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Social ontology and the modern corporation

Jeroen Veldman and Hugh Willmott

In an assessment of Lawson's social ontological analysis of the modern corporation, we consider what is marginalized: the significance of the status and the effects of the separate legal entity (SLE). The SLE is conceived as a specific type of construct that is ascribed particular properties through its stabilization within and between different (legal and economic) discourses. By showing how the SLE, as a reified construct, is rendered meaningful, real and/or consequential, we illustrate how the 'social ontology' of the modern corporation is radically contingent and inescapably contested. Given that the social ontology of the corporation defies definitive specification, we regard the prospect of the completeness of its disclosure (e.g. by foregrounding a specific referent) as problematic. Indeed, any account of social ontology that foregrounds a specific referent is seen to obscure a political process in which the stabilization of the SLE rests on the contingent foregrounding of particular priorities. This leads us to reflect on the power-inflected *social* organization of knowledge generation. Key to the explication of social ontology, and with specific reference to the corporation, is not, as Lawson contends, the concept of 'community' but the inescapability of contestation within relations of power that translate ontological openness into specific but precarious forms of ontic closure.

Key words: Corporation, Corporate governance, Industrial relations, Board, Management, Board duties, Shareholder primacy, Corporate reform, Corporate architecture, Social ontology, Organization theory, Political economy

JEL classifications: A12, A13, B41, B50, G30, J50, K20, K40, L21, L22, M1, N20, Z10

1. Introduction

Social ontology is at the heart of Tony Lawson's thinking, including his analysis of the modern corporation. Offering an account of the general structure, nature and basic constituents of social reality, Lawson conceives of the examination of social ontology as 'the study of the social realm, where the latter is taken as comprising those phenomena whose coming into being and/or continuing existence depends necessarily on human beings and their interactions' (Lawson, 2015A, p. 30). As Lawson convincingly argues, 'taking an ontological stance ... is unavoidable' (Lawson (2015C, p. 30); and it is by disclosing the ontological presuppositions of our stance that we make them available for critical scrutiny and thereby advance scholarly analysis. Conversely, when this explication is absent, the examination of ontological presuppositions is impeded, and the quality of analysis is correspondingly degraded (Lawson, 2015A).

In his recent writings on social ontology, Lawson affirms his commitment to the view that ‘there exists a knowable (under some description) social reality and that economics should primarily address such matters as identifying and understanding real world economic structures, mechanisms, processes and events, etc.’ (Lawson in Pratten, 2015, p. 2). Within the domain of ‘real world economic structures’ (ibid.) is included the modern corporation. Given these conditions, Lawson contends that ‘As long as we are in possession of theories widely regarded as reliable, whose content can serve as premises for ontological analysis, there is reason to suppose that the presuppositions uncovered can relate to a reality beyond conceptions’ (Lawson, 2015A, p. 27). With this approach to social ontology, Lawson concludes that ‘the material conditions for a social science that is scientific in the sense of existing natural science are entirely present’ (Lawson, 2015D, pp. 413–14).

With specific reference to the modern corporation, Lawson notes that ‘the corporation is the site of an extraordinarily powerful set of mechanisms of social change in the modern world’, adding that ‘the structures at the heart of its workings appear to be relatively unexplored’ (Lawson, 2015B, p. 214). This shortcoming is ascribed to the neglect of social ontology, as exemplified in the lack of attention devoted to the question of the status of the corporation, or firm, as ‘a legal fiction’. What, Lawson asks rhetorically, does it mean to say that ‘the firm qua corporation is a legal fiction?’ And he continues: ‘What precisely does the latter term mean, how does it relate to the notion of an ontological fiction and what does its use, if legitimate, imply for the constitution of the corporation?’ (Lawson, 2015C, p. 2). Lawson responds to these questions by contending that the corporation is more than merely a ‘legal fiction’ or a simple collection of contracts or assets (Lawson, 2015C, p. 6), a view that we share, but we disagree on what the ‘more than’ is, and how it is most instructively addressed.

Consistent with his approach to social ontology—in which ‘there is always something or someone real that is repositioned’ (Lawson, 2015C, p. 19), and in which ‘the social category employed also picks out a definite feature of reality, that there is a definite referent’ (Lawson, 2015A, p. 43)—Lawson analyses the corporation in relation to a concrete referent. For Lawson, the modern corporation is, in essence, the ‘(sub) community’, albeit legally positioned, that is formally registered, within the wider, typically national (or international), community (Lawson, 2015C, pp. 9–10). As a ‘(sub)community’ constituted as a firm (Lawson, 2015C, p. 11; 2015B, p. 215), the corporation is ‘oriented to the collectively coordinated production of goods and/ or services to be sold to others, in a way that is intended to be advantageous to (at least some of) the community members’ (Lawson, 2015C, p. 15).

