract from all other contracts. As a result, the reality and the requirements of running the company necessitate giving priority to the interest of the legal person over the wills of the shareholders(62).

Therefore, stakeholders, or at least a large number of them, should be given a prominent position in the concept of corporate interest. This corporate interest is defined as the legal person's best interest, that is, the company as an independent economic agent pursuing its own goals that are distinct from those of its shareholders, employees, creditors, including tax authorities, suppliers, and customers, with the sum of these interests aligned with their common goal of ensuring the company's prosperity(63).

(60) E. Eid and C. Eid, Commercial law - Commercial companies, T. 2, Sader, p.465.

(61) F. G. Trebulle, Stakeholders Théorie et Droit des Sociétés, Bulletin Joly sociétés, No.12, (2006), p.1345.

(62) E. Nassif, Encyclopedia of Commercial Companies - Companies› General Provisions, T.1, (2008), pp.65-66.

(63) F. G. Trebulle, Stakeholders Théorie et Droit des Sociétés, Bulletin Joly Sociétés, No.1, (2007), p.9.

While it is evident that this corporate interest is subordinated to the satisfaction of the shareholders who gave it birth, it is also undeniable that it incorporates the legitimate interests of other participants and third parties. It is worth noting that the influence of external factors derived from economic reality and the social necessities that produce it has weakened the contractual concept of companies.

Therefore, legislation has surrounded companies with several mandatory requirements that shareholders cannot ignore and that ensure the protection of creditors' interests as well as the rights of third parties dealing with the company. Among these provisions are those pertaining to the establishment of the company, as well as the conduct of its work and control.

As a result, the extent of contractual freedom began to narrow in joint-stock companies, since the latter became restricted by a binding legal system in which the right of subscribers is only to join it and provide their capital without having a right to discuss the provisions of the company's contract(64).

Accordingly, if a company's primary goal is to make a profit, as defined by article (844) of the Code of Obligations and Contracts, its ultimate goal, and the reason for its legal personality, is to identify a common good for the company as a whole. In this light, it is illusory to think that shareholders "have the right to vote in their sole interest and to ignore any other"(65).

As a result, it is clear that considering goals other than a short-term growth in the value of shares is more reasonable and legitimate, as it has been shown to have positive effects on economic activity and, eventually, the value of shares.

This appears to be supported, for example, not only by labor interests, but also by consumer and environmental concerns. Insofar as it serves to alleviate the company's financial condition, this investment in the context of long-term development may be far more advantageous to shareholders than the payment of a dividend.

It is worth noting that the French PACTE Law (22 May 2019), which governs corporate growth and transformation of companies, is seen as the natural result of debates about the company's place in society, and thus validates this development, particularly through two key texts that affect corporate law as a whole(66).

(64) E. Nassif, op. cit., p.66.

(65) F. G. Trebulle, Stakeholders théorie et droit des sociétés, Bulletin Joly sociétés, No.1, (2007), p. 11.

(66) J. Mestre, L'intérêt Social N'est Pas Omnipotent, Horizons du Droit, Bulletin No.26, (2021), p. 89.

On one hand, this law supplements article (1833) of the Civil Code, which now provides that the company must be governed in its best interests while also considering the social and environmental implications of its operations. Article (1835) of the Civil Code, on the other hand, encourages corporations to include a "raison d'être" in their statutes, which is likely to influence the company's purpose and, as a result, to encourage it to produce non-financial values in addition to profits or savings(67).

This justifies why MESTRE defines corporate interest as "the interest of the corporate body as a whole, encompassing not only its shareholders but also the legal person's participants, especially its employees, regular contractual parties, and creditors"(68).

Management science also emphasizes this equilibrium and invites to consider the interests of all stakeholders. As a result, corporate interest is not equal to the total of categorical interests; rather, it is the culminating result of a balance between them. This equilibrium requires not only the preservation of shareholders' interests but also the protection of stakeholders' interests.

The stakeholder theory, if adopted by Lebanese corporate law, would provide a solution that ensures that companies as organizations are accountable not only to their shareholders but also to their stakeholders, and that divergent stakeholder interests are balanced, allowing companies to develop and promote overall social wealth.

