SOCIAL ONTOLOGY OF THE MODERN CORPORATION: ITS ROLE IN UNDERSTANDING ORGANIZATIONS

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ABSTRACT

We explore the significance of social ontology and its capacity to inform the specification of organizational status, architecture and capacities. We consider how different conceptions of social ontology are critical for explicating a range of epistemological and socio-economic questions concerning organizations and develop a research agenda oriented to studying these issues from the perspec - tive of management and organization studies.

Keywords: Social ontology; corporation; corporate governance; corporate architecture; organization theory; stakeholders

INTRODUCTION

The corporation[1] is one of the most prominent and influential of modern ideas (Greenwood, 2017; Micklethwait & Wooldridge, 2005). Even for company law specialists, however, the specification of the ontological status of the corporation is highly elusive and contested (Foster, 2006; Litowitz, 1999; Mark, 1987; Mayer, 1989). "Corporations," Monks and Minow, respected legal scholars contend,

> have a life, and even citizenship, of their own, with attendant rights and powers. Corporations are "persons" within the meaning of the United States Federal Constitution and Bill of Rights. (Monks & Minow, 2009, p. 14)

Yet, a contending idea that the corporation is, in essence, an aggregation of individuals, and that the status accorded to the corporation as an "entity," "subject" or "person" can be disregarded, also remains influential. As Fiss and Zajac (2004) characterize the situation of contestation over the social ontology of the corporation, "Fundamentally, governance models such as shareholder value management are normative belief structures about the allocation of power in the firm" (p. 22).

Historically, the idea of the corporation has enabled perpetual legal representation for private ventures (Johnson, 2010). It has also been fundamental for the extension of constitutional rights to corporations and in enabling the use of corporate funds in the political domain (Winkler, 2018).

From the 1970s onwards, an economic conception of the corporation, viewed as an aggregation of individuals, has become particularly prominent. Explicitly invoking methodological individualism, this conception identifies the individual agent as "the elementary unit of analysis" (Jensen, 1983, p. 327) and the sole recipient for ascriptions of agency, ownership, and rights (Friedman, 1970, p. 1; Jensen & Meckling, 1976, pp. 310–311). By formally excluding the corporation from the category of the individual agent, the status of the corporation as an "entity" to which agency may be attributed is conceived as an inconsequential legal fiction, and its organizational architecture is reconceived as a nexus of contracts (Jensen & Meckling, 1976, pp. 310–311). This idea underpins the "agency theoretic" view that shareholders – as "principals" – enter into an exclusive contractual relation with managers – as "agents." The invocation of this social ontology has reoriented the "purpose" of the corporation and its associated strategizing toward serving the interests of transient (short-term) shareholders (Aglietta & Rebérioux, 2005; Davis, 2009; Yosifon, 2014).

Following Lawson, we note that social ontology may be conceived 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, 2015, p. 30)

Our contention is that knowledge claims about social constructs, including "corporations," are typically contingent (Butzbach, 2022; Ireland, 2010) as they rely upon the operation of particular relations of power to establish and maintain some degree of purchase and closure. And we attend to the study of social ontology by interrogating and recollecting the ways in which a particular power/knowledge relation, stabilized as a "discipline," deploys "procedures" for accumulating knowledge of social reality – for example, by rendering a social construct like the corporation meaningful, explicable, real, and so consequential. Accordingly, to study social ontology in the context of the corporation, we focus upon the (discursive) processes that articulate the significance of (competing) conceptions of the corporation as an organization (see Veldman & Willmott, 2013, 2017).

Building on this approach to social ontology, we explore how the adoption and stabilization of specific conceptions of social ontology frames the conditions of possibility for developing answers to the question of what the organization *is* (i.e., organizational status); how the organization is *constituted* (i.e., organizational architecture); and what the organization can *do* or what it *enables* (i.e., organizational

capacities). We note and explore the relevance of debates on the relation between corporate social ontology and the development of idiosyncratic ideas of organizational status, architecture, and capacities for Management and Organization Studies (MOS), and specifically for the ways in which the assembly of these ideas may affect the interpretation of the status, (representational) roles, positions, relations, remit, duties, functions, claims, and protections of organizational elements (Levillain et al., 2018; Lokin & Veldman, 2019). We also note how these debates have been going on for at least two centuries in company law (e.g., Deakin, 2019; Deakin, Gindis, Hodgson, Huang, & Pistor, 2017; Millon, 1993; Pistor, 2019; Robé, 2011; Yosifon, 2014; Winkler, 2018) and have only recently found their way into debates in corporate governance (e.g., Aguilera & Jackson, 2010; Kay, 2015; Tricker, 2015). Despite their significance for MOS, explicit engagement with these debates has been mostly confined, in MOS, to the contributions of a small group of scholars whose work is typically only loosely inter-connected and indirectly engaged with our focus on the politico-legal dimensions of the contested social ontology of the corporation (e.g., Baars & Spicer, 2017; Bower & Paine, 2017; Djelic, 2013; Driver & Thompson, 2019; Ghoshal, 2005; Lan & Heracleous, 2010; Levillain & Segrestin, 2019; Perrow, 2002; Williams & Zumbansen, 2011).

We start by exploring the consequences of the use of competing conceptions of legal social ontology for the articulation of the status, architecture and capacities of organizations. We then trace, historically, how the influx of minority investors into public corporations put pressure on notions of organizational status and architecture associated with the unlimited liability partnership (Freeman, Pearson, & Taylor, 2011; Ireland, 1999; Johnson, 2010). To solve the practical and conceptual problems associated with this pressure, a remedy was found in the form of the gradual strengthening of the singular and reified qualities of the Separate Legal Entity (SLE). Over time, these qualities made possible radically novel conceptions of organizational *status – inter alia*, by enhancing the representational capacities for the corporation so that, for example, it could be nominated to sit on a board of directors. These qualities also supported novel notions of organizational *architecture* by, for instance, viewing the board and the body of shareholders as corporate "organs," and by relieving shareholders of managerial duties and responsibilities as the duties of the board were directed toward the corporation as an "entity." Finally, these innovative notions of organizational status and architecture facilitated the development of new organizational *capacities* – such as ascriptions of ownership, liabilities, (contractual) agency, and (constitutional) rights; the capacity to operate with asset lock and entity shielding; and the formation of the corporate group that enabled trans-jurisdictional operations.