We will argue that Lawson’s attentiveness to the community as a concrete referent acknowledges, rather than ignores or disregards, the status of the corporation as a ‘legal fiction’, but he overlooks the significance and effects of the separate legal entity (SLE). In the following section, we examine how the SLE is postulated as a reified construct, separate from the aggregation of individuals. The SLE is of key importance for the analysis of the corporation because it provides the basis for the development of a specific architecture and, in principle, bestows fiduciary duties upon the corporate board toward the SLE as an ‘entity’, rather than to any specific (sub-)community. We then expand upon an attentiveness to the SLE as a reified construct by problematising the internal consistency of its status as posited by the legal epistemic community. Since the SLE presents a reified construct without a definite referent,

it supports multiple conceptions of its status and referents, with accompanying performative effects. Multiple conceptions of its status and referents—notably, the placeholder conception versus the extended conception—are constructed and defended by (subsections of) the legal epistemic community. These differences and their associated contestations, we argue, illustrate and affirm our conjecture that ‘social ontology’ of the SLE and the modern corporation are radically contingent: they are inescapably contested; and their stabilisation and institutionalisation is the outcome of a political process.

We acknowledge that conceiving of the SLE in this way invites the accusation that it conflates the concreteness of the corporation with whatever discourses, or constructs, are invoked to characterize it, and so is forgetful of the ‘real’, material world. To address and disarm this objection, we argue, in the discussion section, that while the ontological status of the SLE is elusive, recognition of how its reified status lacks a definite referent is necessary in order to understand the attribution of a host of properties to the modern corporation, and to understand the specific type of architecture that characterises the modern corporation. More specifically, we argue that the SLE facilitates and secures the provision of privileges and protections to corporate constituencies on the basis of an architecture that associates and directs the benefits of the SLE toward the interests of multiple corporate constituencies. We explore how this conception of the ontological status of the corporation enables an appreciation of how competing framings of the SLE within and between multiple epistemic communities favour and perform differing kinds of corporate architecture(s), how these architectures condition the distribution of privileges and protections granted by the use of the SLE and how they exert significant effects in terms of political economy.

With regard to Lawson’s reflections on the corporation, our analysis draws attention to two issues. First, it illuminates how, when ontological priority is ascribed to a specific referent, such as community, it has the (unintended) consequence of displacing consideration of how the status and significance of the modern corporation and the SLE, as social constructs, is (re)produced. Second, this draws attention to the real, politico-economic effects of the *social organization* of knowledge claims, and specifically in relation to corporate governance and political economy.

2. The corporation and the separate legal entity (SLE)

Establishing the status of the SLE is critical, we contend, for understanding the significance and influence of the modern corporation (Ireland, 2009). That is because it is a condition of possibility of the rights and associated benefits enjoyed by the modern corporation, resulting in far-reaching effects with regard to how businesses, nationally and globally, are organised.

The SLE is something of a misnomer, as it is not an ‘entity’ except in a strictly legal sense. It is a construct, postulated by the legal epistemic community (Haas, 2001),¹

¹ While members of an epistemic community may share values and principled beliefs (e.g. with regard to the role, significance and authority of the law), there is scope for different interpretations of specific laws and judgments. Its members ‘are likely to disagree vehemently about some elements’ (Haas, 2001, pp. 11579–80), albeit within a broadly shared frame of reference that can be differentiated from the epistemic community of finance specialists, for example. Accordingly, we recognize that there may be ongoing contestation of the status of ideational constructs like the SLE within and between epistemic communities. Our distinctive focus is on the (temporary) stabilisation of the status of the SLE in broader and more enduring institutional

that functions as ‘something distinct from the individual persons who constitute it’ (Brown, 1905, p. 4). It is a device used in legal reasoning that facilitates and signals ‘a transfer of rights and liabilities concerning ownership and contracting from individuals to registered corporate organizations’ (Deakin *et al.*, 2017, p. 196). Notably, the UK Companies Acts of 1856 and 1862 ascribed ownership and liabilities of ‘the company’ to a separate legal entity (SLE), thereby providing a practical solution to a situation in which increasingly dispersed shareholders were no longer practically involved in functions of ownership and management. Crucially, the ascription of company assets and liabilities to the SLE restricted shareholders’ financial liability to the value of the shares and removed shareholders from the responsibilities of day-to-day management. As a consequence of the SLE’s reified status, the rights and obligations of ‘the corporation’, as contrasted to the partnership form, are not directly transferable to individuals (Hart, 1983, p. 41).

The development of the SLE, as a ‘juridical artifact’ with a separate existence—an ‘it’, rather than a ‘they’—and the surrender of shareholders’ claims to ownership and to day-to-day management was part of an elaborate *quid pro quo* that made possible the development of a new organizational architecture in the form of the modern corporation (Veldman and Willmott, 2017). Since the SLE is not identical to the corporation or to its members, the assets and liabilities of ‘the corporation’ are separate from the individuals and constituent groups that constitute the corporation. As a consequence, the SLE, as a reified legal construct, can be creditor and debtor in its own right; it can continue despite entirely changing its personnel; and it can be insolvent while each of its shareholders remains solvent (and vice versa) (Brown, 1905). For these reasons, the material significance of the reified qualities of the SLE as a ‘juridical artifact’ cannot be ignored (Timberg, 1946, p. 542). Indeed, it has been argued that the SLE is crucial since ‘the difference between the organization and the legal entity is the key distinction in corporate law, and it must be borne in mind in all areas of company law and practice’ (Foster, 2006, p. 322; see also Biondi *et al.*, 2007; Robé, 2011).

