THE PURPOSE OF THE CORPORATIONS AND CORPORATE SOCIAL RESPONSIBILITY

- *Gabriel Eduardo Messina & Lisandro A. Hadad*

I. INTRODUCTION

"…there is one and only one social responsibility of business
–to use its resources and engage in activities designed to increase its profits
so long as it stays within the rules of the game…"[1]

Over the last decades there has been an exponential increase in the responsibilities expected to be conferred on corporations.

Corporate Social Responsibility (CSR) is an approach that breaks through more and more in the academic debates and in the sphere of public policies,[2] to the point of being considered the stance of the majority[3]. Therefore, the current essay will articulate the social role, given to companies and the possible conflict that can be revealed between shareholders and stakeholders.[4]

[1] Milton Friedman, *The Social Responsibility of Business is to Increase its Profits*, The New York Times Magazine (Oct. 8, 2015), http://www.colorado.edu/studentgroups/libertarians/issues/friedman-soc-resp-business.html.

[2] Timothy M. Devinney, Joachim Schwalbach, Cynthia A. Williams, At a macro level, whether the corporate governance system generally is oriented towards shareholders alone, or towards a broader stakeholder group, will have implications for firms' relationships with societal institutions and sense of social obligations, *Corporate Social Responsibility and Corporate Governance: Comparative Perspectives*, Corporate Governance: An International Review, 21(5) 413 (2013).

[3] María Celia Marsili, El rol social de la empresa está fuera de discusión, habiéndose delineado doctrinariamente y en documentos de organismos internacionales su contenido, *La Responsabilidad Social de la Empresa y el Derecho Societario*, XII Congreso Argentino de Derecho Societario VIII Congreso Iberoamericano de Derecho Societario y de la Empresa 606 (Buenos Aires, 2013).

[4] Caspar Rose, The literature dealing with the seeming conflict between shareholders and other stakeholders is large. The contributions reflect different methodological approaches ranging from financial economics over political science to management theory, *Stakeholder Orientation vs. Shareholder Value— A Matter of Contractual Failures*, European Journal of Law and Economics, 18 78 (2004).

The alluded task will depend to a large extent, on what is understood as the purpose of the corporation or corporate interest and CSR,[5] so that some conceptual clarifications are required.

As a management technique, CSR does not need to be examined by legal science. However when a normative role is assigned, that is to say, when corporations *are supposed* to assume certain responsibilities linked to CSR to achieve an indefinite social-interest goal, which is its purpose, this perspective gets significant importance to corporate law. CSR is frequently disregarded by jurists, due to the rooted habit of attempting to epitomize law without any contact with economics, administration or finance matters, to name a few.

In other words, it is usual that CSR is studied only from the point of view of the administrative theory or corporate management. Nevertheless, the current article intends to warn against possible consequences that this conception may have for corporate law.

If it is accepted that one of the objectives of the law, in this case corporate law, could be to contribute to the development of social welfare, the debate is generated about the means or the way to reach that goal. Giving our opinion in advance, we consider that the search for shareholders' wealth maximization[6] constitutes the best option for companies, organized around a corporate structure, to contribute to the progress of social welfare[7]. Beyond the difficulty to empirically contrast the previous statement, the intention is to provide theoretical arguments that may serve as foundation[8].

[5] Ronald Bénabou, Jean Tirole, Corporate social responsibility (CSR) is somewhat of a "catch-all" phrase for an array of different concepts, *Individual and Corporate Social Responsibility* Economica, 77 12 (2010). In same way, Forest L. Reinhardt, Robert N. Stavins, Richard H. K. Vietor, *Corporate Social Responsibility Through an Economic Lens*. Fondazione Eni Enrico Mattei Note di Lavoro 84.2008 -NBER Working Paper No. 13989, 1.

[6] Reiner Kraakman, Bernard Black, Corporate law, we believe, should have the same principal goal in developed and emerging economies succinctly stated, to provide governance rules that maximize the value of corporate enterprises to investors, *A Self-Enforcing Model of Corporate Law,* "Foundations of corporate law" Second Edition, Roberta Romano, editor 725 (2012).

[7] John Armour, Henry Hansmann, Reinier Kraakman, What is Corporate Law? *The Anatomy of Corporate Law. A Comparative and Funtional Approach*, Oxford University Press, Second Edition 29. Diego Duprat, "Responsabilidad social de la empresa". La Ley, 1 (2009).

[8] Steve Letza, Xiuping Sun, James Kirkbride, Different perspectives in theory result in different diagnoses of and solutions to the problems of corporate governance practice, *Shareholding Versus Stakeholding: a critical review of corporate governance*, Corporate Governance: An International Review, 12, 242, (2004).

Lastly, it should be pointed out that Corporate Social Responsibility (CSR) has been studied several times from a macro or public policy perspective, which indicates that the debate about this subject is also about the role of the corporation within society[9].

II. CORPORATE SOCIAL RESPONSIBILITY, THE STAKEHOLDER DOCTRINE AND CORPORATIVE PHILANTHROPY

"Do corporations have any responsibilities beyond trying
to maximize stockholder value, adhere to contracts, implicit as well as explicit,
and obey the laws of the different countries where they operate?
My answer is "no""[10]

Entrepreneur Social Responsibility[11] and Corporate Social Responsibility are currently ordinary terms that are used in economic, political, social and media circles, which present, however, a not rigorous conceptual basis.[12] To a large extent, the discussion on social responsibility is focused on corporations, so I will omit private businessmen.[13]

[9] Antonio Argandoña, Heidi Von Weltzien Hoivik, When we define CSR, we are implicitly defining the whole set of interrelated responsibilities and roles in society: CSR is not only business ethics, but also social ethics and even political ethics…. *Corporate Social Responsibility: One Size Does Not Fit All. Collecting Evidence from Europe*, 89, Issue 3 suplement, Journal of Business Ethics, 229-230.

[10] Gary Becker, *Do Corporations Have a Social Responsibility Beyond Stockholder Value?* (May 10, 2016), http://www.becker-posner-blog.com/2005/07/do-corporations-have-a-social-responsibility-beyond-stockholder-value-becker.html.

[11] Isaac Halperín, "Las sociedades comerciales son generalmente empresas comerciales; pero no es forzoso que así sea dado que los conceptos de sociedad y empresa no se identifican". Sociedades Anónimas. Examen crítico del decreto-ley 19.550. Ediciones DePalma. Buenos Aires, 22 (1974).

[12] Pablo De Andrés Alonso, Valentín Azofra Palenzuela, "El enfoque multistakeholder de la responsabilidad social corporativa: De la ambigüedad conceptual a la coacción y al intervencionismo". Revue Sciences de Gestion – Management Science – Ciencias de Gestión, No. 66, 6, (2008).

[13] Milton Friedman, *The Social Responsibility of Business is to Increase its Profits*, The New York Times Magazine, (Oct. 8, 2015), http://www.colorado.edu/studentgroups/libertarians/issues/friedman-soc-resp-business.html.

As noted, one of the first challenges found by diverse authors who develop this concept is to specify a definition of CSR.[14] In spite of difficulties, a definition must be attempted. Therefore, in this paper, the definition of the so called "Green Book", produced by the European Commission, which considers corporate social responsibility as companies' voluntary integration of social and environmental concerns into their commercial deals and their connections with their interlocutors is adopted. [15]

Voluntarism[16] seems to be a factor that the different definitions have in common so that the adoption of CSR policies implies the acceptance of corporate liabilities beyond legal requirements[17] or as a result of institutional demands imposed by certain corporate governance systems.