C- Legal Means of Defending the Interests of Stakeholders

Taking different stakeholders' interests into account should help corporate law move closer to stakeholder theory, and thus improve stakeholder legal protection. Various branches of law protect the interests of the stakeholders(69): corporate law, insolvency law, labor law, banking law, and environmental law are part of this movement to recognize and protect the interests of natural and legal persons who may affect or be affected by the company's activities.

We focus here on some cases that are provided by corporate law (the main subject of this paper) and allowing the protection of stakeholders' interests:

1- Firstly, it should be noted that the arguments which justified the reception of the abuse of power by controlling shareholders and the

(67) V. Mercier, Le Rôle Des Parties Prenantes Dans L›évolution Du Droit Des Sociétés, Bulletin Joly Sociétés, No.11, (2019), p.44.

(68) J. Mestre, Liberté Contractuelle et Droit des Sociétés», RTD com, 1996, p.595.

(69) Such as the company›s creditors, customers, suppliers and subcontractors, competitors, the State and local communities, associations, and neighbors.

various recourses open to minorities are perfectly reconcilable with the stakeholder theory. In fact, " abuse of power by controlling shareholders is characterized when the decision of a contested general meeting is contrary to the social interest, and its purpose is to favor majoritarian shareholders to the detriment of minoritarian shareholders"(70). In other words, the abuse of power by controlling shareholders necessitates the presence of two elements: a breach of shareholder equality and a disregard for the corporate interest.

When the conditions for the abuse of power by controlling shareholders are met, all those who can claim a legitimate interest, whether shareholders or directors, can bring a nullity action against the disputed deliberation. Controlling shareholders' abuse of power can also result in a liability action against majority shareholders, who may be held liable for damages(71).

2- Secondly, it is interesting to analyze stakeholder interests and the exclusion of a shareholder within the context of corporate interest and the paralysis of the company. On this point, the legal doctrine considers that the dissolution of a company is "economically and socially unacceptable".

Therefore, in addition to company dissolution, Lebanese law recognizes a less drastic option: the expulsion of a shareholder who engages in behavior that jeopardizes the company's normal operation. In general, when one of the causes of dissolution is a shareholder, exclusion serves as a preventive measure, because it would be unjustifiable to terminate the company when it appears possible that it could continue its normal operations with the responsible shareholder excluded. The exclusion procedure is provided for in article (918) of the Code of Obligations and Contracts and article (64) of the Lebanese Code of Commerce(72).

This point of view strengthens the stakeholders' position. Since attempting to dissolve the company could be interpreted as a reluctance to consider the stakeholders. Moreover, it is inappropriate for shareholders who prefer to continue the firm's operations, as well as participants and interested third parties.

(70) Court of First instance, Mount-Lebanon, number 89, (07/11/2018).

(71) J. M. Moulin, Sociétés anonymes – Droits des actionnaires, Fasc. 1484, J.-Cl, Commercial, 2020,§102-104.

(72) E. Tyan, Commercial Law, T.1, 2nded., Hachette-Antoine, 2017, pp.382-383.

3- Thirdly, the auditor appears to be a natural defender of the interests of all persons who, in whatever capacity, come into contact with the company. Indeed, the Lebanese Code of Commerce, in articles 174 and following, assign to auditors the competency to monitor the progress of the company's operations and to have access to its papers and accounts, as well as all the information necessary to carry out this mission.

To guarantee the rights of the shareholders and the creditors of the company, it is not permissible to restrict or cancel the auditor's competencies under conditions inserted in the company statutes, but rather it may be stipulated in it for its expansion(73). On this point, it is worth noting that, under article (L. 823-10) of the French Code of Commerce, the verification of the sustainable development and corporate social responsibility reports, was materialized by an extension of the missions of the auditor to the verification of the social, corporate and environmental information contained in the management report submitted to its control(74).

Moreover, it is worth mentioning that stakeholder theory and corporate social responsibility could have some similarities, nonetheless they are distinct concepts with considerable overlap. Stakeholder theory contends that the essence of business is primarily concerned with developing relationships and creating value for all of its stakeholders. Though the number of stakeholders varies by business type, they are all equally important to the corporation; and executives must figure out how to reconcile their conflicting interests.