That said, the questions ‘What is *it*, which has the right?’ and ‘for what *it* stands, for what *it* means’ have not been credibly answered (Hart, 1983, p. 37, emphasis in original). The meaning of the SLE as an ‘it’, and its relation to the broader aggregation of individuals and/or constituencies making up ‘the corporation’, is a matter of ongoing, if ebbing and flowing, contestation (Blair, 2015; Ireland 1999; Lawson, 2015C; Naffine, 2003). That such questions continue to be debated is explicable, we contend, in relation to the appeal of the various responses that have been offered. We now demonstrate the possibility and significance of ascribing different identities to the SLE: as a placeholder; as a construct with an extended status for the provision of specific functions; and as a fiction whose reified status is of negligible importance.

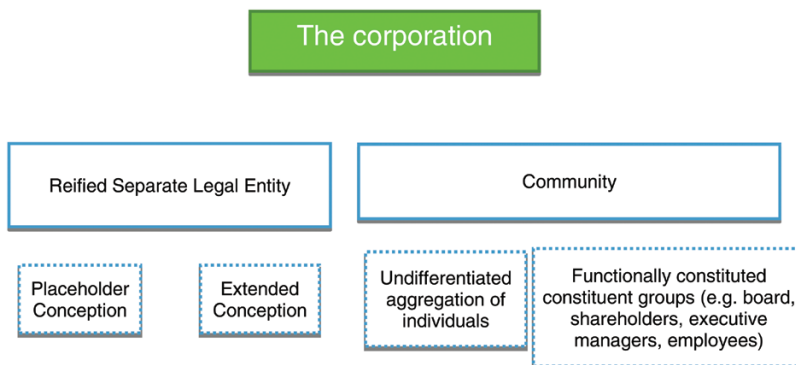
2.1 *The placeholder conception of the SLE*

In one formulation, the SLE is postulated as no more than a functional placeholder with no substantive status: ‘fictions are only ratiocinations which have no provable

settings, such as company law, corporate governance codes and accounting regulations. In this context, we argue that the status of the SLE as a reified construct is first and foremost postulated and stabilized by a community of legal scholars and practitioners. In a later section, we explore the impact of a competing, law-and-economics concept of the SLE.

counterpart in the inherent nature of things ... we need not be concerned with either the ontological or the epistemological status of the corporate fiction (i.e. its “reality” or its “truth value”)’ (Timberg, 1946, p. 540). When the SLE is conceptualised as a placeholder, it follows that the identification of the corporation as a ‘citizen’, ‘subject’, or ‘person’, and the projection of anthropomorphic qualities onto it, is a category mistake (Cohen, 1919; Freund, 2000 [1897]; Lampert, 2016; Radin, 1932; Vinogradoff, 1924). Despite the rejection of a broader substantive status, the placeholder conception of the SLE still conceives of the SLE as a construct with reified properties, but does so for purely functional reasons.

Taking up the placeholder conception of the corporation as a basic way to understand the status of the SLE, it is possible to provide a preliminary answer to the question whether ‘the corporation is a mere mental construct, a legal device of some sort or something else’ (Lawson, 2015C, p.11). As the SLE is ascribed ownership and liabilities as a fully separate legal construct with reified properties, which stands apart from the ‘community’ as an aggregation of individuals or groups, the corporation encompasses both the SLE and the community. As a result, the ‘community’ and the SLE offer different responses to the question ‘What is the corporation?’, and neither of them can be considered synonymous with ‘the corporation’.²



2.2 The extended conception of the SLE

It was during the nineteenth century that scholars and commentators sought to address issues and questions posed by the reified properties of the SLE, and particularly in relation to the legal and political status of citizens and states (Maitland, 2003). At this time, multiple ‘founding myths’ were advanced—such as concession theory, entity theory and the aggregation of individuals theory. In relation to these founding myths, and as a product of an ongoing conflation between the SLE and a broader conception of the corporation, the status of the SLE and its relation to the corporation were variously interpreted as: a legal fiction relating to a (contractual) aggregation of individuals; the natural or spontaneous representation of a group or community, or of a constituent group or sub-community; a fully reified legal construct with the status of a legal ‘entity’, ‘subject’, ‘person’ or ‘citizen’; and combinations of these

² The specific development of the SLE sets the notion of the modern corporation apart from the notion of the firm, which is broader: ‘it is reasonable to regard partnerships, cooperatives, companies and corporations all as firms’ (Hodgson, 2002, p. 40).

interpretations (Avi-Yonah and Sivan, 2007; Blair, 2015; Gindis, 2009; Harris, 2006; Millon, 2001; Naffine 2003).