Also, there is a close relationship between CSR and the doctrine of *stakeholderism*[18] or *stakeholder*[19]; and *even though these terms cannot be seen as synonyms*, they may incarnate the same risk: to distort the firm`s goal.[20]The same situation occurs with the so called corporative philanthropy.[21]

The stakeholder theory is usually presented as a meeting proposal between management theory and business ethics aimed to legitimize a corporative governance model, supposedly pluralist, socially responsible and targeted at wealth maximization of every stakeholder.[22]

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[14] Lawrence E Mitchell, CSR remains ill-defined, if defined at all, and proliferating precatory pronouncements are no better than the paper on which they are written, *The board as a path toward corporate social responsibility*. Doreen McBarnet, Aurora Voiculescu, and Tom Campbell, *The new corporate accountability: corporate social responsibility and the law*, Cambridge University Press, 279, (2007).

[15] 7, (may 09, 2016) http://www.europarl.europa.eu/meetdocs/committees/deve/20020122/com(2001)366_es.pdf.

[16] Efraín H. Richard, "La responsabilidad social corporativa va más allá del cumplimiento de las leyes y las normas, dando por supuesto el respeto y su estricto cumplimiento". "Utilidad inmediata de la doctrina de responsabilidad social empresaria". MJ-DOC-4729-AR | MJD4729.

[17] "Lo cual significa que la responsabilidad social comienza cuando termina el derecho". BOUR, Enrique. "Responsabilidad social de la empresa análisis del concepto". Estudios Económicos Volumen XXIX, Nº 59 (N.S.), Julio - Diciembre de 2012. Departamento de Economía, Universidad Nacional del Sur, 10.

[18] Richard Marens, *We Don't Need You Anymore: Corporate Social Responsibilities, Executive Class Interests, and Solving Mizruchi and Hirschman's Paradox*, 35 No. 4, Seattle University Law Review, 1221-1222 (2012).

[19] Antonio Argandoña, Heidi Von Weltzien Hoivik, In practice, then, CSR will be the result of a dialog between the firm and its stakeholders about the obligations of the first and the expectations of the second, *Corporate Social Responsibility: One Size Does Not Fit All*, Collecting Evidence from Europe, 89, Issue 3 suplement, Journal of Business Ethics, 225 (2009).

[20] Caspar Rose, The concept of a firm's social responsibility is closely related to the stakeholder theory i.e. whether management should subordinate profit maximization to other goals, *Stakeholder Orientation vs. Shareholder Value— A Matter of Contractual Failures*, 18 Issue 1, European Journal of Law and Economics, 93 (2004).

[21] Luisa Montuschi, "… tres aspectos en los cuales la RSE asume un papel preponderante. El primero corresponde a la tradicional filantropía corporativa, que manifiesta preocupación por el bienestar de los miembros de la corporación", "La responsabilidad social de las empresas: la brecha entre los principios y las acciones". Academia Nacional de Ciencias Ecónomicas 15-16 (Jan 01, 2016) http://www.anceargentina.org/site/trabajos/LA%20RESPONSABILIDAD%20SOCIAL%20DE%20LAS%20EMPRESAS%20f.pdf.

Even though a precise definition of *stakeholder* is not available, this concept can be understood as inclusive of every individual and group, affected by the activities of the organization,[23] as well as individuals that are vital for the survival and success of the undertaking.[24]
It has been maintained that along with the shareholder maximization aim (of value or wealth), the ethic horizon[25] must not be overlooked.

Even though these are well-meaning, the previous statements can only be interpreted as expressions of desire. Firstly, due to the fact no one can aspire for companies (or people) to behave in a non-ethical way.[26] Secondly, these terms are neither contradictory nor in need of clarification. Shareholders' wealth maximization does not imply that the company behave in a dishonest manner (or rather managers' dishonest behaviour). There seems to be a tendency, maybe unintentional, to consider wealth maximization as detrimental, so that it is necessary to clarify that it must be achieved within ethical and legal boundaries. Every organization has a purpose,[27] and

[22] Pablo De Andrés Alonso, Valentín Azofra Palenzuela, "El enfoque multistakeholder de la responsabilidad social corporativa: De la ambigüedad conceptual a la coacción y al intervencionismo". Revue Sciences de Gestion – Management Science – Ciencias de Gestión (ISSN:1634-7056), No. 66, 9 (2008).
[23] Geoffrey P. Lantos, "… stakeholders can be envisioned as existing at four levels. First, is the systemic¬¬/macroenvironmental general/environment level – largersocietal factors, incluiding the entire business system, plus society at large […]. The second… microenviroment/operating task/enivoroment, consisting of exchange relationship partners (such us suppliers and distributors), plus competitors, customers, the local community, and the financial community […]. A third level of stakeholder is within the business organization, notably superiors, subordinates and other employees and labor unions. The final level of stakeholder I significant others of business decision makers, such as peers, family, friends, etc." The boundaries of strategic corporate social responsibility, 18 No. 7, The Journal of Consumer Marketing, 604-605 (2001).

[24] Pablo De Andrés Alonso, Valentín Azofra Palenzuela, "…en el sentido originario del término, los stakeholders se identificaron con aquellos sin los cuales una organización no podría sobrevivir, es decir, "aquellos en quienes la organización tiene un interés (stake)". "El enfoque multistakeholder de la responsabilidad social corporativa: De la ambigüedad conceptual a la coacción y al intervencionismo". Revue Sciences de Gestion – Management Science – Ciencias de Gestión (ISSN:1634-7056), No. 66, 8 (2008).
[25] Mariano Gagliardo, La meta y aspiración a la "maximización del valor de la acción" tiene que estar acompañada de una restauración de la confianza si aspiramos a superar nuestras crisis recurrentes. Para ello, también resulta ineludible, un trasfondo humanístico y ético que defina a la gestión societaria y empresarial, permitiendo, asimismo, armonizar la eficiencia con un obrar de los administradores transparente y responsable, *Maximización del valor de la acción*, MJ-DOC-3017-AR | MJD3017.
[26] Without going into digressions about what is considered "ethical behaviour".
[27] Michael C. Jensen, *Value Maximization, Stakeholder Theory, and the Corporate Objective Function,* 14 No. 3, Journal of Applied Corporate Finance, 8 (2001).

their activity will be directed at that goal in the optimal way;[28] and if the goal is an economic benefit, wealth maximization will be the activity guiding lighthouse. Therefore, we are not ashamed to state that it is not harmful for the corporation "to make money within the law" if that is the reason why the corporation was created.

III. CORPORATION APTITUDE FOR PRACTICING CSR

"To view pollution, or investment in South Africa,
or other difficult moral and social questions
as governance is to miss the point."[29]

The chance that a company is able to conduct CSR actions is directly related to the debate on the corporation's purpose,[30] and the proper conceptualization and differentiation between company, artificial person and enterprise. In this way, it will be essential to make a few assessments of corporate interest, the organization's purpose or objective function, and the compliance with the contracts and the law.

The corporate-interest institute has been profusely addressed in corporate literature. Nonetheless, its representation and delimitation still arouses controversy, to the point that it is considered one of the most evanescent concepts that the doctrine[31] has to face.

It should be mentioned that this topic is not expected to be developed in a few lines; and only some aspects that have been kept in mind to substantiate the conclusions, are noted.

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[28] Ricardo F. Crespo, Maximización y auto-interés no significan necesariamente lo mismo, pues el segundo de los términos es más acotado, *Alcances y limitaciones de la noción de maximización económica*, Anales de la Academia Nacional de Ciencias Morales y Políticas. Tomo XXXVIII, 104 (2011).

[29] Frank Easterbrook, Daniel Fischel, The economic structure of corporate law, Harvard University Press. ISBN 0-674-23539-8, 39.

[30] Eric B. Rasmusen, *The proper goal of a corporation is an old question in corporate law, most commonly discussed in connection of "social responsibility",* The goals of the corporation under shareholder primacy: just profit— or social responsibility and religious exercise too? Page 6. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2365135.

[31] Rafael Mariano Manovil, Grupos de Sociedades en el Derecho Comparado, Ed. Abeledo Perrot, Bs. As., 571 (1998). In same way, Horacio P. Fargosi, Releyendo el art. 248 de la Ley de Sociedades Comerciales, MJ-DOC-940-AR | MJD940.