Summing up these changes to organizational status, architecture, and capacities, Greenwood (2017) contends that "an entirely new creature" was created, taking the form of

> a vehicle for economic enterprise [that was] freed to pursue private interest … [so that] investors and control parties were almost entirely relieved of responsibility or liability for corporate actions. (p. 177)

Before concluding, we set out a research program based on our examination of how social ontologies inform a diversity of specifications of organizational

status, architecture, and capacities. Its three strands identify and compare the consequences of divergent and competing conceptions of social ontology, and we point out their relevance for MOS, including engagement of "grand societal challenges," such as societal inequality and planetary sustainability (Aguilera, Aragón-Correa, Marano, & Tashman, 2021; Ferraro, Etzion, & Gehman, 2015; George, Howard-Grenville, Joshi, & Tihanyi, 2016; Howard-Grenville et al., 2019; Veldman, Morrow, & Gregor, 2016).

In the next section, we will briefly introduce the history of the emergence of multiple and differential conceptions of social ontology in the context of the modern corporation.

THE CORPORATION AND THE SLE

Features of organization that are today associated self-evidently with those of the modern corporation – including separate legal personality, entity shielding, limited liability, transferable joint stock and delegated management – emerged in an extended series of largely incremental conceptual changes to the (legal) understanding of the modern corporation (see Blair, 2015; Djelic, 2013; Hager, 1989; Kantorowicz, 1998; Maitland, 2003; Kraakman, Davies, & Hansmann, 2004; Pistor, 2019). Most of these features were implemented during the nineteenth century as pragmatic responses to a shift in the ownership of shares (Ireland, 1999). This shift prompted a series of conceptual changes with regard to the interpretation of the SLE that, eventually, resulted in this construct becoming a conceptual anchor-point for novel notions of organizational architecture and capacities (Freeman et al., 2011; Hansmann & Kraakman, 2000). As these novel notions of status, architecture and capacities for the corporation were seen as resulting in significant transformations in the nature, operation, and implications of corporate capital, they informed during the first decades of the twentieth century

> what can only be called questions of corporate ontology. What … is the nature or essence of a corporation? What sort of existence or being does it have, and how does this existence or being originate? (Hager, 1989, p. 579)

To appreciate the significance of these changes, we consider briefly the historical development of interpretations of the SLE, conceived here as a social construct.

During the long time that legal representation for organizations has existed, debate about the quality of such legal representations has followed the concept (Hodgson, 2015; Kantorowicz, 1997; Mark, 1987; Pistor, 2019). In this long intellectual history, the nineteenth century presents a turning point. Before the nineteenth century, a SLE could be conceived as a corporate "body" and could be conceived as a legal "person" with rights and obligations separate from the incorporators or members (Hallis, 1978; Winkler, 2018). The corporation was, however, typically conceived to exist *only* "in intendment and consideration of the Law" (Hallis, 1978, p. xliii). As the corporation owed its existence to a charter or concession, granted by the sovereign or state, it was conceived to rely upon the continued provision of an external mandate, and the scope of its activities

was thereby legally limited by the terms of that mandate (Greenwood, 2017). In essence, the legal representation of the corporation was conceived as

> a dead form, not a living reality, a concept which can enter into jural relations only so long and in so far as the state breathes into it the power of jural capacity. (Savigny in Hallis, 1978, p. 8)

The consequences of such a view of the corporation, conceived as a generic type of organization and deriving its status exclusively through a charter, are brought into sharp relief by Pistor (2019) when observing that

> in 1811, the state of New York enacted one of the first free incorporation statutes. It included a sunset provision, thereby limiting the life span of corporations to 20 years; it imposed a capital ceiling of $100,000; and it required that the directors of the corporation be drawn from among the corporation's shareholders. (p. 76)

The view that the status of the corporation was connected to an externally granted charter and therefore constituted a distinctly artificial entity (Gindis, 2009; Harris, 2006) enabled *a clear conceptual distinction* between the status of human individuals and the SLE as legal entities. As an artificial legal entity, the SLE was typically conceived as "something apart from the members of the corporate body, since it is a fiction while they are realities" (Hallis, 1978, pp. xlii–xliii). Following this view, US Chief Justice Tawney argued that

> because a corporation was its own legal person, its rights and duties were separate and distinct from those of its members. *Corporations had only those rights appropriate for this unique and special type of legal entity*, one that already enjoyed special legal privileges, such as limited liability. Corporate personhood served as a limit on the rights of corporations and a basis for distinguishing corporations from ordinary people. (Winkler, 2018, p. 102, emphasis added)

The role of the SLE as a distinctly artificial construct offered a convenient heuristic – a juridical expediency created by the monarch or the state (Freeman et al., 2011) that enabled legal and economic representation for an aggregation of individuals for specific and circumscribed functions by virtue of the invention of a "legal fiction" (Winkler, 2018). The conception of corporate status as artificial was highly significant for political economy as it permitted the ascription of organizational capacities (such as perpetual legal representation and limited liability) as exceptional and conditional on continued legal sanction. Moreover, by maintaining a formal separation between the representational status of natural persons and the corporation *qua* representation of an organization, it also made the direct ascription of agency and (constitutional) rights normally pertaining to natural persons conceptually problematic (Ciepley, 2013, 2020; Kantorowicz, 1997; Maitland, 2003; Post, 1934; Winkler, 2018).

