

The Corporation: A Neo-Realist Account

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An Institutional Theory of the Firm, LSE, 16-17 June 2022

‘Management’ as a legal concept

Directors’ general authority

3. Subject to the articles, the directors are responsible for the *management* of the company’s business, for which purpose they may exercise all the powers of the company.

(UK Model Articles of Association of a public company)

Company law approach in effect treats management as a ‘black box’

Health and safety law

37 Offences by bodies corporate

- (1) Where an offence under any of the relevant statutory provisions committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, *manager*, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(Health and Safety at Work Act 1974)

Historical case study: management and control of mines

- Mines and Quarries Act 1954: duty of 'owner' to appoint 'manager' and 'under-managers' of mine; duty of manager to additionally appoint 'deputies'
- Management as a *hierarchy* tasked with the organization of work and maintenance of safety
- Origins in 19th century/early 20th century legislation (Mines Regulation Acts 1872, 1887; Mines Act 1911)

Separation of ownership and control

- The term 'owner' means 'in relation to a mine or quarry, the person for the time being entitled to work it' (section 181(1)). The 'owner' is under a duty to ensure that the mine is 'managed and worked' in accordance with the provisions of the Act (section 1(1)(a)).
- The term 'manager' is not defined in so many words, but the manager, by virtue of their appointment, 'shall have the management and control of the mine' (section 2(2)).
- The owner can give instructions to the manager, but must put them in writing or confirm them in writing on request (section 3(1)). The owner or anyone acting on the owner's behalf cannot give instructions to anyone 'employed in' (note, not 'by') the mine and who is responsible to the manager, except with the manager's consent (section 3(2)).



Senghennyd, 1913

- Largest mining disaster in British history
- 439 men died following an underground explosion
- The mine's management had failed to install safety equipment mandated by the Mines Act 1911
- The manager and company were prosecuted and fined
- A coroner's inquest recorded a verdict of accidental death



- Fatalities in mining slowly declined after the Senghennyd disaster, but significant incidents continued into the era of nationalization
- With the end of the British coal industry, Part II of the Mines and Quarries Act was repealed (1993)

The last days of British coal

Assessment

- The legal category 'company' or 'corporation', and by extension 'company law' or 'corporate law', only captures a part of what 'firms' or 'enterprises' do or are
- To see how management functions within the organisation of the firm, we have to look beyond company law
- In labour and health and safety law, it is possible to observe a legal conception of management as a hierarchy, charged not just with meeting the productive goals of the firm, but with ensuring its reconciliation with certain goals of social policy
- The twenty-first century corporation, which by comparison to its twentieth century predecessor is highly fragmented and fissured, has correspondingly more flexibility in externalizing social and environmental harms, as was the Victorian forebear of them both
- 'Management' has not disappeared as a social reality merely because it is now less visible in law, but the lack of a good legal account of management in the twenty first century may make it more difficult to hold enterprises accountable for the risks they create