In honour of brevity, corporate interest denying theories[32] are disregarded, because the objective of this study would be thoroughly exceeded. It is only pointed out that although the main denying positions are based on the fact that accepting the existence of corporate interest implies "subjectivism", since the idea of interest always refers to an attitude typical of men,[33] necessarily related to their natural reality[34]. It is estimated, on the contrary, that social interest is a category with objective existence, deduced from the incorporation agreement,[35] and whose concept is sufficiently clear, forming a control method over discretionary decisions of the political body or the managers, and a protection boundary for those defeated in that decision.[36]

However, if we expect to take the analysis further, it will be necessary to question about this matter from a theoretical point of view. In this way, in order to analyse a business-company's ability to practice CSR, we must inquire into corporations´ purposes, that is to say, what is the reason why people create this organizations.

It should be taken into account that the problem of corporate interest is related to the incorporation agreement, which gives birth to the legal entity. Around a legal entity, other figures, called stakeholders move. They participate in the company activity without belonging to it, but related to it by means of the agreement and the law.[37]

[32] Within the authors, we can quote Colombres and Roimiser.
[33] Efraín Hugo Richard, Orlando Manuel Muiño,"El término "interés de la sociedad" […] ha recibido algunas censuras por implicar un subjetivismo -interés- de las personas jurídicas, elemento subjetivo que sólo puede encontrarse en las personas físicas", "Derecho Societario". Editorial Astrea. Buenos Aires, 75 (2000).
[34] Carlos A. Molina Sandoval, El difícil contorno del interés social, MJ-DOC-1713-AR | MJD1713.
[35] Germán González Cocorda, Tomás Capdevila, El interés social y el interés contrario del accionista. Recensión del artículo 248 según la jurisprudencia. XI Congreso Argentino de Derecho Societario. VII Congreso Iberoamericano de derecho societario y de la empresa. Fundación para la investigación y el desarrollo de las Ciencias Jurídicas. Tomo II. Buenos Aires 275 (2010).
[36] Jesús Alfaro Aguila-Real, *Interés social, cumplimiento normativo y responsabilidad social corporativa*, http://almacendederecho.org/interes-social-cumplimiento-normativo-y-responsabilidad-social-corporativa/.
[37] Jesús Alfaro Aguila-Real, ob. cit.

Focused on the purpose of the corporation, people may have multiple objectives to become a member and they will choose the most convenient channel or method to achieve their purposes.[38] The legislator, having in mind the aforesaid, regulated different ways of association. In this way, non-profit organizations seem to be in compliance with activities, by which the members´ wealth increase is not the ultimate goal. A proof of that turns out to be the tax benefits that these institutions enjoy: since they are aimed at social good activities, the government encourages their creation by tax-relief. However, there is no obstacle to activities aimed at social good accomplished by a corporation: people within their scope of liberty, are able to join together and can agree to create a corporation targeted at social good or not aimed at distributing profit among their members (or any sort of percentage). Equally, the founders of these companies are able to appoint other people to manage the created artificial person and the role of these managers will be to maximize profit for the members (who elected them for that task).

Through the legal-instrument company, the shareholder attempts to satisfy his individual interest. This interest, as a shareholder, is an indirect interest; obtained as a reflection; it must be achieved through the fulfilment of the corporation´s purpose or corporate interest.
Since there are several specifically-legislated legal structures, orientated to social good, which are not for profit, and that enjoy tax-benefits; it is very difficult to imagine that people who create a corporation, have a different goal than to maximize the return on their investments.[39]

Hence, the *managers will have to try to optimize utility – either economic or not – and in absence of explicit orientation it will have to be understood as shareholders' wealth maximization.*[40]

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[38] Eric B. Rasmusen, *If shareholders wish to use the corporation solely to earn money, fine. But if, as is not only often but usually the case in a closely held corporation, the shareholders have other goals, those are legitimate too*, The goals of the corporation under shareholder primacy: just profit— or social responsibility and religious exercise too?, 39, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2365135.
[39] Jesús Alfaro Águila-Real, "…considerada como contrato, el objetivo de la sociedad debe ser el que las partes hayan establecido en el mismo y, presuntivamente, es decir, salvo que los socios digan otra cosa en los estatutos, maximizar la rentabilidad de las inversiones realizadas por los socios (arts. 1665 CC y 116 ss. y 133 C de c, en particular) o, lo que es lo mismo, maximizar el valor de la empresa a largo plazo".. "El interés social y los deberes de lealtad de los administradores", AFDVAM 213 (2016). Although I share the first postulate with the author, I allow myself to doubt that it is assimilable to the maximization of the value of the company in the long term. Hence the use of the formula - somewhat vague - "maximization of wealth.
[40] David L. Engel, "One cannot persuasively claim to have found an extra-profit goal that society wants corporations to pursue, unless one can offer at least a plausible explanation of why the legislatura did not long ago enactliability rules, regulations, or other measures, to implement the goal in question quite independently of any management practice of social responsibility". *An Approach to Corporate Social Responsibility*, 32, No. 1, Stanford Law Review, 36 (1979).

Based on the assertion that the legal personality of an entity is a technical resource that the legislator may adopt or not, according to rules of coexistence or legislative policies, that is to say, it is a simplified system of legal relationships and the legislator has the power to make legal rules that recognise it as a different allocation centre, by means of social actions or contractual relationships functionally externalised,[41] the corporation turns out to be an instrument of which the shareholders make use of to achieve their common purpose.

On the basis of this contractual concept of a company, the risk the shareholders are willing to share (for the developing of an activity applied to the production or exchange of goods and services) becomes the purpose of the contract.[42]

At this point, it is possible to point out one of the main characteristics of the analysed institute: corporate interest is the common denominator of the legal interest of the shareholders in the company.

It is also worth mentioning that corporate interest may or may not agree with the majority interest, disagreeing with the dogmatic trend that identifies both ideas. The majority principle is useful as an organizational criterion of the shareholders, in case there is disagreement about the decision to make, in order to respond better to corporate interest, that is to say, the referred principle is based on decisions made by a majority, acting in pursuit of corporate interest, not personal interests, not in accord with the former. In case the will of the shareholders comes into conflict, the matter is initially decided by the majority, though bounded by the incorporation agreement purpose.

[41] Gabriela Calcaterra, Personalidad, empresa y contrato de sociedad, VIII Congreso Argentino de Derecho Societario. IV Congreso Iberoamericano de Derecho Societario y de la Empresa. Tomo I. 91.

[42] Horacio P. Fargosi, "aquel interés común derivado del riesgo y de la vocación de soportar las pérdidas y de participar de las utilidades, fundamento de la igual calidad de derechos, forma parte de la causa-fin de la sociedad", "Releyendo el art. 248 de la Ley de Sociedades Comerciales". MJ-DOC-940-AR | MJD940.

In conclusion, corporate interest may be understood as the common interest of every shareholder, which functions as common surety, protecting the essence of company's purpose and the bond between the former and the latter.[43]

IV. DUTIES OF MANAGERS AND SHAREHOLDERS FOR WEALTH MAXIMIZATION

"When one person exercises authority that affects another wealth, interests may diverge."[44]

Motivations that bring people to go into business and develop an activity as a group go beyond this analysis. Nonetheless, it must be noted that every organization has a purpose and, as a consequence, a governance system that allows for decision making.[45] In this sense the two basic options are consent or authority.