The notion of the corporation as an "artificial entity" was congruent with a conception of corporations as special instances of a partnership:

> Partnership law ideas predominated to such an extent that even incorporated companies tended to be regarded as partnerships, and indeed what we now call company law was regarded as a specialist part of partnership law. (Foster, 2006, p. 321)

When conceived as subject to partnership law, the organization was seen as a contractual bond between individual shareholder-partners (Ireland, 1999, 2010). And since the partnership as an organization bound all the members as individuals,

and did not separate contractual and economic liabilities from those individuals, shareholder-partners were legally obliged to assume joint and unlimited liability for the contracts entered into by any and all of the shareholder-partners (Greenwood, 2017; Robé, 2011). The view that the partnership was constituted as a collection of contracting individuals thus connected the exercise of organizational ownership and control claims to having "skin in the game" in the form of the assumption of personal liability and organizational risk by investor-partners (Boatright, 1994; Johnson, 2010).

Such closely circumscribed conceptions of organizational status and architecture came under increasing pressure as the role and position of shareholders started to shift during the nineteenth century. The ambition to develop large infrastructural projects (e.g., the construction of turnpikes, canals, and railroads) required the extension of shareholding to a much broader group of capital providers, which meant that investors with different sizes of holdings, located in different places and with different degrees of interest in the exercise of "control" over the managerial function, joined the shareholder pool. In this process, a rift opened between the legal presumption of direct involvement by shareholders and the factual capacity of many of these shareholders to be involved in and/or monitor corporate management. The calling and hosting of all shareholders in courtrooms to answer for corporate wrongdoings became increasingly impractical. And an influx of shareholders with limited practical capacity and/or interest in the assumption of the managerial role was exploited by shareholders with a comparatively privileged (e.g., insider or controlling) position in public corporations. Problems arising from the *de facto* separation of shareholders from the active assumption of monitoring and management functions, and the associated emergence of significant principal-principal issues stimulated a quest for alternative conceptions of organizational status and architecture that could mitigate these drawbacks (Freeman et al., 2011; Haveman & Nedzhvetskaya, 2022; Horwitz, 1992; Roy, 1999).

A central element in the development of new ideas of organizational status and architecture that would allow to shift the consequences of claims to ownership and management – and thus organizational liability and risk – away from (minority) shareholders was the strengthening of the reified and singularized qualities of the SLE. To enable a representational role of the SLE as a placeholder for the "body of shareholders" the corporation was gradually reconceived from a "they" to an "it," notably in the 1844 and 1856 UK Company Law Acts (Ireland, 1999). A critical and instructive moment in this conceptual history of the social ontology of the corporation was the influential case of Salomon v. Salomon & Co Ltd [1897] AC 22 at 27 and 31 (per LORD HALSBURY L.C.) in which a clear distinction was made between the entity and its owner(s):

> If the company was a real company, fulfilling all the requirements of the Legislature, it must be treated as a company, as an entity, consisting indeed of certain corporators, but a *distinct and independent corporation*. … Either the limited company was a legal entity or it was not. If it was, *the business belonged to it and not to Mr. Salomon*. (emphasis added)

This reasoning reflected and reinforced a view that ascribed to the corporation a strongly reified capacity: "a body, which by no fiction of law, but by the very

nature of things, differs from the individuals of whom it is constituted" (Dicey, 1908, p. 133 cited in Hallis, 1978).

Shifting the conception of the legal representation of the corporation from a heuristic for the representation of an aggregation of individuals to a legal entity with its own distinctly reified status and qualities was transformative for the understanding of organizations in two ways.

The *first* effect was that it enabled a doctrinal distinction between the SLE and the rest of the organization (Robé, 2011). As Foster (2006, p. 322) notes,

> it is no exaggeration to say that the difference between the organisation 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.

The notion of the "organization" or "firm" thus came to comprise *both* the SLE and the "enterprise" or "undertaking" as distinctly separate elements (Segrestin, Hatchuel, & Levillain, 2020).

The *second* effect was that the interpretation of the "enterprise" became subsidiary to the concept of the corporation. As the concept of the "corporate order" established the boundaries of what would be considered "material" from the perspective of company law, and as the status, roles and relations of organizational elements were formalized in relation to their role in this "corporate order," the formalization of this "corporate order" effectively mediated the relevance, status and roles of organizational stakeholders and interests (Foster, 2006; Johnston & Millon, 2005; Lokin & Veldman, 2019; Robé, 2011).

In these two ways, the reification of the SLE exerted a significant effect on the conceptual structuring of the corporate order and the enterprise, and, by extension, the architecture of the organization.

Despite the significant conceptual effects of the reification of the SLE, this legal construct was not clearly identified in terms of its status. By the end of the nineteenth century, multiple "founding myths," i.e., artificial entity theory, real entity theory, and an aggregation of individuals theory (Gindis, 2009; Hager, 1989) were simultaneously in use and contributed to the development of various capacities of the corporation (see below). With multiple founding myths representing competing conceptions of legal social ontology in active use, the SLE was interpreted by some as a "convenient heuristic" that represented individual "members" constituting the corporation; by others as a reified social construct representing itself as an $N + 1$, and by yet others as a representation of the organization as a whole (i.e., in its capacity as the recipient of ascriptions of organizational assets and liabilities) (Harris, 2006; Maitland, 2003). The resulting disputes about the status of the SLE and the adequacy of specific referents for the corporation were never resolved (Dewey, 1926; Litowitz, 2000; Radin, 1932).

The simultaneous use of multiple conceptions of legal social ontology was directly consequential, as it facilitated a rapid expansion of organizational capacities. By the end of the nineteenth century, a multitude of representational roles was ascribed to the corporation. These included *inter alia*: the ascription of ownership over organizational assets and liabilities; the capacity to enter into contracts; the construction of a balance sheet and a credit rating and credit history

independent of the persons incorporating; the capacity to sue and be sued in courts, and to go bankrupt; compliance with public obligations, such as a statutory filing of accounts and reports that, when unobserved, rendered the organization liable to financial penalty; and the capacity to hold ownership of shares in other and subsidiary corporations. During the nineteenth and into the twentieth century, these roles were further expanded to accommodate ascriptions of constitutional rights and criminal liability; the capacity to sit on the board of a subsidiary company as a non-natural director, and the capacity to act with legal standing in (transnational) governance and standard setting bodies (Hansmann & Kraakman, 2000; Robé, 2011; Tricker, 2015; Winkler, 2018).

