

# From Corporate (Law) Theory to DAO (Law) Theory

Michael Schillig

Corporate law theory is currently experiencing somewhat of a renaissance. Following the proclaimed 'end of history' of corporate law 20 years ago, the ESG debate has reignited interest in fundamental issues such as the nature and purpose of corporations, their role in society and how they should be governed and regulated. In seeking answers, corporate law theories purport to describe and analyse the law and legal practice to unearth a deeper meaning, principle, or justification underpinning the disparate and seemingly unconnected rules and cases, linking them up so that they form a coherent body of law. These principles (allegedly) underpinning law and regulation may then provide ammunition for critiquing the law as it stands, as well as reasons and guidelines for law reform.

So far, current corporate theory debates have largely ignored the potentially transformative technological innovations happening in this space. Blockchain technology allows the creation of software-based organizations that can interact with third parties by deterministically executing software code with limited human input. The increasing use of AI in corporate decision making may eventually result in the emergence of decentralised super-autonomous organizations. This raises the fundamental question of whether and to what extent the law should accommodate these phenomena and whether it can ensure that they are deployed for legitimate purposes to benefit society overall. Inevitably, when academic debate zooms in on these issues it draws on the corporate theories of the past as a source for arguments in the policy battles that lie ahead.

The paper argues that the grand corporate law theories of the past – fiction/concession theories, real entity theories, nexus of contract theories and proprietary theories – are inadequate to fully capture and accommodate the DAO phenomenon. Instead, the development of a new DAO-specific theory is called for. Interestingly, the best fit seems to be a theory developed by an obscure German legal scholar, Alois Brinz, writing at the end of the 19th century. For Brinz, a corporation is a pool of assets and liabilities for a certain purpose (*Zweckvermögen*), thus eliminating any anthropomorphic element: a pool of assets and liabilities that is not owned by and/or owed to anyone; rather the subject of the attribution of property rights – a natural or fictitious legal person – is replaced with a certain purpose to the attainment of which the assets are applied and the liabilities are incurred. The notion of a pool of assets for a certain purpose fits DAOs like a glove: a network of smart contracts with a software-encoded purpose controls a pool of assets for which liabilities may be incurred; the on-chain attribution of assets and value has a 'proprietary' effect and is enforceable against third parties. Building on Brinz's work, the paper seeks to provide a general standard of legitimacy for possible purposes that can inform the regulatory debate.