Authority appears frequently in those structures where there is significant asymmetry of information or where members have opposing interests. Once the authority system is established, its counterpart is to be held accountable for their actions (*accountability*).[46]

Corporate governance practices, either in the area of management or control, have a direct implication for the survival of organizations, since individuals or agents who make important decisions may not bear a substantial share of the wealth their decisions[47] generate; a frequent situation within the board of directors.[48]

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[43] Rafael Mariano Manovil, Grupos de Sociedades en el Derecho Comparado, Ed. Abeledo Perrot, Bs. As., 574 1(998).
[44] Frank Easterbrook, Daniel Fischel, *The economic structure of corporate law*, Harvard University Press. ISBN 0-674-23539-8, 91.
[45] Robert Cooter, Hans-Bernd Schäfer, The structure of offices and roles in an organization makes its individual members capable of corporate action. Its members coordinate their behavior to pursue common goals, as with a football team, symphony, orchestra, church, army, partnership, or corporation, *Solomon's Knot. How Law Can End the Poverty of Nations*, Princenton University Press, New Jersey, 12 (2012).
[46] Stephen Bainbridge, The New Corporate Governance in Theory and Practice, Oxford University Press, New York, First Edition, 3.
[47] Eugene F. Fama, Michael C. Jensen, "… we are concerned with the survival of organizations in which important decision agents do not bear a substantial share of the wealth effects of their decisions", *Separation of Ownership and Control*, 26 No. 2, Journal of Law and Economics, Corporations and Private Property: A Conference Sponsored by the Hoover Institution, 301, (1983), http://links.jstor.org/sici?sici=00222186%28198306%2926%3A2%3C301%3ASOOAC%3E2.0.CO%3B2-A. http://links.jstor.org/sici?sici=00222186%28198306%2926%3A2%3C301%3ASOOAC%3E2.0.CO%3B2-A.
[48] Eugene F. Fama, Michale C. Jensen, *Id.*

Corporate governance traditionally has proposed control systems[49] that include establishing plans, policies, procedures, standards and codes,[50] among others, based additionally on instruments of incentive or compulsion directed towards reducing uncertainty and diminishing the cost of transaction.

Nevertheless, to restrict the possibility of individual election within circles characterized by uncertainty, dynamism and complexity, complicates the development of conditions aimed at facilitating innovation, quick and flexible reaction and, in general, proper decision making; key factors for the survival of organizations. As a consequence, it can be stated that the greater the responsibility to account for their actions, the less productive the authority-based decisions will be. At some point, authority and accountability are irreconcilable.[51]

Having in mind that agents are rational, but to a limited extent, contracts will be incomplete due to the fact that it will be impossible to foresee every contingency or future situation.[52] Facing this fact, corporate law states a series of mechanisms to solve this issue, among which behaviour standards are outlined. The solution just mentioned is based on the special incorporation agreement characteristic, which turns it into an incomplete sample, since no restriction can be specified about a necessarily indefinite act of decision-making delegation.[53]

[49] Martín E. Paolantonio, "Los mecanismos de control pueden tener origen legal, contractual en sentido estricto, o seguirse de la existencia de un mercado de control societario que limite la posibilidad de un comportamiento oportunista por parte de los administradores societarios". "Retribución de los directores y análisis económico del derecho: reflexiones sobre el caso de las sociedades abiertas" en "Revista de Derecho Privado y Comunitario". No. 21. Derecho y Economía. Rubinzal – Culzoni Editores. Santa Fe, 297-298 (1999).

[50] Enrique Pelaez, "Por medio de los principios contenidos en estos Códigos de Gobierno Corporativo se intentó disminuir uno de los principales problemas que enfrenta el accionariado disperso de las grandes corporaciones que consiste en la disociación entre la propiedad y control que provoca importantes problemas de agencia, difíciles de resolver".. "Informe sobre el código de gobierno corporativo". XI Congreso argentino de societario: VII Congreso iberoamericano de derecho societario y de la empresa. 1ª ed. Buenos Aires: Fundación para la Investigación y Desarrollo, 2010. ISBN 978-987-23848-3-8. Mar del Plata. 19, 20 21 y 22 de Octubre de 2010. Tomo III. Page 440.

[51] Stephen Bainbridge, *The New Corporate Governance in Theory and Practice*, *supra* note 46.

[52] Frank Easterbrook, Daniel Fischel, *The economic structure of corporate law*, *supra* note 44.

[53] Martín E. Paolantonio, "El análisis económico del derecho y la estructura societaria" en "Análisis económico del Derecho". Kluger, Viviana (compiladora). Editorial Heliasta. Buenos Aires, 220 (2006).

Managers´ duties are introduced as the tool developed by the legal system to complete the unspecified terms within the agreements subscribed by the shareholders.

Disregarding the legal system requirements, the following question may be considered: why managers must direct their activities *only* at shareholders? In this sense, the first answer resides in the position of residual beneficiary that members of a company occupy. The fact that members receive the flow of residual funds of the corporation reveals an interest alignment, since they are among the most affected by the results of the company activity. However, this reason alone could be unsatisfactory.[54]

Another frequent argument is the one that suggests that - "*no servant can serve the interests of several masters"*- related to managers being unable to serve the shareholders along with another group with different or opposed interests.

In front of the previous statement, it could be argued that within a public limited company there might exist different types of shares that confer different rights to their holders.[55] This way, even if the aspiration is shareholders´ primacy, since they have dissimilar interests, we would be in the same position as that of running the company´ activities in aid of all the stakeholders. In spite of the different rights attributable to the different types of shares, it cannot be forgotten that they share a characteristic that distinguish them from third party strangers to the company: the choice of participating in profit and loss. The common interests in participating in the company outcomes make managers direct their activity in aid of the shareholders.

Assuming the existence of freedom of contract (legal as much as factual), agents sign agreements – either loans, employment or supply contracts, etc- with the company because they are expecting to improve their current situation – by means of return of the lent money, plus interests or salary,

[54] Jonathan R. Macey, *An Economic Analysis of the Various Rationales for Making Shareholders the Exclusive Beneficiaries of Corporate Fiduciary Duties* (1991), Yale Law School Faculty Scholarship. Paper 1713. 31. http://digitalcommons.law.yale.edu/fss_papers/1713.

[55] The Argentine law admits for certain types of companies (not very used by the way) the need for different types of partners. For example, in "comandita simple" company and in the capital and industrial compay, capital and industrial partners. In both cases, each member category is granted diferent rights and obligations.

salary payment, supplies, etc-. As we will see later, each contracting party must accept the risk structure inherent to their voluntary relationship[56] with the firm.

In other words, it could be considered that shareholders are the ones who appreciate[57] the "tool" of managers´ fiduciary duties the most, and as a consenquence they decide to invest by subscribing for shares and not by means of another legal structure.

Even in relation to corporative philanthropy, and assuming the existence of a market for altruism,[58] managers (as agents)[59] will have to attempt to satisfy shareholders` main interests,[60] in the best way.[61] Although it is considered that corporations could be more productive than government and non-profit organizations, to conduct altruistic activities (though the reason for this productivity should be examined), it must be kept in mind that the analogy between individuals (natural person) and companies (artificial person) fails when discussing social-interest goods supply. While human beings are versatile and have different interests, corporations are incorporated with a well-defined purpose, which do not mainly include a direct contribution to general interest.[62]

[56] Special mention will be made of those who are involuntarily related to society: for example, the community where the company operates does not sign a contract but it will be the task of public representatives to safeguard their interests.

[57] Jonathan R. Macey, Corporate Social Responsibility: A Law & Economics Perspective, 17 Issue 2, Chapman Law Review, 333.

[58] Todd Henderson, Anup Malani, *Corporate Philanthropy and the Market for Altruism,* http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=8004&context=journal_articles.

[59] Eric Posner, *Agency Models in Law and Economics,* http://www.law.uchicago.edu/files/files/92.EAP.Agency.pdf. Frank Easterbrook, Daniel Fischel, The economic structure of corporate law, Harvard University Press. ISBN 0-674-23539-8. Stephen Ross, The Economic Theory of Agency: The Principal's Problem 63 Issue 2 American Economic Review, 134 (1973). Michael C Jensen, Clifford W. Smith Jr, *Stockholders, manager and creditor interests: Applications of agency theory*, 2. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=173461, among many others.