The social ontology of the corporation thus developed from a conception in which the corporation was perceived as a distinctly artificial construct that served as a convenient heuristic for specific functions to a conception in which the corporation was perceived as a distinctly reified construct with singular qualities. The development of these novel notions of social ontology significantly affected the development of novel ideas about organizational status and architecture. And the simultaneous use of multiple and competing conceptions of social ontology in legal discourse exacerbated the effects of these novel ideas by positioning the SLE and the corporation in a multiplicity of representational roles, which significantly enhanced the organizational capacities enabled by the modern corporation.

We now consider some of the consequences of these novel interpretations of organizational status and architecture by engaging with their consequences for ideas about the status, role and relations of organizational elements, such as the board, shareholders and employees.

EXPANDING ORGANIZATIONAL ARCHITECTURE AND ORGANIZATIONAL CAPACITIES

In the previous section, we explored how conceptual and practical issues of corporate governance followed the influx of minority shareholders in public corporations, and were addressed by a strengthening of the reified interpretation of the SLE. Importantly, this mitigation of legal conceptual issues and principal–principal conflicts came with a *quid pro quo*. As the new organizational architecture ascribed organizational ownership, liabilities and (contractual) agency to the SLE, shareholders were obliged to relinquish direct claims to organizational assets, ownership and control of the public corporation (Pickering, 1968). Their claim was now limited to the value of their shares and indirect control rights (Butzbach, 2022; Ireland, 1999). It is on this basis that critics of what has become known as "shareholder primacy" contend that shareholders "do not own corporations: corporations are independent legal entities that own themselves" (Stout, 2012, p. 6; see also Gelter, 2009; Robé, 2011). Legally, shareholders in public corporations are "lenders of equity capital and not owners … What shareholders really own are their shares and not the corporation" (Demsetz, 1967, pp. 358–359). Shareholders have no formal responsibility for, or direct influence on, the managerial function. Rather, "this job [i.e., management of the corporation]

is delegated to a board of directors whom public shareholders influence only indirectly, if at all" (Stout, 2012, p. 6).

Why, then, would shareholders accept and even promote and advance this shift in their legal status from fully fledged investor-partners, as they had been designated in the context of the unlimited liability partnership, to "lenders of equity capital" – outsiders without direct ownership or control claims? An explanation for this apparent conundrum is that shareholders benefitted very considerably – in four main ways – from the radical reimagination of organizational status, architecture and capacities that their new status and role made possible.

Firstly, the development of the SLE as the centerpiece for a new type of organizational architecture bestowed significant new organizational capacities that were advantageous to shareholders. It provided the benefit of perpetual legal representation without political conditionality; it removed the necessity of dissolving the partnership at the exit or death of any partner as was the norm in the preceding partnership form; and it created an organizational setup in which the corporation could only be dissolved if a stockholder held the majority of shares (Lamoreaux, 1998). These organizational capacities brought about an exceptional increase in the longevity of organizational representation. Moreover, from the end of the nineteenth century, the reification and singularization of the SLE enabled the ascription of "ownership" over a second subsidiary entity. In turn, this made possible the development of group structures and trans-jurisdictional operations as well as facilitating considerable simplification of the process of mergers and acquisitions. In short, the conceptual development of the SLE and an associated novel organizational architecture provided a conceptual setup that helped accelerate economic concentration and associated monopoly profits beneficial to shareholders (Chandler, 2002; Hannah, 2010; Horwitz, 1985; Ireland, 2002; Robé, 2011).

Secondly, and relatedly, the identification of the SLE as an autonomous social construct with reified and singular characteristics made it possible to conceive of this construct as "a single and unitary source of control over the collective property of its various participants" (Lan & Heracleous, 2010, p. 2). Identifying the SLE, rather than partners or shareholders, as the source and locus of ownership over a designated pool of (shared) organizational assets and liabilities supported the development of key legal institutions – such as entity shielding, capital lock-in, and affirmative and defensive asset partitioning[2] – as well as the ascription of contractual agency with legal entities, inside and outside the corporation, to the SLE. These developments were welcomed by shareholders who anticipated that the re-conceptualization of organizational architecture would enable improved internal coordination insofar as it increased transparency about the locus of the assets and liabilities involved in transactions. And by improving the efficient structuring of hierarchical and contractual relations between stakeholders,[3] these reforms created opportunities for profitable growth as they lowered transaction costs, and monitoring, negotiating and decision-making economies (Hansmann & Kraakman, 2000, p. 437; Robé, 2011).

Thirdly, the identification of the SLE as the source and locus of ownership over a designated pool of (shared) organizational assets and liabilities and the associated development of an asset lock, enabled a separation of ownership

and liabilities associated with *shares* from ownership and liabilities associated with *the corporation*. And as the "retreat" by shareholders from direct claims to ownership and control over the organization released those shareholders from residual claims and liabilities on behalf of the corporation, this enabled limited liability. Eventually, the separation of shares from claims to organizational assets and liabilities radically improved the capacity to make easy, accessible, relatively well-protected and liquidly transferable investments in secondary share markets, thereby enabling capital gains from value increases as well as the possibility of developing diversified and risk-spreading asset portfolios. In short, the re-conceptualization of organizational status and architecture was welcomed, especially by rentier shareholders, as a part of a *quid pro quo* that allowed for secondary share market gains (Ireland, 2010; Haldane, 2015).

