Ron Harris

Abstract

The debate on the nature of the legal personality of groups emerged in Germany in the last third of the 19th century and intensified with the controversies over the drafting of the German Civil Code. This discourse was well-rooted in German jurisprudential traditions, German historical narratives and the German political context. Yet, somewhat unexpectedly, it was imported into the Anglo-American world in about 1900. The discourse focused on three theories of corporate legal personality that were played against each other: the state grant theory according to which corporate entities were created by public law, the contractual theory according to which corporate entities were created in the sphere of private law and the real entity theory according to which corporate entities were constructed socially outside the realm of law and were only recognized by the law. This was arguably the most intense Anglo-American legal discourse of the first quarter of the twentieth century. Around the mid-1920s it abruptly subsided, leaving only traces for historians to follow. Several factors make this discourse particularly interesting: its transnational dimension, its intensity over a short and well-defined period of time, the fact that this was a mid-level theory discourse, that it had a significant historical component and lastly that the discourse and its theories were transplanted in debates in various contexts.

My focus is on the history of the discourse. I follow its course of expansion from one site to the other and map its borders. I will identify the contours and functions of the discourse in Britain and the US in four contexts: political theory, trade unions, city governance and business organization. Special emphasis is given to explaining the timing of its emergence in different venues, its transplantation into new contexts, its shifts from theory to doctrine, from academic to practical discourse, from past narratives to present concerns. A central theme of this paper is that there was indeed an initial under-determinacy in each of the three basic theories of personality, as John Dewey’s critique argued, one that sometimes enabled utilization of the same theory for conflicting purposes or of different theories for the same purpose. However, each personality theory could be used only in some venues, some periods and some contexts. Each became embedded in certain meanings when it functioned in concrete historical and spatial discourse settings. Each lacked in the first place, or lost along the way, much of the manipulability that Dewey attributed to it.