[60] John Buchanan, Dominic Heesang Chai, Simon Deakin, Viewing shareholders as 'principals' and managers as their 'agents' is not synonymous with the idea and practice of 'shareholder primacy', but it is linked to it, *Agency Theory in Practice: a Qualitative Study of Hedge Fund Activism in Japan,* Corporate Governance: An International Review, 22(4), D'Angelo Law Library, Chicago University, 299 (2014).

[61] Richard Marens, The existence of an agency relationship between partners and administrators is not peaceful doctrine: "Historically and legally, agency theory was not an accurate account of how corporations were expected to be run", *We Don't Need You Anymore: Corporate Social Responsibilities, Executive Class Interests, and Solving Mizruchi and Hirschman's Paradox*, 35 No. 4, Seattle University Law Review, 1218 (2012).

[62] Geoffrey P. Lantos, The boundaries of strategic corporate social responsibility, 18 No. 7, The Journal of Consumer Marketing, 609 (2001).

In this way, *managers, in the course of their duties, must direct their behaviour towards social interest*[63], *which presumably, will result in shareholdes'r wealth maximization.*[64]

When disguised as CSR, it is intended to protect interests of people who are strangers to the incorporation agreement. By doing this, not only are we unreasonably forcing this idea of corporate interest,[65] but also, we would be failing to provide the managers with a unique task,[66] and as a consequence, they would be prevented from maximizing this function, with multiple objectives[67] (in many occasions opposed).[68] Even though alternative models have been developed, using the game theory,[69] it cannot be stated that the mentioned deficiency has been overcomed.

The above-said does not imply the disclaiming of the needs of those interested in the firm.[70] The attention required by many stakeholders is a result of corporate logic itself: it is inconceivable to any organization that competes on the market, to disregard consumers, employees, creditors, suppliers, community, etc.[71] However, all the attention granted, must not nullify the aim of the

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[63] Francisco Junyent Bas, El interés social: directiva central de responsabilidad de los administradores societarios. IX Congreso Argentino de Derecho Societario V Congreso Iberoamericano de Derecho Societario y de la Empresa, San Miguel de Tucumán, 429, (2004).

[64] Douglas G. Baird, Todd Henderson, Purpose not shared by many: "An example of an almost-right principle that has distorted much of the thinking about corporate law in recent decades is the oft-repeated maxim that directors of a corporation owe a fiduciary duty to the shareholders", Other's people money, 60 Issue 5, Standford Law Review, 1309.

[65] Diego Duprat, "Responsabilidad social de la empresa". La Ley, 1 (2009).

[66] Michael C. Jensen, "…stakeholder theory should not be viewed as a legitímate contender to value maximization because it fails to provide a complete specification of the corporate purpose or objective function", *Value Maximization, Stakeholder Theory, and the Corporate Objective Function*, 14 No. 3, Journal of Applied Corporate Finance, 9 (2001).

[67] Id. 10-11, "It is logically impossible to maximize in more than one dimension at the same time unless the dimensions are what are known as "monotonic transformations" of one another".

[68] Luisa Montuschi, "Pero en el nuevo contexto definido por la RSE ese objetivo deberá ser compatibilizado con otras demandas dirigidas a la empresa", *La responsabilidad social de las empresas: la brecha entre los principios y las acciones*, Academia Nacional de Ciencias Económicas, 30. (2008) (Jan 14, 2016) http://www.anceargentina.org/site/trabajos/LA%20RESPONSABILIDAD%20SOCIAL%20DE%20LAS%20EMPRESAS%20f.pdf.

[69] Lorenzo Sacconi, "..the objective function of the firm is univocally defined not as the maximisation of shareholder value, but as the maximisation of the Nash bargaining product of the stakeholders' utilities within a symmetrical payoff space, after having set the negative externality on other non-cooperating stakeholders at a minimum. This objective function is perfectly calculable as the Pareto efficient allocation of payoffs that maximizes the egalitarian distribution".. *The Economics of Corporate Social Responsibility*, EconomEtica, No. 39, 31 (2012).

[70] Michael Porter, Mark Kramer, The mutual dependence of corporations and society implies that both businees deciscions and social policies must follow the principle of shared value. That is, choices must benefit both sides, *Strategy and Society: The link between competitive advantage and corporate social responsibility*, Harvard Business Review, 5 (2006).

[71] Alejandro Miller, "…entendemos que la sociedad mercantil debe prestar atención a los intereses de los "stakeholders" dado que los mismos finalmente repercutirán -en el largo plazo- favorable o desfavorablemente a la creación de valor económico de la sociedad mercantil".. "Los nuevos paradigmas en el Hacer de las Sociedades Comerciales". MJ-DOC-5113-AR | MJD5113.

organization pursued by its members.[72] Both employees[73] and creditors invest in the company (either their time or resources), have expectations and interests at stake, and yet each and every one of them must endure the risk structure they have accepted as a consequence of their relationship with the firm[74] and they can count on legal protection as well as contractual basis they deem appropriate.

Nonetheless, it could be argued that due to the previous assumptions about the limited rationality of the agents, agreements between stakeholders and the corporation are also incomplete. However, it is important to remember that the relationship between every stakeholder and the corporation will be different, showing each and every one of them their own distinctive features. Hence, potential conflicts in each relationship must be identified in addition to the management mechanisms in accordance with the business characteristics, among which the agreement and *gap filling protection* of different laws are mentioned. In other words, it would be *mutatis mutandis* applicable the so called Tinbergen Rule[75]: for each goal it will be necessary at least an instrument to attempt to reach it – and it must turn out to be linearly independent-.[76]

The expansion of managers´ duties does not seem to be the appropriate tool to protect the interests of people strange to the incorporation agreement: not only because just one tool to reach

[72] Gary Becker, In many other situations, apparent conflicts between maximizing stockholder value and social goals disappear on closer examination. A corporation may give money to local charities, play up its contributions to the environment, and do other things that appear to reduce shareholder value because that sufficiently improves the government regulations that affect their profitability, *Do Corporations Have a Social Responsibility Beyond Stockholder Value?* (May 10, 2016), http://www.becker-posner-blog.com/2005/07/do-corporations-have-a-social-responsibility-beyond-stockholder-value-becker.html.

[73] Jonathan R Macey, Taking steps to improve worker morale is good for workers and good for shareholders, *An Economic Analysis of the Various Rationales for Making Shareholders the Exclusive Beneficiaries of Corporate Fiduciary Duties*, (1991). Yale Law School Faculty Scholarship Paper 1713, 35, http://digitalcommons.law.yale.edu/fss_papers/1713.

[74] Frank Easterbrook, Daniel Fischel, The economic structure of corporate law, Harvard University Press. ISBN 0-674-23539-8, 37.

[75] Jeffrey Schas, Felipe Larraín, "Tinbergen delineó cuidadosamente los pasos cruciales para la formulación de políticas óptimas. Primero, las autoridades deben especificar las metas de la política económica, usualmente en términos de una función de bienestar social, que la autoridad está tratando de maximizar, Basadas en la función de bienestar social, las autoridades identifican los objetivos que quieren alcanzar. Segundo, las autoridades deben especificar los instrumentos de política que se dispone para alcanzar los objetivos. Tercero, las autoridades deben tener un modelo de de la economía que conecte los instrumentos con los objetivos, para así poder escoger el valor óptimo de los instrumentos de política" "Macroeconomía en la economía Global". Pearson Educación. México, 586 (1995).

[76] Jeffrey Schas, Felipe Larraín, "Si en una economía de estructura lineal las autoridades tienen N objetivos, estos objetivos se pueden alcanzar siempre que existan al menos N instrumentos de política que sean linealmente independientes entre sí", "Macroeconomía en la economía Global", Pearson Educación, México, 588 (1995).

several goals would be tried, but also because the sought goals depend on each other and are even opposed.[77]

Lastly, it seems illogical that CSR emerges with a greater deal of energy next to financial scandals of the last decade. In the first place, it should be explained that many of the aforesaid facts, were contrary to ethics, as well as illegal. There is also a contradiction in thinking that disloyal managers would not have committed a crime having as a goal profit maximization of all the stakeholders. That the disloyal manager would stop acting selfishly when faced with a change of the activity guiding-goal is a paradox.