Fourthly, and as noted earlier, the conceptual reification of the SLE enabled a re-imagining of the governance structure of corporations that mitigated the principal–principal conflict endemic to the role of minority shareholders in the modern corporation (Freeman et al., 2011; Ireland, 2010). The shift of direct ownership rights from shareholders-as-individual-"members"-of-the-corporation (Greenwood, 2017) to the SLE was accompanied by a reinvention of the corporate board as a separate "body" or "organ"[4] serving the interest of the "entity"[5] and thus mandated with the stewardship of a broader set of interests than those of dominant or controlling shareholders (Eisenberg, 1969). Legally, this involved a loss of direct control by shareholders as the board was reconceptualized as an "organ" operating at a structural remove and with a differentiated role and function from the shareholders (Johnson & Millon, 2005; Lan & Heracleous, 2010; Segrestin & Hatchuel, 2011; Lokin & Veldman, 2019), so that formally the organizational architecture bestowed upon the board a significant measure of autonomy in terms of strategy setting[6] (Lan & Heracleous, 2010; Pickering, 1968). Enhanced board autonomy, the "professionalization" of the management and board functions, and the reorientation of directors' duties toward the "entity" promised to support a more independent and longer-term view on strategy setting and investment returns (Cremers & Sepe, 2016; Khurana, 2007) that would be advantageous to the *entire* shareholder pool and would forestall principal–principal conflicts.

In sum, the development and deployment of novel and competing conceptions of the social ontology of the corporation brought about new notions of organizational status, architecture and capacities. On balance, shareholders supported these innovations despite losing formal and direct (responsibility for the) control of corporations. Specifically, their appeal resided in: the elimination of coordination and principal–principal problems between stakeholders with divergent interests; the full separation of organizational risks and liabilities from the shares issued; liquid transferability of shares; the creation of secondary share markets; the professionalization of the management function, and, eventually, the ascription of constitutional rights that offered "unprecedented protection from and by the state" (Lan & Heracleous, 2010, p. 2). As well as the anticipation of the delivery of significant economic advantages, including collection, monitoring, negotiating and decision-making economies and the lowering of overall transaction

costs, the reforms increased the capacity to raise debt and equity capital from shareholders and debtors with widely differing types of times horizons and risk preferences than could be sourced from personal networks. In combination with an organizational architecture in which the managerial mandate was reoriented toward the SLE and its long-term organizational value creation, these novel conceptions of organizational status and architecture enabled investments in much riskier and/or more long-term ventures than could be supported by the unlimited liability partnership model (Hansmann & Kraakman, 2000; Hodgson, 2015; Lamoreaux & Rosenthal, 2006; Pistor, 2019; Robé, 2011).

In the discussion, we will engage with the consequences of the use of these competing notions of social ontology and develop a research program for MOS.

TOWARD A RESEARCH PROGRAM FOR MOS

We have shown how issues of social ontology with regard to the modern corporation are consequential for innovations in organizational status, architecture and capacities. To further investigate and debate the epistemological and politico-economic aspects and implications of attentiveness to social ontology, we propose a three stranded research agenda. The first engages with social ontological assumptions in company law and in corporate governance in relation to a theory of organizations. The second considers how contingent assumptions with regard to social ontology can be studied from the perspective of MOS. And the third strand focuses on the socio-economic implications of the study of social ontology.

Social Ontology and Organizational Status, Architecture, and Capacities

Our analysis has illuminated how innovation in social ontology supported a conception of the corporation as "a socio-economic institution and organization that has functional autonomy from its stakeholders, including shareholders" (Biondi, 2011, p. 10). The *first* strand of our research program, therefore, addresses the constitutive role of configurations of (legal) social ontology (Deakin, 2019; Hodgson, 2015; Pistor, 2019; Winkler, 2018) for the interpretation of notions of organizational status, architecture and capacities.

Starting with status and architecture, the concept of the "organization" is seen to be constituted out of two distinctive parts. One we designate as the "corporate order"[7] which encompasses the SLE, the board and the shareholders as distinct organizational elements, and is constituted through company law. The other is the "enterprise" or "undertaking" which is connected to, but not formally included in, the corporate order. Establishing a clear understanding of the status of these elements is relevant to debates on the structure, content and boundaries of the corporation as a specific type of organization (Deakin, 2012; Deakin, Gindis, & Hodgson, 2021; Lokin & Veldman, 2019; Rajan & Zingales, 1998; Robé, 2011; Segrestin, Hatchuel, & Levillain, 2022). Relatedly, this strand of research explores how constructs like the SLE, "corporate officers," "agents," the "board" and corporate "organs"[8] attain a particular status in relation to the "corporate order." Specifically, it examines and assesses how their assembly in a "corporate order"

affects the status, (representational) roles, positions, relations, remit, duties, functions, claims and protections of these constructs as organizational elements (Johnson & Millon, 2005; Levillain et al., 2018; Lokin & Veldman, 2019).

This strand of research is directly relevant for gaining an appreciation of the delineation of the scope and remit of director and managerial duties in company law. In particular, it directs attention to the managerial mandate for considering specific interests and time frames. To give one example: multiple legal reform proposals have recently commended a focus on the "undertaking" as this enables a view in which the managerial mandate is directed toward serving the whole of the organization[9] (Winter, 2020; Segrestin et al., 2020). A further exploration of the role of the "undertaking" in relation to the constitution of the corporation in company law is, in such ways, shown to be relevant for assessing how legal conceptions of organizational architecture affect the consideration of specific investments and (residual) risks of organizational stakeholders (Blair & Stout, 1999; Butzbach, 2022; Deakin, 2012; Grandori, 2010; Hodgson, 2015).