On the other hand, corporate social responsibility refers to the company's operations that benefit society as a whole ("the firm [is seen] as a channel for the expression of citizen value"(75), such as philanthropy, volunteering, environmental efforts, and ethical labor practices. Unlike stakeholder theory, corporate social responsibility does not seek to understand what a corporation is all about or to define its full range of responsibilities. Rather corporate social responsibility focuses on the accountability to local communities and society as a whole(76).

(73) E. Eid and C. Eid, op. cit., p.452.

(74) E. Forget, L'investissement Etique - Implications En Droit Des Sociétés, Rev. Sociétés, 2015, p.559.

(75) R. Benabou and J. Tirole, Individual and Corporate Social Responsibility, Economica, Vol.77, No.305, (2010), p. 10.

(76) R. E. Freeman and S. D. Dmytriyev, Corporate Social Responsibility and Stakeholder Theory: Learning from each other, Symphonia Emerging Issues in Management, No.1, (2017), p.10.

4- Fourthly, article (166) of the Lebanese Code of Commerce engages the directors' liability for fraudulent acts or violation of the law or the articles of association. According to this article, the expression "the injured party" refers primarily to the shareholders acting by the individual action, it also covers as expressly said by the text "the third party", in particular the corporate creditors (stakeholders); who would be injured by the directors' activities, particularly their infringement on the corporate assets that constitute the creditors' exclusive pledge(77).

In addition, article (167) of the Lebanese Code of Commerce provides for the liability of directors for mismanagement. On this point, according to article (276) of the Code of Obligations and Contracts, corporate creditors and shareholders' personal creditors may only file the company's lawsuit against the members of the board of directors through indirect action(78).

Similarly, article (L. 225-251) of the French Code of Commerce, emphasizes the liability of administrators and the chairman for breaches of the provisions applicable to joint-stock companies, breaches of the statutes, and mismanagement, by focusing on their repercussions on third parties(79).

As a result, directors should be as aware of the interests of third parties as they were of the interests of shareholders: all stakeholders have a right to expect directors not to cause them harm as a result of their faults. In a broad sense, and whenever the fact of committing an offense or diminishing the company's credit and reputation is contrary to its interest, the fault may be assigned to directors(80).

Conclusion

The shareholder-stakeholder debate is at the heart of corporate law has been going on for a while. In dealing with this debate, the merits and demerits of each theory come into play.

- First, in terms of shareholder theory, the most obvious and main advantage of pursuing a wealth maximization goal, the common

(77) E. Eid and C. Eid, op. cit., p.452.

(78) E. Tyan, op. cit., p.731.

(79) F. Descorps-Declere, Pour Une Réhabilitation de la Responsabilité Civile des Dirigeants Sociaux, RTD com., 2003, p.25.

(80) F. G. Trebulle, Stakeholders Théorie et Droit des Sociétés, Bulletin Joly Sociétés, No.1, (2007), p.13.

shareholders interest, is that to make money for all of the company's shareholders(81). Shareholder theory, on the other hand, has certain disadvantages. As previously stated, shareholder primacy is concerned with wealth maximizing; nevertheless, this begs the question, what exactly is wealth maximization? Is it the shareholders' wealth or the corporation's profit? It has been observed that there is a significant difference between shareholder profit and corporate profit. As a result, increasing the wealth of the shareholders does not increase the value of the firm(82).

Furthermore, various researchers investigated the concept of common shareholders interest and determined that there are numerous conflicts among shareholders, making such a concept practically nil(83).

- Second, in terms of stakeholder theory, its main advantage is that it draws "attention to the interests and well-being of those who can assist or hinder the achievement of the organization's objectives"(84) and gives directors an objective to strive for. They have to act in the best interests of the stakeholders. This promotes a climate in which social wealth is promoted for the benefit of all.

  On the other hand, stakeholder theory has some disadvantages. Indeed, it has been stated that the stakeholder theory is unsustainable because the number of stakeholders is infinite and determining what should be acknowledged as a benefit is impossible given all of the competing interests. In other words, it is unknown how this can be accomplished, let alone how a large range and variety of such groupings can be properly identified. Moreover, there are instances when stakeholders are only concerned with their own interests. External stakeholders are typically community groups or political appointees who may not behave in the best interests of the corporation(85).