Ultimately, the problem is not that managers attempt to satisfy too many interests[78] simultaneously, but that this perspective has the potential to allow them to serve their own interests,[79] finding it difficult,[80] not to say impossible, to assess the business management.[81]

V. ARTICULATION OF THE CORPORATION PURPOSE AND SOCIAL RESPONSIBILITY

"…the profit motive is compromised in both word and deed.
It now shares its royal throne with a multitude of noncommercial
motives that aspires to loftier and more satisfying values."[82]

[77] Jesús Alfaro Águila-Real, "En este sentido, indicar a los administradores que han de proteger «armónicamente» los intereses de todos los grupos interesados en la empresa no proporciona ningún criterio para ponderar tales intereses y atribuir, por tanto, un mayor o menor peso a cada uno de ellos, por lo que los administradores quedan sin directivas de conducta claras". "El interés social y los deberes de lealtad de los administradores", AFDVAM 20, 214 (2016).

[78] Guillermo E Ragazzi, "La responsabilidad social empresaria (moda, mito un nuevo paradigma de gestión)". XI Congreso argentino de societario: VII Congreso iberoamericano de derecho societario y de la empresa. 1ª ed. Buenos Aires: Fundación para la Investigación y Desarrollo, 509 (2010).

[79] Jonathan R Macey, An Economic Analysis of the Various Rationales for Making Shareholders the Exclusive Beneficiaries of Corporate Fiduciary Duties (1991), Yale Law School Faculty Scholarship. Paper 1713, 36. http://digitalcommons.law.yale.edu/fss_papers/1713.

[80] Caspar Rose, "Recognizing this implies that the notion of a broad duty of loyalty for management is simply misleading due to problems of verifiability and the fact that no servant can serve the interests of several masters", *Stakeholder Orientation vs. Shareholder Value— A Matter of Contractual Failures*, 18 Issue 1, 86-87 (2004).

[81] Pablo De Andrés Alonso, Valentín Azofra Palenzuela, "…los teóricos del enfoque stakeholders cuentan con el apoyo activo de muchos managers que quieren liberar su poder de decisión de las limitaciones que le imponen el criterio de la búsqueda del valor y su aplicación por los mercados de capitales", "El enfoque multistakeholder de la responsabilidad social corporativa: De la ambigüedad conceptual a la coacción y al intervencionismo". Revue Sciences de Gestion – Management Science – Ciencias de Gestión (ISSN:1634-7056), No. 66, 12 (2008).

[82] Theodore Levitt, The Dangers of Social Responsibility, Harvard Business Review, 42 (1958).

As it has been anticipated, the task of articulating corporate goals and CSR[83] depends to a large extent, on how each of these concepts is understood.

Based on the previous explanation, the following ways of adopting CSR are recognized: *additional, strategic* (instrumental), *constitutive*,[84] among others.[85]

From the first perspective, CSR is considered a policy of product differentiation[86] which, in addition to standard offer, attempts to satisfy an altruist preference of the consumer (for an additional cost).[87] Maybe, the ones that bear corporate-activity costs are not consumers, but employees by accepting lower salaries for working in companies compatible with altruist preferences, or creditors or any other investor through minor rates or returns. It is evident that CSR is not free of charge: an agent related to the Company bears the costs, which could be compensated or not, with the profit obtained from social actions carried out by the corporation. That is to say, the preference of an agent who signs an agreement with a company that adopts CRS actions is not different from any other preference that stimulates the contractual bond.[88] As long as it is the will of an agent to pay his counterparty an amount that has exceeded the cost of the offered service or good, the agreement will probably be reached.

[83] Eric B Rasmusen, *The proper goal of a corporation is an old question in corporate law, most commonly discussed in connection of "social responsibility",* The goals of the corporation under shareholder primacy: just profit— or social responsibility and religious exercise too? Page 6. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2365135.

[84] Lorenzo Sacconi, The Economics of Corporate Social Responsibility, EconomEtica, No. 39, 7 (2012).

[85] Geoffrey P Lantos, For example, Lantos distinguishes three kinds of CSR: ethical, altruistic and strategic: "… there appear to be three mutually exclusive types of CSR based on the nature (required vs optional) and purpose (for stakeholders' good, the firm's good , or both): ethical CSR, altruistic CSR, and strategic CSR", The boundaries of strategic corporate social responsibility, 18 No. 7, The Journal of Consumer Marketing, 605 (2001).

[86] Michael C Jensen, Clifford W. Smith Jr., Competition among organizational forms occurs in numerous dimensions, not only in their pricing and other marketing policies but also, for example, in their investment, financing, compensation, dividend, leasing, insurance, and accounting policies, *Stockholders, manager and creditor interests: Applications of agency theory*, Page 4, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=173461 06-04-2015.

[87] "…la RSE es también una actividad estratégica adicional en la competencia comercial". BOUR, Enrique. "Responsabilidad social de la empresa análisis del concepto". Estudios Económicos Volumen XXIX, No. 59 (N.S.), Departamento de Economía, Universidad Nacional del Sur, 24 (2012).

[88] Robert T Miller, The Coasean Dissolution of Corporate Social Responsibility, 17 No. 2, Chapman Law Review, 383.

We do not disregard that the shareholder is an investor, and as such, he should be willing to assume lower profit. However, this decision may not be his to make; instead it is made by the corporate managers,[89] when the investment has already been made.

From the instrumental perspective, CSR is considered a present strategy within the main corporation activities, but still functional to the traditional goal of profit maximization. Many authors, traditionally identified with the social responsibility movement, could be grouped within this view. They state that CRS actions must not be tested for the respectability of its cause, but for the opportunity to create "shared value" – a benefit for the society and valuable for the business-.[90] In this context, *companies take advantage of the expectations CSR creates in order to obtain competitive advantages.*

Backtracking to the taxonomy outlined at the beginning, we note that both additional and instrumental versions are absolutely compatible with the common interest presumably pursued by the Company[91] and with Friedman`s neoclassical view about purpose of the corporation.[92]
It is not the same with the constitutive view[93]: where CSR is raised to *corporative governance model,* and the corporate goal is the common profit of every relevant stakeholder. The criticism expressed when expounding managers' inability to maximize more than one goal simultaneously, is applicable

[89] Gary Becker, "I am bothered only when managers, founders, or others in control of corporations that behave in a "socially responsible" manner try to pass the cost of behaving in this way on to others rather than bearing the costs themselves", *Do Corporations Have a Social Responsibility Beyond Stockholder Value?*, (May 10, 2016), http://www.becker-posner-blog.com/2005/07/do-corporations-have-a-social-responsibility-beyond-stockholder-value-becker.html.

[90] Michael Porter, Mark Kramer, Strategy and Society: The link between competitive advantage and corporate social responsibility, Harvard Business Review, 6 (2006).

[91] Frank Easterbrook, Daniel Fischel, For most firms the expectation is that the residual risk bearers have contracted for a promise to maximiza long-turn profits of the firm which in turn maximizes the value of their stock, *The economic structure of corporate law*, Harvard University Press, 36.

[92] Markus Kitzmueller, Jay Shimshack, A key insight within economics is that CSR is not necessarily incompatible with profit maximization, at least for a subset of firms within a separating equilibrium. While CSR to satisfy manager preferences may constitute moral hazard, CSR to satisfy nonclassical preferences of investors, employees, and consumers does not. Similarly, CSR to influence outcomes driven by public and private politics may be consistent with shareholder wealth maximization, *Economic Perspectives on Corporate Social Responsibility,* Journal of Economic Literature, 52 (2012), http:www.aeaweb.org/articles.php?doi=10.1257/jel.50.1.51.