Concurring with Deakin who writes that "study of the patterns of legal thought can disclose aspects of economic institutions which are otherwise hard to grasp" (Deakin, 2019, p. 139), this strand of the proposed research agenda explores these patterns in relation to their effects on conceptions of organizational status, architecture and capacities including how they contribute, for example, to debates on human capital as a specific investment (Jacoby, 2005; Grandori, 2010) and on the innovative capacity of organizations (Lazonick, 2014; Segrestin et al., 2020; Sorkin, 2015). Furthering an appreciation of the role of legal social ontology in the constitution, delineation and positioning of functions, roles and mandates of organizational constituent groups also has the potential to contribute to debates on corporate strategy (Flammer & Bansal, 2017); corporate governance (Aguilera et al., 2021; Bower & Paine, 2017; Filatotchev & Boyd, 2009); and the study of the managerial function in relation to its organizational context (Khurana, 2007; Segrestin, Johnston, & Hatchuel, 2019).

Social Ontology: An Immanent Critique

The *second* strand of our research program revolves around an immanent critique[10] with regard to the formalization of the social ontology of the modern corporation, and assesses its effects for the development of a theory of organizations.

We have noted how the SLE developed as a pragmatic response to concrete problems in the practice of corporate governance, rather than, for example, extensive debate on social ontology *per se* (Foster, 2006; Harris, 2006). A pragmatic engagement with the role and consequences of social ontology (Dewey, 1926) is typically reflected in self-referential methodological framings of this issue in company law. Commenting on the restrictiveness of "legal reasoning," Deakin et al. (2017) note that it "is not used to map social structures"; legal concepts and reasoning do not provide a "descriptive sociology; nor are they variants of the ideal types or axiological models which different social sciences might use to generate claims about the world which are then tested using empirical data"; instead, legal

reasoning comprises concepts that are "verbal formulas used in allocating rights and obligations, not describing them; they project positionings on to the social world" (p. 1518). Taking this self-referentiality as a central, if not defining, feature of legal understanding of social ontology, we note how key concepts like "subjecthood" or "personhood" are conceived specifically in relation to their positioning in company law[11] (Deakin et al., 2017, 2019; Foster, 2006; Greenwood, 2017; Naffine, 2003; Pistor, 2019).

The combination of pragmatism and self-referentiality in legal reasoning provides the basis for the emergence of competing "founding myths," manifest in the presence and engagement of multiple and conflicting conceptions of social ontology to establish and explain the status of the modern corporation. To illustrate, possible identifications of the status of the corporation in current use range from the effect of a concession or charter; a (negligible) legal fiction or an (ephemeral) side-effect of (contractual) agency by an aggregation of individuals; a fund; an object directly owned or controlled by shareholders; a placeholder; a reified construct capable of being ascribed with agency, rights and ownership; the representation of specific organizational constituencies or of the organization as a whole; a full-blown legal "subject" or "person"; and a social construct with its own interests (see Avi-Yonah, 2005; Blair, 2015; Dewey, 1926; Gindis, 2009; Harris, 2006; Winkler, 2018).

This multiplicity, we contend, is consequential in three ways. *First*, it is the background to a Cheshire Cat quality ascribed to the modern corporation (Allen, 1992; Naffine, 2003). On the one hand, as shown above, multiple and conflicting conceptions of social ontology are the media and outcome of the expansion of significant organizational capacities – including the ascription of (constitutional) rights and religious liberties (Winkler, 2018). On the other hand, the multiplicity is symptomatic of a "metaphysical gap" (Wells, 2005) in which theoretical "elasticity" (Dewey, 1926, p. 669) provides space to perform a "corporate vanishing trick" (Ireland, 1999, p. 56) as organizational capacities are ascribed to concrete individuals or (representative) groups in the context of the modern corporation. In this regard, the exploration of social ontology can contribute to debates that seek to develop a clearer understanding of ascriptions of (organizational) agency, responsibility and (tax) liability to the modern corporation (Blair, 2015; Fisse & Braithwaite, 1988; Pistor, 2019). Relatedly, this focus upon social ontology can inform and illuminate how the combination of the Cheshire Cat quality of the corporation and the absent formal legal status for the corporate group makes possible the strategic organization and compartmentalization of the risks and proceeds related to the holding, production, pricing and liability with regard to contracts, IP, goodwill and shareholder and creditor risks across different legal and tax regimes (Murphy & Ackroyd, 2013; Robé, 1997, 2011; Ruggie, 2018).

Or, to give another example, this focus can shed light on competing formalizations of organizational status and architecture. Extensive discussions that preceded revisions to the 2006 UK Company Law Act, and the formulation of section 172 in particular, resulted in the company being conceived as constituted out of its "members" – an ambiguous formulation that typically identifies the "members" of the corporation exclusively with the shareholders (Ciepley, 2020;

Keay, 2008; Tsagas, 2014; Yosifon, 2014). To the extent that the selective use of this particular conception of social ontology ignores or disregards the *quid pro quo* involved in the development of differential new notions of organizational status, architecture and capacities with significant effects for shareholders, it effectively enables shareholders to have their cake (limited liability) and eat it (shareholder primacy). Such a use of social ontology can be contrasted, for instance, with the interpretation of the corporation as an "institution" in Dutch company law, as such a broader interpretation of the status of the corporation allows for the development of a series of institutions in company law and in corporate governance that allow for the inclusion of a broad set of interests (Lokin & Veldman, 2019; see also Dodd, 1931).

