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Company Law: A Real Entity Theory is a long-overdue contribution to UK company law scholarship. Debates in company law in recent years have revolved around the controversial and politically laden questions of the extent to which companies should be run in the interests of shareholders or of all stakeholders, and the degree to which hard and/or soft law can render shareholders, especially institutional investors, effective monitors of senior managers, and corporate stewards. At a more fundamental level, UK corporate law academics tend to assume that theories of the essential nature of corporations (namely, the aggregate, concession, and real entity theories, an overview of which is provided in Chapter 1 of the book) map directly onto normative positions on the desirable orientation of corporate law. Aggregate (contractarian) theory is often conceived as the foundation of shareholder value maximisation, while concession and real entity theories are presumed to provide justification for mandatory intervention in favour of other stakeholders.

In Chapter 1, Micheler effectively dispels the myth that it is possible to logically deduce the appropriate configuration of corporate law (regarding the balancing of shareholder and other stakeholder interests, and the allocation of decision-making power) from one's positive conceptualisation of a typical corporation as a creature of contract, state concession or real social entity. Micheler is not the first scholar to make this claim. JE Parkinson, in his seminal work *Corporate Power and Responsibility: Issues in the Theory of Company Law* (1993), made a similar observation albeit in a cursory manner. Micheler, however, provides a detailed reasoning that disentangles the ontological debate on the nature of corporations from the normative debate on the way in which corporate law should balance different interests, demonstrating that all three fundamental theories are inconclusive in relation to the aforementioned normative questions, the answer to which depends – according to Micheler – on a mix of economic, political, historical and cultural factors.

Having shown this, Micheler sets out to illustrate why, despite the normative inconclusiveness of the three fundamental theories, the choice between them still matters. This is for two reasons. First, adopting an accurate theoretical framework that explains the essential features of companies enriches our understanding of company law rules and thus provides valuable assistance to the task of rationalisation of positive law by doctrinal legal scholarship. Second, an apt theoretical framework on the nature of companies sheds light on the type of legal and regulatory interventions that are likely to be effective in bringing about the changes in corporate behaviour that policymakers aim at. Or, in her own words: "The real entity model advanced in this book does not tell us 'if' the law should intervene. It does, however, tell us 'how' the law should intervene." (p 265).

This brings us to the core thesis of the book which holds that real entity theory provides the best explanation of both the actual characteristics of most companies as organisations and of company law as a field that above all seeks to enable, protect, and support autonomous

organisational decision-making by companies. The former leg of the argument is mostly expounded in Chapter 1 of the book which analyses the origins and development of real entity theory. The latter part of the argument is developed throughout chapters 2 to 10 of the book which examine all core areas of company law and analyse them from the perspective of real entity theory. In doing so, the book strikes a balance between precise analysis of a broad range of legal doctrines – which requires in-depth discussion of a formidable body of case law, of which Micheler has undoubted mastery – and drawing theoretical insights. In each chapter, the theoretical discussion serves two objectives: first, to demonstrate the close fit between the real entity theory and the shape of legal doctrines and therefore the superiority of the real entity theory compared to contractarian theory in explaining positive UK law; second, to assess the effectiveness of positive law drawing on insights from real entity theory.

In terms of supporting the argument that the real entity model provides a better explanation of positive law in the UK than the contractarian model, the book largely succeeds, while acknowledging that in certain contexts, such as situations where directors face conflicts of interest, agency theory offers a useful analytical lens. Perhaps the superiority of real entity theory is most clearly visible in the analysis of the demise of the ultra vires doctrine in Chapter 4 and in the interpretation provided by Micheler of courts' reluctance to make commercial judgments on whether to permit derivative litigation in Chapter 10. In the context of derivative litigation, Micheler crucially observes that the reasoning of the courts assumes the existence of a "corporate will" which can be assessed by determining an appropriate independent organ and is ontologically distinct from the will of individual corporate participants, in line with the fundamental assumption of real entity theory that organisations are social facts and, hence, that companies have real existence and are not merely artificial separate legal entities (*personae fictae*).

The theme that emerges is the intention of the courts to enable autonomous corporate action and protect the corporate process, thus acknowledging the distinct and separate nature of the corporate entity which is in no way equivalent to the aggregate body of the members. In parallel, Micheler explains that company law ultimately and indirectly serves a range of interests amongst which the interests of shareholders may be paramount, but which extend to other groups, particularly creditors, and encompass public interest considerations. In this context, the book could perhaps have done more to highlight the role of creditors in company law and the multiple ways in which they are given protection and even decision-making powers in certain contexts such as capital reductions and insolvency. A separate chapter on creditors might be warranted in a future edition of the work.