(81) M. T. Jones and W. Felps, Shareholder Wealth Maximization and Social welfare: A Utilitarian Critique, Business Ethics Quarterly, Vol.23, No.2, (2013), p.207.

(82) B. Sheehy, Scrooge - The Reluctant Stakeholder: Theoretical Problems in the Shareholder-Stakeholder Debate, University of Miami Business Law Review, Vol.14, (2005), p.215.

(83) A. Argandona, The stakeholder Theory and the Common Good, Journal of Business Ethics, Vol.17, No.9/10, p.1094.

(84) R. Phillips and R. E. Freeman and A. C. Wicks, What Stakeholder Theory is Not, Business Ethics Quarterly, Vol.13, No.4, (2003), p.481.

(85) B. Sheehy, op. cit., p. 202.

Nonetheless, today, there is widespread adoption of a stakeholder approach in business ethics, but we continue to see a neglect of a stakeholder approach in the legal field(86). In Lebanon, a legal stakeholder strategy can entail a series of amendments or the enactment of several articles in the Code of Commerce concerning the interaction with various groups dealing with the company, particularly in the fields of corporate governance and corporate social responsibility and performance(87).

In truth, the stakeholder approach and corporate social responsibility are inextricably linked. Nowadays, corporate social responsibility is a controversial issue in practice, especially as globalization exacerbates inequity and social disadvantages, raising concerns about the scope of firms' actions. "Corporate social responsibility implies that companies take responsibility for their actions by considering the consequences for others who are affected, i.e. for stakeholders. Stakeholder theory is, therefore, an implicit part of corporate social responsibility"(88).

It is agreed that the directors of a company must manage it in its best interests as a whole. It does not imply that directors can be completely unconcerned about the interests of other groups (stakeholders) than shareholders. A director must strike a balance between a number of competing interests when making decisions. In any case, shareholders will benefit from considering different interest groups.

This new approach is justified by the fact that stakeholders have always been denied a voice in corporations. Without a voice, stakeholders can only trust that directors would evaluate the ramifications of their actions and act appropriately toward all groups affected. That is why Lebanese corporate law is invited to encourage directors and executives to think about stakeholders more frequently and seriously, without imposing a legal obligation on them to always act in their best interests.

As a result, applying the stakeholder theory by Lebanese corporate law will help companies to earn the loyalty of their stakeholders, thus creating a considerable deal of corporate wealth. It is thought that the more attention devoted to stakeholders' interests, the more loyalty companies will receive.

(86) R. E. Freeman and J. F. Mcvea, op. cit.

(87) R. E. Freeman, The Stakeholder Approach Revised, op. cit., p.234.

(88) U. Hansen and M. Bode and D. Moosmayer, Stakeholder Theory between General and Contextual Approaches - A German View, Zeitschrift für Wirtschafts- und Unternehmensethik, January 2004, p.251.

In an "economic jungle", loyalty is a critical aspect for businesses to remain competitive(89).

We can only conclude with a powerful quote from Sheehy: "The current and expanding stakeholder views may permit us to limit the externalizing of social and environmental costs done in favor of maximizing shareholder wealth, and ultimately save our planet from destruction by the reluctant shareholder"(90).

(89) E. O'higgins, Corporations, Civil Society, and Stakeholders: An Organizational Conceptualization, Journal of Business Ethics, Vol.94, No.2, (2010), p.157.

(90) B. Sheehy, op. cit., p.240.

List of References

I. Arabic references

- E. Eid and C. Eid, *Commercial law - Commercial companies*, T. 2, Sader.
- E. Nassif, Encyclopedia of Commercial Companies - Companies' General Provisions, T.1, 2008.
- E. Tyan, *Commercial Law*, T.1, 2nd ed., Hachette-Antoine, 2017.

II. English references

A- Legal books and directories

- K. Greenfield, *The Failure of Corporate Law: Fundamental Flaws and Progressive Possibilities*, The University of Chicago Press, 2006**.**
- R. E. Freeman, Strategic Management: A Stakeholder Approach, Cambridge University Press, 2010.