Attentiveness to the use of competing conceptions of social ontology heightens awareness of the long and complicated processes that has informed their formation and institutionalization, and how these processes were developed and articulated not only through company law but also in other disciplinary domains, such as organization studies (Hatchuel & Segrestin, 2019; Lan & Heracleous, 2010); accounting (Biondi, Canziani, & Kirat, 2007), and economics (Butzbach, 2022; Grandori, 2010; Hodgson, 2015; Zingales, 2000). It may also stimulate interest in comparisons of how social ontology is addressed in relation to the modern corporation and its parallel role in the development of other social constructs, such as citizens, sole proprietorships, partnerships, cooperatives, municipalities and states (Bowman, 1996; Hansmann & Kraakman, 2000; Lamoreaux & Novak, 2017; Maitland, 2003; Runciman, 2005). There is potential to contribute to debates on (political) corporate social responsibility (CSR) and business ethics (Oosterhout, 2005; Plessis, Varottil, & Veldman, 2018; Rhodes & Fleming, 2020) as well as to enrich debates on the role of the re-assertion of private control by shareholders, notably through the increasing market dominance of a small number of passive investment funds (Fichtner & Heemskerk, 2020; Petry, Fichtner, & Heemskerk, 2019); through the expanding use of multi-class share structures in venture capital models and in companies associated with "platform capitalism" (Davis, 2016; Haskel & Westlake, 2018), and through the strengthening of shareholder rights, claims, and capacities for engagement in corporate governance institutions and practice (Pye, 2001). Finally, the exploration of the role of specific epistemic communities engaged in ongoing processes of stabilization with regard to these contingent conceptions of social ontology can productively be informed by, and contribute to, debates on (organizational) sociology (Davis, 2005; Fiss & Zajac, 2004; Fourcade & Khurana, 2013; Fligstein, 2001; Oosterhout, 2010).

Political Economy

The *third* strand of our research program focuses on the relation between social ontology and socio-economic outcomes. To establish this relation, we begin by focusing on moments of contestation, where shifts in the allocation of organizational value and protections and broader socio-economic consequences become apparent (Talbot, 2008). Contestation of corporate status and capacities already existed before the nineteenth century when, for example, it threatened to encroach

on sovereign prerogatives (e.g., inheritance tax) and the concept of sovereignty itself (Bowman, 1996; Kantorowicz, 1997, Maitland, 2003). From the nineteenth century onwards, the relation between the formulation of new conceptions of social ontology[12] and the development of novel organizational capacities – such as general incorporation; freely available limited liability and the ascription of constitutional and religious rights – generated extensive debates. Similarly, the limiting of shareholders' "skin in the game" in the form of exposure to organizational liabilities, while at the same time gaining significant organizational capacities and protections *and* maintaining claims to residual control rights was amply debated. These debates extended to, and overlapped with, further contestation over the consequences of the development of these new notions of organizational architecture for the status and position of organizational constituencies, notably employees[13] and creditors (Djelic & Bothello, 2013; Greenwood, 2017; Hager, 1989; Hodgson, 2015; Horwitz, 1985; Mark, 1987 Perrow, 2002; Pistor, 2019; Rajan & Zingales, 1998 Talbot, 2008).

Contestation of these conceptual developments gained in importance as they were increasingly associated with a move away from an atomistic ordering of market capitalism and sweeping socio-economic changes brought about by them (Hannah, 2010; Horwitz, 1992; Johnson, 2010; Roy, 1999; Talbot, 2008). Berle and Means (2007) presented a pragmatic answer to such contestation by advocating a "social contract" in which the social license of the modern corporation was associated with the attribution of a significant part of corporate value generation and distribution to employees and other societal stakeholders (see Berle, 1931, 1947, 1954; Bratton, 2017; Bratton & Wachter, 2008; Dodd, 1931; Konzelmann, Chick, & Fovargue-Davies, 2022; Mizruchi & Hirschman, 2010; Moore & Rebérioux, 2007). This social contract was subsequently challenged and displaced by proposing and naturalizing a competing conception of social ontology (Butzbach, 2022; Veldman & Willmott, 2020).

The effects of these conceptions of social ontology inform a broader exploration into the institutionalization of stakeholder interests. As explored above, the interpretation of the status of the corporation delivers the background for notions of organizational architecture, which affects and delineates the status, roles, positions, relations, duties and functions of organizational actors (e.g., directors, management, shareholders, suppliers, creditors and other stakeholders). Accordingly, we have drawn attention to how the remit of the "corporate order" is typically limited to a number of specific corporate elements, such as the SLE, the board, and the body of shareholders, and it is conceptually separated from the broader concept of the "undertaking." The remit of this "corporate order" is consequential, because organizational stakeholders that are not part of its scope but are part of the "undertaking," such as employees, have their interests represented through auxiliary areas of law, such as labor law (Chassagnon & Hollandts, 2014; Segrestin et al., 2020, 2022). And stakeholders that are not part of the remit of "corporate order" or the "enterprise" are typically not included in company law or corporate governance institutions and will not be considered "valid" claimants in specialist corporate governance tribunals (Lokin & Veldman, 2019).

The content, scope and remit of the "corporate order" thus function to structure the inclusion and exclusion of particular types of stakeholders and interests, as well as to establish a particular distribution of powers, claims, rights, protections, risks, liabilities, rewards and capacities between organizational actors and broader stakeholders (Biondi et al., 2007; Johnson & Millon, 2005; Pistor, 2019; Rock, 2013; Talbot, 2008). That is why, as we have shown, exploration of the establishment, role, scope and functioning of company law, corporate architecture and the "corporate order" (Gelter, 2009; Lokin & Veldman, 2019; Strine, 2010, 2014) can contribute to debates that are of direct and central relevance to the field of MOS in areas that include the managerial mandate (Khurana, 2007; Segrestin et al., 2022); stakeholder differentiation and salience (Grandori, 2022; Mitchell, Agle, & Wood, 1997; Schwartz & Carroll, 2008; Klein, Mahoney, McGahan, & Pitelis, 2017); industrial relations (Jacoby, 2008; Deakin & Wilkinson, 2012; Gospel, 2011; Vitols, 2015; Williams & Zumbansen, 2011); and studies of Value Creation and Appropriation (VCA) (Cobb, 2015; Garcia-Castro & Aguilera, 2015; Kern & Gospel, 2020; Lieberman, Garcia-Castro, & Balasubramanian, 2017).

