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Capitalism without the Capitalist: The Joint Stock Company Share and the Emergence of the Modern Doctrine of Separate Corporate Personality

PADDY IRELAND

'The principle of the independent corporate existence of a registered company', write the authors of *Charlesworth's Company Law*, 'is of the greatest importance in company law',[1] a proposition few company lawyers would question. Regularly described as 'the corner-stone of company law', the principle entails what L.C.B. Gower describes as 'the *complete* separation of the company and its members',[2] establishing that an incorporated company 'is not like a partnership or family, a mere collection or aggregation of individuals', but is 'a [legal] person quite distinct from its members or shareholders'.[3] As this suggests, the principle is based on a conception of the company as not merely an entity with an independent legal existence from its shareholders but an *object* which has been effectively cleansed of them. This reification of the company not only colours many aspects of modern company law, generating many of its conundrums, but shapes contemporary debates about the nature of 'the company' in which its relative autonomy and neutrality is often taken, rather uncritically, for granted.

Traditionally, of course, separate personality is seen as a simple consequence of the act of incorporation. It follows that a sharp line is usually drawn between incorporated associations, objects in themselves whose members stand in an essentially external relationship to them, and *un*incorporated associations – mere collections or aggregations of individuals – in which the members *are* the association. Indeed, to emphasise its specifically corporate origins, separate personality is commonly referred to as '*corporate* personality' and the opaque barrier that descends between company and members on incorporation as the '*corporate* veil'. Correspondingly, in texts, the principle is usually illustrated by reference to the celebrated case of *Salomon* v. *Salomon and Co. Ltd*, in which the House of Lords asserted that even a 'one man company' was, by virtue of its corporate status, 'at law a different person altogether from the subscribers to

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