B- Legal articles

- Argandona, The Stakeholder Theory and The Common Good, *Journal of Business Ethics,* Vol.17, No. 9/10.
- A. Berle, For Whom Corporate Managers Are Trustees: A Note, *Harvard Law Review*, Vol.45, (1932).
- A. Keay, Stakeholder Theory in Corporate Law: Has It Got What It Takes?, *Richmond Journal of Global Law & Business*, Vol.3, Iss.9, (2010).
- A. S. Lynn, The Toxic Side Effects of Shareholder Primacy, *University of Pennsylvania Law Review,* Vol.161, No. 7, (2013).
- B. Sheehy, Scrooge - The Reluctant Stakeholder: Theoretical Problems in the Shareholder-Stakeholder Debate, *University of Miami Business Law Review*, Vol.14, (2005).
- D. A. Demott, Directors' Duty of Care and the Business Judgment Rule: American Precedents and Australian Choices, Bond Law Review, Vol.2, Iss.1, (1992).
- E. M. Dodd, For Whom Are Corporate Managers Trustees?, *Harvard Law Review*, Vol.45, (1932).
- E. O'higgins, Corporations, Civil Society, and Stakeholders: An Organizational Conceptualization, *Journal of Business Ethics*, Vol.94, No.2, (2010).

- H. Hansmann and R. Kraakman, The End of History for Corporate Law, *Georgetown Law Journal*, Vol. 89, Issue 2, (2001).
- I. Esser, Stakeholder Protection: The Position of Employees, *Tydskrif vir Hedendaagse Romeins-Hollandse Reg*, Journal for Contemporary Roman-Dutch Law, Vol.70, No.3, (2007).
- J. Harrison and A. Wicks, Stakeholder Theory, Value, and Firm Performance, *Business Ethics Quarterly*, No.1, (2013).
- J. Harrison and R. E. Freeman and M. Cavalcanti Sa De Abreu, Stakeholder Theory as an Ethical Approach to Effective Management: Applying the Theory to Multiple Contexts, Business Management Review, São Paulo, Vol.17, No.55, (2015).
- K. Hale, Corporate Law and Stakeholders: Moving beyond Stakeholder Statutes, *Arizona Law Review*, Vol.45, (2003).
- K. O. Mrabure, and A. Abhulimhen-Iyoha, Corporate Governance and Protection of Stakeholders Rights and Interests, *Beijing Law Review*, No.11, (2020).
- L. E. Mitchell, A Theoretical and Practical Framework for Enforcing Corporate Constituency Statutes, Texas Law Review, Vol.70, (1992).
- M. Friedman, The Social Responsibility of Business is to increase its profits, *New York Times*, 13 Sept. 1970.
- M. Goranova and L. Ryan, Shareholder Activism: A Multidisciplinary Review, *Journal of Management*, 2013.
- M. T. Jones and W. Felps, Shareholder Wealth Maximization and Social Welfare: A Utilitarian Critique, *Business Ethics quarterly, Vol.*23, No.2, (2013).
- R. Alhumaymidi, Shareholder Theory Versus Stakeholder Theory, May 2011. Available at: https://www.researchgate.net/publication/351491876_Shareholder_Theory_vs_Stakeholder_Theory.
- R. Benabou and J. Tirole, Individual and Corporate Social Responsibility, *Economica,* Vol.77, No.305, (2010).
- R. E. Freeman and J. F. Mcvea, A Stakeholder Approach to Strategic Management, *SSRN Electronic journal*, January 2001, Available at:https://www.researchgate.net/publication/228320877_A_Stakeholder_Approach_to_Strategic_Management.