As these multiple interpretations reflected and performed an unstable, shifting and confusing conceptual basis for the SLE, they provided an accommodating context for the invocation of multiple referents and their use to embellish the properties, privileges and protections ascribed to the corporation. These included the attribution of (citizenship) rights; the direct attribution of (contractual) agency to the SLE; the capacity to form corporate groups; a marked substantiation of the use of the ‘corporate veil’; and, in some jurisdictions, the capacity to sit on the board of another company as a director in the capacity of a legal ‘entity’ (Bowman, 1996; Hodgson, 2002; Johnson, 2010; Maitland, 2003; Mayer, 1989; Nace, 2003; Robé, 2011; Tricker, 2015).

The invocation of multiple referents inspires and supports the basis for an *extended conception* of the SLE that accommodates the attribution of properties, privileges and protections far beyond the basic placeholder conception. Despite social and academic contestation of this accommodation of an extended conception of the SLE in corporate theory, ‘pragmatism’ became accepted in US and British legal scholarship from the 1920s as a justification for maintaining the parallel use of the placeholder and extended conceptions (Dewey, 1926; Harris, 2006; Lawson, 1957). In turn, accommodation of multiple referents and their effects rendered the sole, doctrinal use of the narrow placeholder conception increasingly untenable. Today, both the placeholder and extended conceptions of the SLE remain in service (see Blair, 2015).

3. The holy grail of social ontology

To recap, we have argued that the postulation of the SLE is crucial for the development of the modern corporation as a specific legal form. Its reified status has material consequences in the form of shaping legal, contractual and economic relationships with, and within, the corporation (Foster, 2006, p. 318); for the capacity to attribute rights and protections; and for the capacity to form corporate groups. It significantly influences the set-up of the conceptual architecture and related corporate governance structure of the modern corporation (Foster, 2006, p. 319; also see below), facilitating a number of other innovations, like rentier shareholdership, minority shareholder protections, a secondary share market and professional management (Biondi *et al.*, 2007; Ciepley, 2013; Ireland, 1999; Johnson, 2010; Lamoreaux, 1998; Stoljar, 1973). Despite its significance, the precise status of the SLE remains unstable.

To understand why such an important construct has such an unclear status, it is relevant to appreciate how, within the legal epistemic community, the ‘law is grounded only on itself’ (Teubner, 1997, p. 764). As F. H. Lawson (1957, p. 914) has put it, ‘all legal relations are abstract and exist not in fact but only in contemplation of law’. He continues that juristic concepts are ‘ideal expressions of social facts, and ... their ideality is possible only by means of the abstraction which the jurist deliberately makes in his account of society’ (Hallis, 1978, p. 163). As ‘ideal expressions of social facts’, the status of juristic concepts is not verifiable by any empirical test: ‘Legal personality, estates and contracts are parts of a world of their own, which is in some way related to the world of fact but is separate from them. It is an artificial world whose members are to some extent arbitrary, though not irrationally, created to serve certain purposes’ (Lawson, 1957, p. 913). Crucially, it is important to understand how the status,

qualities and relations of all legal constructs are created and performed by the application of rules that function internally to the legal system of representations. That is why the notion of a ‘legal fiction’ can point to ‘terms or categories that have no referents’ (Lawson, 2015C, p. 18).

Any referent in this system of representations is merely an *implied* referent,³ so it is possible to posit and use constructs like the SLE without presuming closure with regard to referents, or to the (ontological) status of such constructs. For this reason, it is not ‘always something or someone real that is repositioned’ (ibid. p. 19). It is not necessarily an ‘individual’ that ‘becomes the bearer or agent of novel positional powers and specifically rights and obligations’ (ibid., p. 9). And it is not ‘the firm positioned as a company [that acquires] legal personhood or [becomes] positioned as a legal person’ (ibid., p. 18; see also n. 2). Although the SLE may have acquired functions on the basis of its identification in relation to the ‘person’ or the ‘(sub-)community’ as referents, this identification does not reflect an exclusive relation to any of those referents.

As there is no direct relation between a ‘legal fiction’ and a concrete referent, it is not necessarily a misrepresentation when a legal rule is applied ‘to a case for which it was not originally designed or intended to cover’ (Lawson, 2015C, p. 19). It is indeed possible to infer multiple classes of ‘persons’, interpreted as ‘*persona ficta*’ or ‘bundles of rights and duties’, within the category of the legal ‘subject’. It is therefore not a type of (ontological) category mistake that leads to the identification of the SLE as a legal ‘person’ (Lawson, 2015C, p. 18). And it is implausible to claim that the corporation presents a type of ‘agent of rights and obligations intended only for human beings’ (Lawson, 2015B, p. 218). Instead, the (ontological) status of any type of legal fiction—like the legal entity, subject, person, the SLE or the corporation—is equivalent in its status. As an empty signifier, it may be filled with whatever contents members of the legal epistemic community see fit, within the historically defined boundaries of their worldview, to propose, challenge, reject or accept (Dewey, 1926; Hallis, 1978; Hart 1983; Foster, 2006; Veldman, 2016A).