[93] Geoffrey P Lantos, "Unlike strategic CSR, where it is belivied that money put into good works will yield a return on investment for the business, with altruistic CSR this is not motive…", The boundaries of strategic corporate social responsibility, 18, The Journal of Consumer Marketing, Nº 7, 609 (2001).

to this case. Nonetheless, it will imply sacrificing profits in the social interest,[94] which was not established by the shareholders. Managers will be in charge of evaluating social needs and they will arrange the firm's resources accordingly. Brushing aside that it is a pluralistic society, what it is considered socially responsible is constantly being re-evaluated.[95]

As a consequence, CSR as a *voluntary process* adopted by the managers, *which implies a sacrifice for the shareholders is unacceptable, since it is incompatible with the corporate objective.*

Together with the significant extension of managers' duties,[96] something that distorts the decision-making mechanism,[97] there is the risk of diluting the main objective of the company. To impose a different responsibility, either social, political or of any other type, will mean a restriction to the property of the shareholders,[98] having the "same effect than a tax imposed to the owners."[99]
In the most radical versions, managers, far from being agents of their principals (the shareholders), become public servants,[100] a kind of judges, who must establish a certain balance[101] between

[94] Forest L Reinhardt, Robert N Stavins, Richard H. K. Vietor, Of course, questions regarding sacrificing profits in the social interest apply beyond the environmental sphere, *Corporate Social Responsibility Through an Economic Lens*, Fondazione Eni Enrico Mattei Note di Lavoro 84.2008 -NBER Working Paper No.13989, 1.
[95] David L Engel, "…it is far from clear that all the values and attitude implicitly affirmed by a process of corporate voluntarism would be desirable", *An Approach to Corporate Social Responsibility*, 32 No. 1, Stanford Law Review, 29 (1979).
[96] Raúl A Etcheverry, Eugenio Xavier De Mello, "Las "Empresas B". Posibilidad de su regulación mediante cambios en el derecho societario". XII Congreso Argentino de Derecho Societario VIII Congreso Iberoamericano de Derecho Societario y de la Empresa, Buenos Aires, 580 (2013).
[97] Norman Barry, "… it would also completely overturn customary methods of decision making in a company and might well make capitalist enterprise imposible", The Stakeholder Concept of Corporate Control Is Illogical and Impractical, 4 No. 4, The Independent Review, 542.
[98] Elaine Sternberg, The Stakeholder Concept: A Mistaken Doctrine, Issue No. 4, Foundation for Business Responsibilities, 31 (1999).
[99] Enrique Bour, Responsabilidad social de la empresa análisis del concepto, Estudios Económicos Volumen XXIX, Nº 59 (N.S.), (2012). Departamento de Economía, Universidad Nacional del Sur. Page 23. En un sentido similar puede citarse: "But if he does this, he is in effect imposing taxes, on the one hand, and deciding how the tax proceeds shall be spent, on the other". Milton Friedman, *The Social Responsibility of Business is to Increase its Profits*, The New York Times Magazine, (Oct. 8, 2015), http://www.colorado.edu/studentgroups/libertarians/issues/friedman-soc-resp-business.html.
[100] Jonathan R Macey, "Creating such a duty transforms the top managers of public companies from private businessmen into unelected and unaccountable public servants", *An Economic Analysis of the Various Rationales for Making Shareholders the Exclusive Beneficiaries of Corporate Fiduciary Duties*, Yale Law School Faculty Scholarship Paper 1713 42 (1991), http://digitalcommons.law.yale.edu/fss_papers/1713.
[101] Geoffrey P Lantos, "Social responsibility is balancing act: business must balance economic performance, ethical performance, and social performance, and the balance must be achieved among various stakeholders", *The boundaries of strategic corporate social responsibility*, 18 No. 7, The Journal of Consumer Marketing, 601 (2001).

contradictory interests of every *stakeholder,*[102] and the implicit faculty for redistributing the profit obtained from the company activities.[103]

Furthermore, it must be analysed whether a company that sacrifices profit (in absence of explicit orientation), would have a chance of surviving on the market.[104] In order to accomplish this task it must be analysed under what conditions a company is able to operate having a different goal from shareholders profit maximization.[105]

According to economic theory, if the corporation operates on a competitive market, its inefficiency (or the implementation of CSR without the result of greater economic benefits) brings adverse consequences and it would probably be expelled from the market.

Instead, existing imperfect competition or state intervention, the profit-maximization goal will not be a requirement for the company survival, and the application of the principle could mean a reduction of social welfare.[106]

Under these circumstances, it is useful to examine whether the correct solution is to adopt CSR paradigm (or stakeholder theory) or to reduce the market imperfections or externalities by means of governmental measures or any other methods considered appropriate.

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[102] Margaret Blair, Lynn A Stout, "Rather, the directors are trustees for the corporation itself—mediating hierarchs whose job is to balance team members' competing interests in a fashion that keeps everyone happy enough that the productive coalition stays together", *A Team Production Theory of Corporate Law*, 85, No. 2, Virginia Law Review, 280-281, (1999).

[103] Stephen M Bainbridge, In Defense of the Shareholder Wealth Maximization Norm: A Reply to Professor Green, 50, Issue 4, Washington & Lee Law Review, 1433 (1993).

[104] George W Dent, There is also evidence that increased "corporate social responsibility" reduces shareholder wealth, Academics in Wonderland: The Team Production and Director Primacy Models of Corporate Governance, 44 No. 5, Houston Law Review, 1223 (2008).

[105] Forest L Reinhardt, Robert N Stavins, Richard H. K. Vietor, "… the relationship between socially responsable activities and profitability may be best characterized as some firms will generate long-term profits from some socially responsible activities some of the time (Reinhardt 2000)", Corporate Social Responsibility Through an Economic Lens, Fondazione Eni Enrico Mattei Note di Lavoro 84.2008 -NBER Working Paper No. 13989, 14. It would even be very difficult to affirm that there is a causal relationship in those cases in which a better performance of firms with CSR policies is demonstrated over those that do not. See Geoffrey P Lantos, The boundaries of strategic corporate social responsibility, 18 No. 7, The Journal of Consumer Marketing, 620 (2001).

[106] Mark J Roe, Maximizing shareholder wealth where competition is weak, therefore, could plausibly reduce production, raise prices, and lower national wealth, especially if managers when unconstrained value production, sales, and expansion over shareholder profits, The shareholder wealth maximization norm and industrial organization, Harvard Law and Economics Discussion Paper, 16. En sentido similar podemos encontrar: "To be sure, there are circumstances when the value-maximizing criterion does not maximize social welfare—notably, when there are monopolies or "externalities." Michael C Jensen, Value Maximization, *Stakeholder Theory, and the Corporate Objective Function*, 14 No. 3, Journal of Applied Corporate Finance, 11 (2011).

In the same way, it is possible to ask if corporate managers are the best qualified to represent the interests of consumers, creditors, employees and the community as a whole. The answer seems to be in the negative: corporate managers do not appear to have the training (or skills) to fulfill such a task.[107] At any rate, in this study, it was taken for granted that managers are designated by shareholders in order to achieve a different goal.

As regards legitimisation, it must be mentioned that the selection of these public servants has not been completed in a democratic way: surely, by a majority of shareholders, however, not by general public, who will be the receiver of social benefits,[108] after having democratically selected their own rulers from whom they expect a proper behaviour.

Another query on constitutive CSR application revolves around what would happen if it turns into a habitual behaviour. That is to say, if corporations are expected to solve public-interest situations, either, based on efficiency[109]or on the delay in providing solutions by the state. What would be the consequences of generalizing this principle and try to maximize it?

