ECONOMIC AND RELATIONAL PERSPECTIVES ON CORPORATE LAW: CONFLICT, CONVERGENCE OR COMMONALITY?

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Abstract

Economic and relational analyses at first sight appear to have little in common. They make different assumptions about people's behaviour and goals. Economic analysis is based on the individualistic assumption that people are rational actors, driven to maximise their own welfare, often expressed in terms of wealth. Relational analysis is based on the equally individualistic assumption that people find their ultimate fulfilment through morally good relationships with others. The normative goal of economic analysis is economic efficiency, defined in terms of productive, allocative and dynamic efficiencies, all of which must be achieved simultaneously for efficient resource allocation. The alternative standards of Pareto and Kaldor-Hicks diverge as to the significance of the individual: under Pareto conferring a benefit on just one individual must be done without making anyone else worse off; under Kaldor-Hicks, a change is acceptable if the winners are collectively capable of compensating the losers, even if they do not. The normative goal of relational analysis is the quality of relationships in society. The effect of public policy on the quality of relationships can be measured in terms of their closeness, according to Schluter and Lee, by using the concept of "relational proximity". This involves five factors: directness, i.e. quality of communication; continuity, i.e. frequency, regularity and amount of contact, and length of relationship; multiplexity, i.e. variety of context of meetings; parity, i.e. mutual respect and fairness in the relationship; and commonality, i.e. shared goals, values and experience.

The main conflict between economic and relational analysis of the company is the doctrine of limited liability. This is valuable in economic terms because it reduces transaction costs, enables assets to be partitioned, shifts risk to the most efficient risk-bearer and facilitates efficient stock markets and investor diversification. Superficially it appears to conflict with good relationships because ultimately creditors run the risk of non-payment. This apparent conflict is over-rated when seen in a contractual context and in the light of statutory and judicial interventions. However, there is much in common between economic and relational analyses of the company. Companies encourage the division of labour and so encourage co-operative rather than isolated working. Companies provide a legal hub for parties to transact with and so provide a means to solidify an otherwise ill-defined mass of potentially unstable transactions/ relationships. Companies provide a governance structure to allow for change in the face of uncertainty that can lead to close on-going relationships. Insofar as companies bring with them inefficiencies they relate primarily to principal-agent costs and problems of collective action, issues that spring from rational self-interested decision-making. Legal regulation of the company is largely characterised by a response to such behaviour. Examples include collective decision-making, directors' duties, directors' disqualification and shareholders' remedies. Because corporate law so robustly addresses such self-interested behaviour, mechanisms have been created that also serve to improve the quality of relationships within a company. This paper provides a comparison of the normative bases of economic and relational analysis and an evaluation of core doctrines of corporate law, for example, limited liability, the corporate constitution, corporate decision-making, directors' duties and shareholders remedies. It concludes that, whilst there are conflicts, there are also promising signs of convergence and commonality.