Our brief overview of the legal conceptions of the SLE has provided an initial response to Lawson’s question(s): ‘What precisely does the ... term [legal fiction] mean, how does it relate to the notion of an ontological fiction and what does its use, if legitimate, imply for the constitution of the corporation?’ (Lawson, 2015C, p. 2). The SLE, we have argued, is an ideational construct whose indeterminate status is, in practice, socially defined by its postulation within the legal epistemic community. As a construct that is postulated with reified qualities in that legal epistemic community, it exerts performative effects; and it does so irrespective of its relation to a specific referent or its theoretical or ontological consistency.

We now turn to a consideration of the effects of the postulation of the SLE as a construct with a reified status. In doing so, it is relevant to underscore how, within the legal epistemic community, it is possible to posit and use legal fictions as constructs with no more than an implied referent, and so the (ontological) status of constructs, even those with a reified status, are subject to constant (re)negotiation and re-formulation within and between epistemic communities that are embedded in a wider network of

³ This helps to explain how concepts like shell companies can exist: ‘The legal entity can be almost totally independent of any significant substrate, whether personal or organisational.... ABC Limited need only have the most tenuous of connections to human beings. Indeed, such a connection can often be disregarded for practical purposes’ (Foster, 2006, p. 321).

asymmetrical social relations. In the next section, our focus is primarily upon the reception of the SLE outside the legal epistemic community. In particular, we are interested in how the SLE may be assumed either to have an implied referent, or to be of marginal or background significance. More specifically, we explore how the capacity for constant (re)negotiation and re-formulation of the substantive status of the SLE as a reified construct is at once exemplified and displaced by the hegemony of the Nexus of Contracts (NoC) theory which exerts concrete effects in terms of fostering a new architecture of the modern corporation, with specific outcomes in terms of political economy.

4. The politics of (re)formation of the SLE

Our analysis of the SLE as a capacious and contested construct has placed in question the coherence of proposing, or adjudicating between, ostensibly authoritative knowledge claims about the essence of the SLE and/or the credibility of specific referents. In certain respects, our position is consistent with Lawson's observation that 'Analyses of the firm emanating from economics ... have focused on providing very particular (functionalist) explanations of the existence of the firm' while 'contributors to legal studies or corporate governance, inspired especially by the "law and economics movement" ... have tended to accept (in an overly uncritical fashion) these contributions from economics as realistic, and sought in turn to use them in their interpretations of the legal system' (Lawson, 2015B, p. 227). While we have distinguished the corporation from the firm (see note 2), we agree that the adjudication of the status of the corporation, and of the SLE more specifically, extends beyond the legal epistemic community; and the engagement by epistemic communities has concrete effects in terms of political economy.

To demonstrate the role of contestation and (contingent) stabilization in shaping the meaning and effects of the SLE, we return initially to its historical development. Through the development of the SLE in the nineteenth century, the ownership of shares was distanced from the liabilities that, in the partnership form, had been associated with partners' direct ownership of assets. For partners, those liabilities were unlimited, thereby making them collectively responsible for each other's financial (mis-)judgments and debts. The responsiveness of the SLE to the risks of forming, or joining, partnerships and their associated restrictions in combination with the privileges offered by the SLE⁴ were the basis for a *quid pro quo* in which shareholders came to have an indirect, rather than direct, claim on corporate assets (Hodgson, 2002; Ireland, 1999). Rupturing the indivisibility of ownership and control present in unlimited liability partnerships (although it was not entirely removed in the new architecture, as shareholders continue to appoint directors) repositioned shareholders as a largely external constituency with limited claims and responsibilities compared to the investor-partners in the unlimited liability partnership.

In the new corporate architecture the interests of shareholders are included but no longer equivalent, or reducible, to those of 'the corporation' (Millon, 2014). As a result of this repositioning, the role of the board became central, with its members being required to attend to the interests of the corporation, interpreted as an 'entity' (Millon,

⁴ The modern corporation offered, i.e., a perpetual business form, limited liability—i.e., liability being limited to the loss of the value of the shares, minority shareholder protections, and a secondary share market in which shares could be easily transferred (Ireland, 1999; Johnson, 2010; Lawson, 2015C, p. 21; Veldman and Willmott, 2017).

2013). Over time, this repositioning has prompted a perplexing question concerning board duties: if the fiduciary duties of the board are directed at the ‘entity’ or ‘the corporation’, in whose interest is the corporation to be run? (see esp. [Berle, 1931, 1947, 1954](#); [Biondi et al., 2007](#); [Dodd, 1931](#); [Mizruchi and Hirschmann, 2010](#); [Robé, 2011](#)). This question makes the historical development of conceptions of the ‘entity’ and its relation to the corporation central.