- R. E. Freeman and S. D. Dmytriyev, Corporate Social Responsibility and Stakeholder Theory: Learning From Each Other, *Symphonia Emerging Issues in Management,* No.1, (2017).
- R. E. Freeman, The stakeholder approach revisited, *Zeitschrift für Wirtschafts- und Unternehmensethik*, January 2004.
- R. E. Silberglied and J. P. Friedland, Did the Delaware Supreme Court Break the 'Directors' Shield'?, Vol.24, No.10, (2007), Available at: https://www.rlf.com/wp-content/uploads/2020/05/Bank06.pdf.
- R. Phillips and R. E. Freeman and A. C. Wicks, What Stakeholder Theory is Not, *Business ethics quarterly,* Vol.13, No. 4, (2003).
- S. K. Mc Grath and J. Whitty, Stakeholder defined, *International Journal of Managing Projects in Business,* 2017.
- S. Marshall and I. Ramsay, Stakeholders and directors' Duties: Law, Theory and Evidence, University of New South Wales Law Journal, Vol.35, Iss.1, (2012).
- T. Donaldson and L. E. Preston, The Stakeholder Theory of the Corporation: Concepts, Evidence and Implications, *Academy of Management Review*, Vol.20, No.1, (1995).
- U. Bello and M. M. Abu, Shareholder and Stakeholder Theories: Understanding Corporate Governance Practice, Nile JBE, 2021.
- U. Hansen and M. Bode and D. Moosmayer, Stakeholder Theory between General and Contextual Approaches - A German View, *Zeitschrift für Wirtschafts- und Unternehmensethik*, January 2004.

III- French references

A- Legal books and directories

- B. Dondero, *Droit Des Sociétés,* 7e ed., Dalloz, Paris, 2021.
- J. M. Moulin, Sociétés Anonymes – Droits Des Actionnaires, Fasc. 1484, J.-Cl. Commercial, 2020.
- J. Monet et D. Gallois-Cochet, Sociétés Anonymes. – Conseil D'administration – Statut Des Administrateurs, Fasc. 1377, J.-Cl. Commercial, 2020.
- R. Quenaudon, *Responsabilité Sociale des Entreprises*, Rep. Droit Du Travail, Dalloz, Paris, 2017.
- T. Massart, *Contrat Des Sociétés*, Rep. Des Sociétés, Dalloz, Paris, 2006.

B- Theses

- N. Mathey, *Recherches Sur La Personnalité Morale En Droit Privé,* Thèse Paris II, 2001.

C- Legal articles

- B. Brunhes, Reflexions Sur La Gouvernance, *Dalloz Droit social,* Paris, 2001.
- D. Danet, Pour En Finir Avec Le Financialisme: La Doctrine De L'entreprise, *In L'entreprise Dans La Société Du 21e Siècle*, Larcier, Bruxelles, 2013.
- D. Schmidt, Intérêt Commun des Associés et Intérêt Social : Indépendance ou Subordination? *Recueil Dalloz*, Paris, 2020.
- E. Forget, L'investissement Ethique - Implications En Droit Des Sociétés, *Revue Des Sociétés*, *Dalloz*, Paris, 2015.
- F. Descorps-Declere, Pour Une Réhabilitation De La Responsabilité Civile Des Dirigeants Sociaux, *RTD com*., 2003.
- F. G Trebulle, Stakeholders Théorie et Droit des Sociétés, *Bulletin Joly sociétés*, No.1, (2007).
- F. G. Trebulle, Stakeholders Théorie et Droit des Sociétés, *Bulletin Joly Sociétés*, No.12, (2006).
- J. Mestre:
  - L'intérêt Social N'est Pas Omnipotent, *Horizons du droit* - Bulletin n°26, 2021.
  - Liberté Contractuelle et Droit des Sociétés, RTD com., 1996.
- S. Marshall and I. Ramsay, Stakeholders and directors' duties: law, theory and evidence, University of New South Wales Law Journal, Vol.35, Iss.1, (2012).
- S. Mercier, Aux Origines De La Stakeholder Theory: 1916-1950. Available at: https://www.researchgate.net/publication/4875351_Aux_origines_de_la_Stakeholder_Theory1916-1950/link/00463535041c38f4d3000000/download.
- V. Mercier, Le Rôle des Parties Prenantes Dans L'évolution du Droit des Sociétés, Bulletin Joly Sociétés, No. 11, (2019).

Table of Contents

KILAW
كلية القانون الكويتية العالمية
KUWAIT INTERNATIONAL LAW SCHOOL

PRINCIPLES OF CRIMINOLOGY

Dr. Ahmed Awad Belal

Professor of Criminal Law
Former Dean
Faculty of Law - Cairo University
Visiting Professor at KILAW

2020