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Introduction

Articles

When the concession theory of the corporation was predominant, it was commonly assumed that, since a particular jurisdiction permitted incorporation, that body corporate could not exist outside its home jurisdiction. Those arguments have long been displaced in common law countries by the principle that, if a corporation has been registered by a competent authority, it does not require re-incorporation in any other state in which it operates. Subject to compliance with minimal administrative requirements, foreign corporations are automatically recognised as legal entities. This laissez-faire approach admits the possibility of pseudo-foreign corporations — companies which are based in one country but incorporated in a more laxly regulated jurisdiction — and, more recently pseudo-corporations — arrangements that are recognised as bodies corporate but do not manifest the characteristics of traditional corporations.

This article considers recognition of the legal personality of foreign corporations and their informing rules from a neo-concession perspective. Neo-concession because, while the analytical approach employed is derived from traditional concession theory, it also takes into account contemporary information, including the structural flexibility offered by jurisdictions that permit non-traditional entities, technological developments, and corporate claims to human rights. The principal focus of the article lies with the state's power to regulate corporate activity. It is argued that, since the state permits domestic arrangements to be recognised as companies if — and only if — they meet prescribed requirements, the same or more onerous requirements should apply to foreign entities that operate in the host jurisdiction.

This article argues that the nature of corporate harms — both the harms in and of themselves and the criminal law's (lack of) response — can be (re)conceptualised by drawing upon both the emotion and genre of horror. Recent emotion studies argue that horror is a response to harm so extreme or abnormal that it cannot be easily assimilated into one's understanding of the world. This article

explores the ways in which corporate harms are currently schema incongruent, on an individual and social level, but particularly for the purposes of analysis, for criminal legal doctrine. This article analyses the ways in which harms are used in the horror genre to arouse horror and explore the commonalities between the harms on display in the horror genre with corporate and organisational harms. The significance of this analysis is that it shows both the way corporate harms are horrific in and of themselves and that the relative absence of a criminal legal response is horrific. This then leaves us with the question: do we want corporate harms to continue to be part of the horror genre — whereby harms are understood and conceptualised as schema incongruent — or can and should the schema of criminal law be reshaped to better conceptualise and respond to corporate harms?

If wrongdoing is severe enough that, if committed by a human being, imprisonment might be a consequence, a commensurate consequence for a corporation must do more than simply deter future wrongdoing. This article argues for the adoption of a corporate moral insolvency model and the abandonment of criminal legal systems in order to better respond to corporate wrongdoing. Corporations are not human and do not need protections of criminal procedure meant to respect human dignity. Serious corporate wrongdoing could be treated more effectively, and more serious punishments imposed through a system designed around corporate ontology than is possible through criminal legal systems. Moral insolvency is proposed as a responsive approach to target corporate wrongdoing. It could facilitate serious sanctions, like forced liquidation or awards of equity to victims, as well as allow for more fulsome inquiries and referrals of individuals to criminal or civil courts as warranted.

We all stand to benefit enormously by addressing the challenges of trust faced by First Nations entrepreneurs — as vehicles of self-determination, First Nations businesses and corporations provide social, cultural, environmental and economic contributions to Australian society. These benefits or ‘spillovers’ from First Nations business activity need to be understood and valued.

Stakeholder ideas of the late 20th century challenged the doctrine that corporate managers work exclusively for the interests of equity owners. Yet markets have long been delivering alternative models where workers, customers or suppliers own the firm and run it in their interests. Stakeholder ownership in the form of customer, supplier or worker-owned cooperatives and mutuals also incidentally addresses possible managerial conflict of interest in duties to multiple constituencies by establishing obligations to a single species of stakeholder. This article examines the development of such forms locating them within the stakeholder paradigm and within the modern economy. It provides

theoretical insights into the persistence of stakeholder owned enterprises with transaction cost, capital and market analyses, noting additional behavioural factors working both for and against their persistence. The article finds that comparative organisational advantages of cooperative and mutual forms appear to exist in particular niche service and product lines involving longer term contracts and weaker market governance due to asymmetric information or where there is excessive market power of other entities in the supply chain. It also examines the trend to demutualisation postulating the operation of a market for organisational forms and imperfections in such market.

The accepted rationale for prohibiting insider trading in Australia is to protect and maintain market integrity. While a number of other jurisdictions also base insider trading prohibitions on a market integrity rationale, the United States relies on 'anti-fraud' laws to prohibit insider trading on the basis of fiduciary duty and misappropriation rationales.

How important is the underlying rationale for the insider trading prohibition to the construction, interpretation, and application of relevant laws? With the Australian Law Reform Commission currently conducting an inquiry into the Legislative Framework for Corporations and Financial Services Regulation, with ch 7 of the *Corporations Act 2001* (Cth) under review, it is timely to reconsider this question.

This article will compare and contrast different approaches to the prohibition on insider trading. The legislative history, along with past and present law reform proposals concerning insider trading will also be addressed to determine the extent to which the market integrity rationale underpins the relevant laws. This article will also analyse and assess the impact of judicial commentary on the interpretation of the insider trading provisions. The meaning of market integrity will be examined, and the impact of the rationale on sentencing will be reviewed to determine the extent to which damage to market integrity is considered in sentencing decisions, particularly in the context of co-conspirators and co-offenders. This article will conclude with comments about potential future developments.

Book Review