During its initial development in the nineteenth century, the SLE mainly served to increase the availability, and to reduce the cost, of capital, especially for more speculative ventures. By allowing capital to be pooled, it spread and reduced risk amongst growing numbers of (rentier) shareholders. Inasmuch as these features of the SLE could be related to its conception as a placeholder, directors’ duties could be interpreted as protecting and increasing the assets of the SLE, and thereby indirectly advancing the interests of the shareholders in securing capital growth (see [Biondi et al., 2007](#); [Bowman, 1996](#); [Chandler, 2002 \[1977\]](#); [Deakin 2012](#); [Johnson, 2010](#); [Roy, 1999](#)).

However, as the legal conception of the SLE shifted from a placeholder to an extended conception, this alternative interpretation of the SLE as an ‘entity’ fostered new possibilities, such as the attribution of contractual agency and amendment rights, and the construction of corporate groups. As these developments coincided with a shift in the organization and concentration of markets toward an increasingly oligopolistic model, the corporation became an object of concern, a target of criticism and so subject to challenge. Expressions of concern mounted about its impacts on economic organization, including its socially divisive consequences and the vacuum of control and responsibility at the centre of an emergent ‘corporate capitalism’. These criticisms of the SLE were met in the early twentieth century with responses that *inter alia* insisted upon the vital role of the modern corporation for economic coordination, and specifically in counteracting a perceived communist threat (see [Bowman, 1996](#); [Carroll et al., 2012](#); [Chandler, 2002 \[1977\]](#); [Djelic, 2013](#); [Hannah, 2010 \[1976\]](#); [Johnson, 2012](#); [Marens, 2012](#); [Mizruchi and Hirschmann, 2010](#); [Roy, 1999](#)). Political and economic concerns about the effects of the modern corporation thus provided a background to the pragmatism in the 1920s in legal circles referenced in Section 2.

Following the 1929 crash, concerns about ‘corporate capitalism’ provided a context for Berle and Means’ (2007 [1932]) landmark analysis of the corporation. Berle and Means argued that in the first decades of the twentieth century the formal, legal separation of ownership of shares from the responsibilities and liabilities of control had been followed by increasingly diffused share ownership. As ‘the atom of ownership and control’ had both theoretically and practically been split, control over corporations had passed, by default, to a cadre of professional, but essentially unaccountable managers.⁵ Equivocating between concerns about the development of the modern corporation into an increasingly dominant institution under the control of unaccountable ‘princes’, and supporting the institution of the modern corporation as a vehicle of private wealth accumulation, Berle and Means proposed that the legitimacy of the modern corporation under managerial control depended upon its smooth and progressive evolution

⁵ Berle and Means spoke of ‘managers’ as both directors and executive managers (officers) ([Johnson and Millon, 2005](#))

into a quasi-social institution capable of serving the interests of a broad set of constituencies⁶ (Khurana, 2007; Moore and Rebiérioux, 2007).

In the era of ‘managerial capitalism’, beginning in the 1930s and extending to the 1970s, a concern to re-legitimise the modern corporation justified the expansion of discretionary space for board members and executives within the architecture of the modern corporation. But this exercise of discretion was conceived in relation to ‘the entity’ or ‘the corporation’ as a duty to recognise and adjudicate between diverse claimants on the corporation and, in some readings, by all the stakeholders who are affected by its activities (Berle and Means, 2007 [1932]; Biondi *et al.*, 2007; Ciepley, 2013; Drucker, 2006 [1946]; Lan and Heracleous, 2010; Millon, 2014; Mizruchi and Hirschmann, 2010; Segrestin and Hatchuel, 2011).

During the 1970s, the ‘social contract’ that stabilised and justified the architecture of ‘managerial capitalism’ was tested by slowing economic activity, fiscal crises and the socially destabilising impacts of stagflation. In this context, a more market-oriented conception of the corporation was presented as an alternative. In the ‘nexus of contracts’ (NoC) theory, developed mostly by the Chicago School of law and economics (Van Horn, 2009; Van Horn and Mirowski, 2009), the modern corporation is re-imagined as comprising a set of contractual relations among self-interested, atomistic individuals. Consistent with this market-centred conception of the corporation, the SLE is simultaneously acknowledged and disregarded as an inconsequential ‘legal fiction’ with no substantive status (Bratton, 1989; Friedman, 1970; Jensen and Meckling, 1976), although the privileges, protections and architecture provided by the extended conception of the SLE are maintained.

The ‘intellectual shamanism’ (Ireland, 2005, p. 81) of NoC envisions a corporate architecture in which managerial executives are typified as ‘agents’ who, in a direct contractual relation, respond exclusively to shareholders as their ‘principals’. In this dyadic governance relation, fiduciary duties and accountability are reoriented to the creation of shareholder value as measured by short-term market valuation. The claims of all other stakeholders are structurally excluded from this relation (Ireland, 2005; Marens and Wicks, 1999; Millon, 2014). Consideration and protection of other stakeholders’ interests is contingent upon the calculation by managers that it is instrumentally relevant and effective for maximising shareholder value. NoC has proved alluring, especially to shareholders, as the privileges and protections provided by the SLE are retained, while the institutional protections for other stakeholders developed in the ‘managerialist’ era are denied any legitimate purpose and so can, and should, be dismantled (Aglietta and Rebiérioux, 2005; Armour *et al.*, 2003; Davis, 2009; Dore, 2008; Jacoby, 2008; Jansson *et al.*, 2016; Johnson, 2012; Khurana, 2007; Lazonick, 2014; Millon, 2014).