Also, in terms of social welfare, it must be kept in mind that in order to achieve the goal of shareholder value-maximizing, efficiency and innovation will try to be increased, which will have a positive impact on economy, either by means of greater incomes for shareholders, better salaries, or lower prices for consumers.[110]

[107] David L Engel, "…it is persuasively argued that corporate managements, at least as now structured are altogether ill-suited to the job of distributing society's riches", *An Approach to Corporate Social Responsibility*, 32 No. 1, Stanford Law Review, 30 (1979).
[108] Ernest Dale, If managers really begin to function in this way, all the various parties at interest, and the general public, may well begin to ask for a voice in selecting them. It is contrary to all democratic tradition for constituents to have no say in the selection of their representatives and no way of calling them to account, Management Must be Made Accountable, Harv. Bus. Rev., 49 (1960). Richard Marens, *We Don't Need You Anymore: Corporate Social Responsibilities, Executive Class Interests, and Solving Mizruchi and Hirschman's Paradox*, 35 No. 4, Seattle University Law Review, 1218 (2012).
[109] David P Baron, Firms may be more efficient in the provision of social good than are the organizations to which personal gifts are made. Corporate giving, however, may go to causes opposed by shareholders, in which case personal giving, which can be targeted to selected social causes, may be preferred, Corporate Social Responsibility and Social Entrepreneurship, No. 1916, Stanford Graduete School of Business Research paper, 30.
[110] George W Dent, Academics in Wonderland: The Team Production and Director Primacy Models of Corporate Governance, 44 No. 5, Houston Law Review, 1271 (2008). En un mismo sentido podemos citar: "…maximizing profits for equity investors

Lastly, the degree of decentralization of ESR (Entrepreneur Social Responsibility), carried out by each firm, will be a serious issue in the achievement of social interests since no mechanism of coordination of activities is outlined.[111]

VI. CONCLUSION

Corporations are neither responsible for all the world's problems, nor do they have the resources to solve them all[112]

In this study it was attempted to articulate CSR perspective with the possible conflict that could appear between shareholders and stakeholders, advising about the risks of adopting those versions described as extreme.

Corporate efficiency is not achieved by altering the corporation intrinsic functioning, but allowing it for creating value for its shareholders and growing economically.[113] The state must assume regulatory and control roles in compliance with the law of their concern, in order to protect those groups in need, or to stimulate certain behaviours to the detriment of others, to move forward towards social welfare.

The truth is, the application of CSR in many opportunities, boosts a cost that seems to be assumed by the shareholders, through a decision of the managers they selected themselves. A question that must be asked is, what would happen in case, during the management-body authority-designation

assits the other "constituencies" automatically". Frank Easterbrook, Daniel Fischel, The economic structure of corporate law, Harvard University Press, 38.

111 "Un punto no menor del argumento es el grado de conocimiento y coordinación de los empresarios para cumplir con las supuestas RSE. Descentralización de las decisiones y RSE son objetivos incompatibles entre sí". Enrique Bour, Responsabilidad social de la empresa análisis del concepto, Estudios Económicos, Departamento de Economía, Universidad Nacional del Sur, Volumen XXIX, No. 59 (N.S.), 23 (2012).

112 Michael Porter, Mark Kramer, Strategy and Society: The link between competitive advantage and corporate social responsibility, Harvard Business Review, 13 (2006).

113 Diego Duprat, Responsabilidad social de la empresa, La Ley, 15-5-2009.

meeting, managers anticipated their CSR plan or their future philanthropic actions using someone else´s money? Would they still be selected by the capital owners?

Corporate interest distortion, unlimited extension of managers´ duties (with the consequent difficulty for management assessment)[114] and, in conclusion, the alteration of the role of the company on the market[115] must be the limits upon using Corparate Social Responsibility perspective.

[114] Ronald Bénabou, Jean Tirole, It may also weaken managerial accountability by creating multiple objectives and performance criteria; at the extreme, too many missions amount to no mission at all, Individual and Corporate Social Responsibility, 77 No. 305, Economica, 15 (2010).

[115] Robert Cooter, Hans-Bernd Schäfer, "… a market for organizations keeps them focused in making money, so owned organizations play the central role in economic life. In contrast, unowned organizations that focus on goals other than making money play the central role in government, religion and social life.", Solomon's Knot. How Law Can End the Poverty of Nations, Princenton University Press, New Jersey, 125 (2012).

not speak well for U.S. society that we had such high rates of crime before 1991 and had, apparently, to adopt such draconian measures to reduce those crime rates.

These matters have been the subject of a great deal of scholarly inquiry. That scholarship has focused on two related questions: First, why did crime decline so dramatically after 1991? And second, what role did "mass incarceration," as it is called, play in the crime decline? The payoff to getting correct answers to these questions is extremely high. For instance, to the extent that we can identify the causes of the long decline in crime (and presumably, the causes of the large rise in crime in the late 1960s, 1970s, and 1980s), the greater our ability to adjust policy levers so as to stave off a future increase in crime (on the assumption that the factors we identify repeat their causal roles in the future) or to reduce crime if it spikes. Relatedly, if we can identify the reasons for increases and decreases in the rate of crime, the more focused our criminal justice policy can become. Although the scholarly search for reasons for fluctuations in the crime rate has become far more sophisticated, there are still a distressingly large number of potential reasons adduced to explain both the rise and fall of crime in the U.S. and, as a result, the lack of a clear, agreed-upon account of what happened and why after 1991. In view of that hodgepodge, our criminal justice system policy is struggling to figure out what lessons to take from the last 30 years.

As the readers of this journal will know, the field of law and economics has been deeply interested in criminal law and punishment issues for a long time. One of the foundational articles in the field is Gary Becker's 1968 article on the economics of crime and punishment, which shifted the focus on crime away from socio-economic causes to the consideration of incentives to commit crime and to avoid punishment.[2] Many readers will be familiar with this literature, including the remarkably robust literature over the last 40 years on the deterrent effect of the death penalty.

The books that I shall review here – John F. Pfaff, *Locked In: The True Causes of Mass Incarceration and How to Achieve Real Reform* (2017) and Patrick Sharkey, *Uneasy Peace: The Great Crime Decline, the Renewal of City Life, and the Next War on Violence* (2018) – examine two different aspects of crime in the United States. Pfaff focuses on mass incarceration and offers a novel theory of the reasons for mass incarceration and empirical evidence to support that theory. Sharkey focuses on crime and the urban landscape. In particular, he

[2]Gary S Becker, *Crime and Punishment: An Economic Analysis*, 76 J. POL. ECON. 169 (1968).

examines the great benefits of the crime decline to urban living and particularly to urban minority communities.

Before turning to those works, I shall, in Section II, give some background on what is called the "great crime decline" of the 1990s and early 2000s.

Then in Section III I shall turn to a discussion of Professor Pfaff's account of why there has been such heavy use of incarceration as a crime-deterring strategy in the United States. He argues that society has been driven to overuse imprisonment because prosecutors have overly strong incentives to pursue imprisonment for criminal offenders. Pfaff suggests that the result is that, from a societal well-being perspective, there are too many prisoners. He offers correctives that will, he argues, trim prosecutors' incentives to overuse imprisonment.

Then in Section IV, I turn to a discussion of Professor Sharkey's account of the important relationship between the level of crime and societal well-being. He first shows that the increase in crime in the 1960s through the late 1980s had a wide-ranging adverse effect on society. Crime obviously has very ill effects on the victims of crime, but Sharkey points out that the knock-on effects of crime on all of society are also devastating. It follows, as he demonstrates, that when crime declines, the benefits to society as a whole are very large. In the course of these important demonstrations, Sharkey identifies at least one interesting and heretofore underreported causal effect on the crime decline.

A brief conclusion follows.

A fair question is, "What has all this got to do with India?" The matters discussed in these two books should have appeal to those who are curious about broad social trends in crime, why crime rates fluctuate, what the consequences for societal well-being are when crime declines or increases, and what tools the United States has used to combat crime increases and whether those tools are effective. Moreover, those who are interested in the field of law and economics ought to find these books of interest in that they explore areas in which law-and-economics scholars have taken a deep interest.