More ambitious is the second goal of the theoretical analyses of different areas of company law, which is to assess whether positive law, as well as some proposed changes to the law, are likely to be effective. In this context, the book makes three principal normative claims, all of which touching upon debates of great academic and practical interest. The first claim, which is the boldest, posits that setting incentives to shape managerial behaviour is unlikely to be effective in benefiting either shareholders (as current corporate practice strives) or broader stakeholders (as certain commentators have suggested) but, instead, it is likely to be

abused by managers for their own benefit. Rather than trying to engineer incentives, Micheler argues that policy initiatives should focus on appropriately shaping internal corporate decision-making processes. The second claim is that there is little to be gained from reform proposals urging companies to adopt a mission statement (see e.g., The Purposeful Company initiative) or revolving around an amendment of section 172 to require directors to give equal consideration to the interests of all stakeholders. The third claim, which flows logically from the other two, is that if company law decides to integrate stakeholder interests further, this can be best achieved by integrating stakeholders into corporate decision-making processes, as the Corporate Governance Code 2018 recommends for workers (i.e., to have a director appointed from the workforce; or a worker advisory panel; or a designated non-executive director to represent the workforce; or a combination of the above).

Micheler's claims rest on three fundamental assumptions. One is that it is impossible to design incentives for directors and senior managers in an effective way through performance-based remuneration. Another is that, given the subjective nature of the duty in CA s 172, it is of little consequence how section 172 articulates the interests of the company (shareholder or stakeholder-centric) – and of even less consequence how companies themselves articulate their mission. A third is that representation within corporate decision-making processes is normally the most effective way to protect stakeholder interests. These three assumptions are independent of each other and positive rather than normative in nature, in the sense that they could, in principle, be empirically confirmed or rejected. It follows that the crucial question is the extent to which the real entity model advanced in the book supports these assumptions.

How can any theory or model provide evidence that confirms or rejects what are essentially factual assumptions? If we had the ability of directly testing assumptions by experimenting following the method of natural science, there would be no need to resort to the type of theories that this book, and corporate law scholarship more generally, concerns itself with. Because experimentation is not possible and quantitative statistical methods often oversimplify and obfuscate nuances, social sciences often construct qualitative models which seek to capture the essence of phenomena and provide a reasonably accurate description of the majority of cases, thus enabling reasonably accurate predictions. In that vein, Micheler's real entity model aims to abstract the essence of organisations and the way in which being part of an organisation affects individual behaviour beyond rational incentives in order to draw conclusions on the effectiveness of existing and proposed measures.

Following the logic of the analysis provided by Micheler, it becomes clear that incentives do not capture the whole of the picture that explains individual behaviour when individuals are embedded in organisations. It is also convincing to say that representation within decision-making processes is generally an effective way to provide protection to the interests of those represented. That would support a normative argument that regulation should not limit itself in trying to mould incentives, and that those in favour of a stakeholder orientation of company law should include a form of stakeholder representation alongside other measures in their proposals. Micheler, however, makes the bolder claims that incentives will normally fail in

shaping managerial behaviour in the desired way, and that representation is the most effective method to shift company law to a stakeholder-centred direction. These claims cannot be substantiated merely by reference to real entity theory. In that regard, the discussion needs to engage further with evidence on the effectiveness of performance-based remuneration and stakeholder participation in order to provide more robust support to the bold normative claims that the book makes.

Furthermore, Micheler makes the tacit assumption that corporate purpose and the articulation of the duty of loyalty can only affect managerial behaviour if they affect incentives through enforcement, which cannot take place insofar as the subjective nature of the duty of loyalty is retained. This is perfectly plausible as a matter of incentives. It does not, however, explain why CA s 172 or voluntary mission statements cannot have an impact on the behaviour of senior managers by virtue of their symbolic effects. Real entity theory accepts that individuals can be moved by factors other than incentives, namely by organisational structure, culture, and values. But why can these factors only be affected by processes, as Micheler argues, and not by overarching or tailored symbolic statements of purpose? Micheler provides a tentative answer in explaining that corporate purpose ideas and mission statements are too remote from actual internal decision-making processes to have any practical value. This is a crucial argument and valuable insight which ought to have been developed further. In doing so, it would be necessary to provide a more detailed account of the nature of corporate culture and the extent to which it is affected by both processes and symbols.

These limitations notwithstanding, Micheler's *Company Law: A Real Entity Theory* provides a refreshing perspective on corporate law theory which is certain to stir the waters of the field and become a reference point for years to come. There is no doubt that Micheler's thesis, which cuts across the shareholder vs stakeholder value debate, breaks new ground and reduces the risk that company law debates will remain beholden to a cyclical debate between pro-shareholder and pro-stakeholder proponents (BR Cheffins, The Trajectory of (Corporate Law) Scholarship, 2004). In providing a theoretically informed and wide-ranging overview of company law, Micheler's monograph constitutes an impressive piece of scholarship which, apart from contributing to the field, is bound to inspire advanced students of UK corporate law and enrich the quality of its teaching.

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