We have noted how the capacious and contested status of the SLE as a reified construct postulated by the legal epistemic community invites and accommodates an on-going contestation of knowledge claims about the SLE and the credibility of its

⁶ ‘The institution here envisaged calls for analysis, not in terms of business enterprise but in terms of social organization. On the one hand, it involves a concentration of power in the economic field comparable to the concentration of ... political power in the national state. On the other hand, it involves the interrelation of a wide diversity of economic interests—those of the “owners” who supply capital, those of the workers who “create,” those of the consumers who give value to the products of enterprise, and above all those of the control who wield power’ (Berle and Means (2007 [1932], pp. 309–10).

relation to specific referents. Not only is this contestation and the use of shifting stabilisations problematic in relation to the consistency of ideas about this construct and for understanding the direct effects of the reified status of the SLE; it is also problematic in relation to the provision of a clear view on corporate architecture through which risks, rewards and protections to corporate constituencies and broader stakeholders are allocated.

5. Discussion

We began by noting that Lawson's approach to the corporation, and specifically the foregrounding of the community as a concrete referent, is based upon the presumption that a particular, 'realist' conception of 'social ontology' provides a sound basis for scientific inquiry (Lawson, 2012, p. 346). Lawson contends that in order to advance a 'realist' orientation', in which 'the social category employed also picks out a definite feature of reality, that there is a definite referent' (Lawson, 2015A, p. 43), it makes sense to argue that 'there is always something or someone real that is repositioned' (Lawson, 2015C, p. 19). More specifically, it is claimed that what is 'positioned as a company' (Lawson, 2015C, p. 18) is, in fact, the (sub)community, aggregated as a firm (Lawson, 2015C, pp. 11, 16), which 'acquires positional rights and obligations, just as a (positioned) human individual might' (Lawson, 2015C, p. 10).

By contrast, our analysis has drawn attention to the significance of how the SLE is conceived as a reified construct, separate from the aggregation of individuals ($N+1$) in the legal epistemic community; and that this reified status of the SLE is central to the specificity of the modern corporation and its architecture (Millon, 2014; Robé, 2011; Stout, 2012). Although we agree with Lawson that the legal epistemic community makes possible access to '(sets of) rights and obligations' (Lawson, 2015C, p. 19) through the SLE, we contend that the status of the SLE, like any other 'legal fiction', is ascribed by the legal epistemic community on the basis of a self-enclosed set of ontological assumptions (Veldman, 2016A). Hence, the SLE, as a 'legal fiction', can be interpreted as a concretely reified construct, and yet doesn't need to relate to a concrete referent, like 'community'.

In advancing this position, we also accept that 'through ... a process of incorporation ... a (limited) company, is not going to be somehow rendered thereby an ontological fiction or non-existent as an entity. Nor of course will it be a real person' (Lawson, 2015C, p. 16). But this is not 'because any firm is a real community' (Lawson, 2015C, p. 16). Nor is it because the firm or the community is repositioned as a company (Lawson, 2015C, p. 18). Rather, the relation is the other way around: the reality of SLE, as a 'legal fiction', is derived 'from differences in legal outcomes, which in their turn generate effects in objective reality' (Foster, 2006, p. 319). The SLE, like any other legal fiction, can be '(re)positioned' by the legal epistemic community to relate to multiple referents.

We have demonstrated the relevance and coherence of this approach to social ontology in three ways. First, we explored how the reified status of the SLE, distinct from the aggregation of individuals ($N+1$), makes it possible to distinguish between the corporation, the SLE and the 'community'. Second, we demonstrated how what is postulated as a reified construct by the legal epistemic community does not need to relate to a concrete referent. We showed how the status of the SLE can accommodate, and oscillate between, its conception as a narrow functional placeholder with specific

attributions of ownership and liabilities, and a more expansive, extended conception that provides the basis for a wide use of referents, and hence (much) broader attributions, including attributions of (contractual) agency and (citizenship) rights and protections (Blair, 2015; Bowman, 1996; Maitland, 2003; Mayer, 1989; Naffine, 2003). We also noted how, in the absence of a direct referent, a resort to ‘pragmatism’ upholds these conflicting conceptions of the status of the SLE in the legal epistemic community (Millon, 2001, pp. 3–4). Third, we considered how the reified status of the SLE as a reified construct is central to the provision of a specific corporate architecture; and we reviewed how the adoption and institutionalisation of specific ideas of the (ontological) status of the SLE in different socio-economic contexts has real-world effects in terms of political economy.