And finally, we note how, historically, the use of idiosyncratic conceptions of social ontology that gave rise to differential notions of organizational status, architecture and capacities was embedded by the need for a "social contract" (Konzelmann et al., 2022; Monfardini, Quattrone, & Ruggiero, 2022). We argue that the reconsideration of the need for such a "social contract," in conjunction with a reconsideration of the role of the scope and remit of the "corporate order" in delineating the "materiality" of stakeholder interests can usefully inform the debate on the reform of specific institutions (e.g., in company law, corporate reporting and finance) in order to strengthen and extend the managerial and investor mandate to engage with "externalities," such as pollution, human rights, and inequality (Sjåfjell, 2018; Valiorgue, Metz, & Bourlier Bargues, 2020; Veldman et al., 2016; Veldman, 2018). Attention to the link between social ontology, corporate governance and political economy can thus usefully inform debates on the "grand challenges" of societal inequality and planetary sustainability (Aguilera et al., 2021; Clarke, 2016; Haldane, 2015; Metcalf & Benn, 2012; Veldman et al., 2016).

CONCLUSION

The point of paying attention to different conceptions of social ontology is well made by Robé (2011) when he writes that "relations among individuals and institutionalized groups are in great part structured by this phenomenon called 'law'" (p. 10). From this follows the importance of taking adequate account of "the 'fictions' habilitated by the legal system to own property, have debts, contract, sue and be sued in courts, get bankrupt or accumulate assets and live an infinite life" (p. 10).

We have suggested that competing conceptions of social ontology reside at the heart of the development of differential notions of organizational status,

architecture and capacities, while the content and remit of the "corporate order" informs the (legal) specification of the relative status, roles, positions, relations, duties, functions, claims and protections of organizational stakeholders. The specification of social ontology with regard to the modern corporation is thus associated with wide-ranging societal consequences and with significant effects for the development of an informed view on the corporation as an organization.

To facilitate further research into these issues, we have sketched the contours of a three stranded research program. The first strand aims to establish a clearer understanding of how social ontology is relevant for the understanding of idiosyncratic notions of organizational status, architecture and capacities, and to explore the consequences of these idiosyncratic notions in the context of a broader understanding of organizations. The second strand explores the pitfalls and potential of historically, comparatively, and disciplinary divergent conceptions of social ontology applied to the modern corporation by multiple epistemic communities. In particular, we draw attention to the Cheshire Cat quality of the status of the modern corporation resulting from competing conceptions of social ontology. And the third strand focuses on the relation between processes of stabilization with regard to social ontologies and the distribution of risks and rewards inside and outside the ambit of the corporation.

Awareness of historically, comparatively, and disciplinary divergent and competing conceptions of social ontology, with their significant effects on the interpretation of organizational status, architecture and capacities and attendant socio-economic consequences, is critical for the development of MOS. In terms of understanding organizations, it enables an appreciation of the contingency of idiosyncratic notions of organizational status, architecture and capacities developed in the context of the modern corporation. And beyond organizations, greater appreciation of the societal outcomes of specific stabilizations is of direct relevance for grasping and tackling the "grand challenges" of societal inequality and planetary sustainability.

NOTES

1. For the purpose of theoretical clarity, where we speak of the corporation, we refer to public corporations.
2. Affirmative Asset Partitioning permits a hierarchy of claims to the corporation's assets. Defensive Asset Partitioning limits the extent of creditor's claims on shareholders' assets as a consequence of limited liability (Hansmann & Kraakman, 2000, p. 394).
3. Such capacities made possible the development of a structure that implicitly permits guarantees regarding investment of multiple types of capital with varying time horizons by different types of actors (e.g., shareholders, creditors, employees, and suppliers) (Blair & Stout, 1999).
4. In Dutch company law, for example, directors are not considered to derive their authority from the joint shareholders but to receive undelegated rights from the "corporate order" (Assink, 2016).
5. As Robé (2011) notes, "managers do not manage the shareholders' property: they manage the corporation's property. They are not and cannot be the shareholders' agents: they can only be the agents of the corporation which is their sole principal since it is the sole owner of the assets they manage on its behalf" (p. 32).

6. To the extent that the duties to the "entity" can be conceived as duties to a social construct that represents a designated pool of (shared) assets with an asset lock pertaining to the corporation *as a whole*, it can be argued that directors duties are directed toward an entity that represents the interest of the corporation as a whole (Blair & Stout, 1999; Du Plessis, 2016; Sjåfjell, 2018).

7. This notion is chosen deliberately to avoid confusion with the multi-faceted term "corporation" (see Segrestin et al., 2020).

8. The relevance of a social ontology that conceptualizes "corporate organs" as reified constructs becomes clear, for instance, in Dutch company law, where the attribution of agency and responsibility to directors is collegiate, rather than individual (Lokin & Veldman, 2019).

9. In France, the Loi Pacte "stipulates that the corporation must be run with due regard to the social and environmental impacts of its activity … introduces the notion of raison d'être and affords the possibility for any corporation to assign social or environmental purposes to itself, defined in its bylaws" (Segrestin et al., 2020, p. 1).

10. Immanent critique, proceeds by "exposing internal inconsistencies in beliefs implicit in practices, or demonstrating how beliefs held cannot accommodate practices actually achieved" (Lawson, 1997, cited in Al-Amoudi & Latsis, 2017, p. 1305).

11. Greenwood (2017), for example, claims that: "while legal personality is critical to ordinary corporate law, it has no logical connection to the question of whether corporations do or should have constitutional rights" (p. 17).

12. It has been widely noted that these organizational capacities would have been near to impossible to establish through contract (Ciepley, 2013; Hansmann & Kraakman, 2000; Hodgson, 2015; Robé, 2011; Pistor, 2019; Stout, 2019).

13. The rise of the modern corporation brought with it a significant shift in the nature of the employment contract (Deakin et al., 2009, 2017; Robé, 2011; Segrestin et al., 2020; Talbot, 2008). Notably, the characterization of the corporate entity as the counterparty of the employment contract (the employer) allowed the agency behind the employment contract to correspond to an organizational structure rather than to an individual human person (Deakin et al., 2017, p. 1517).

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