We have commended a conception of the SLE as a functionally constituted construct (Timberg, 1946). This approach reminds us that whatever is deemed to exist in the guise of the SLE is the product of a transient and fragile consensus within and between epistemic communities; and that temporary stabilisation is the outcome of a political process that has real-world consequences. The SLE and associated legal fictions are, on this account, social constructs precariously stabilised within political-economic relations. This approach discredits the quest for ontological neatness or ultimate coherence. Its challenge to conventional, ‘realist’ wisdom has been exemplified in our analysis of how a series of de-stabilizations and re-stabilisations of the SLE have established, revised and justified privileges and protections with regard to how, through the medium of the modern corporation and the SLE, wealth is created, appropriated and distributed (Ireland, 2005).

We agree with Lawson that the status of constructs such as ‘entity’, ‘subject’ or ‘agent’, and their relation to specific referents, is an important issue. Yet, in our view, the effort to identify a direct referent is ill conceived, as it mystifies more than it illuminates the underlying problematic. It is more instructive to focus upon the invocation, stabilization and enactment of key constructs in specific types of theory in relation to their conditioning by, and their consequences for, political economy. In sum, our approach furnishes the elements for a detailed examination of the historical engagement and social definition of the SLE that relate its conflicted status not only to multiple stabilisations within and between epistemic communities but also to the concrete consequences of specific stabilisations in terms of political economy.

Our approach to social ontology combines a consideration of significant aspects of the role of the SLE as a social construct with the real-world effects and consequences of its stabilization within and between epistemic communities. This, we submit, is in line with Lawson’s sense of social reality as ‘an emergent, open-ended, structured, transformational process in motion, in which the parts are constituted in and through their (changing) relations to each other’ (Lawson, 2015A, p. 43). However, in distinction to Lawson we have conjectured that an entity ‘that can reasonably be categorized as social’, such as the SLE, is not ‘as real or objective as’, ontologically continuous with or equivalent to ‘the objects studied within the traditional “natural” sciences’ (Lawson, 2012, p. 346). As a result, our approach to social ontology accepts that the legal epistemic community in principle is able to exhibit “cognitive openness” (Deakin, 2015, p. 176). We agree that ‘the definition of a juridical concept and its application to a given factual context [also] presuppose at least a certain degree of connection between legal forms and the wider social reality of which they form a part’ (Deakin, 2015, p. 182; see

also [Gordon, 1984](#)). However, we note that after two centuries of deliberation by the legal epistemic community, a clear delineation of the status of the SLE and the modern corporation hasn't (yet) materialized ([Veldman, 2010](#)). It is therefore with a measure of scepticism that we look forward to the anticipated 'validation' ([Deakin, 2015, p. 1](#)), or falsification, of the theoretical and empirical claims that abound in relation to the status and effects of the SLE and the modern corporation. For us, the prospect of validation and falsification seems remote. That is not only because, under the banner of 'pragmatism', the legal epistemic community has accepted both the placeholder and the extended conceptions of the SLE in order to secure its practical, material effects. It is also because the SLE is an object of contestation within and between epistemic communities. In tandem, pragmatism and contestation point toward the dynamic role of political economy in disrupting the stabilisation that is necessary to validate or falsify the meaning of the SLE and the nature of the modern corporation.

6. Conclusion

Our purpose has been to give serious consideration to the multiplicity of assumptions about the SLE as a construct that defines, or at least conditions, the status, effects and institutional structure of the modern corporation. This has led us to make three claims in relation to Lawson's assumptions about social ontology. First, we have identified the separate legal entity as a reified social construct formulated within a specific epistemological community whose concrete effects are mediated by processes of contestation over its status and significance. Second, and relatedly, we have suggested that striving to establish an authoritative, definitive social ontology of the modern corporation disattends to the contingent, problematic status of the separate legal entity. Third, we have underscored the *social* organization of knowledge claims, particularly in relation to multiple ways of stabilising the SLE as a social construct and the politico-economic conditions and consequences of its recurrent de-stabilizations and re-stabilizations.

Each historical stabilization of the SLE has been conceived as a consequence of groups mobilising available resources that bestow and sustain material and symbolic advantage. Our approach invites a keener appreciation of the assumptions underpinning particular stabilizations; the ways in which these stabilizations have been produced historically; the effects of those stabilizations and their benefits for particular groups; and, more broadly, it invites a closer attentiveness to the dynamics of contestation in which diverse parties—including academics working within numerous disciplinary fields and diverse stakeholders—mobilise resources as they engage in struggles to institutionalise, de-institutionalise and re-institutionalise preferred versions of the corporate form ([Bowman, 1996](#); [Ciepley, 2013](#); [Johnson, 2010](#); [Nace, 2003](#); [Perrow, 2002](#); [Wilks, 2013](#)). In sum, we suggest that 'political contestation', and not 'community', is key to the explication of the social ontology of the modern corporation.

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