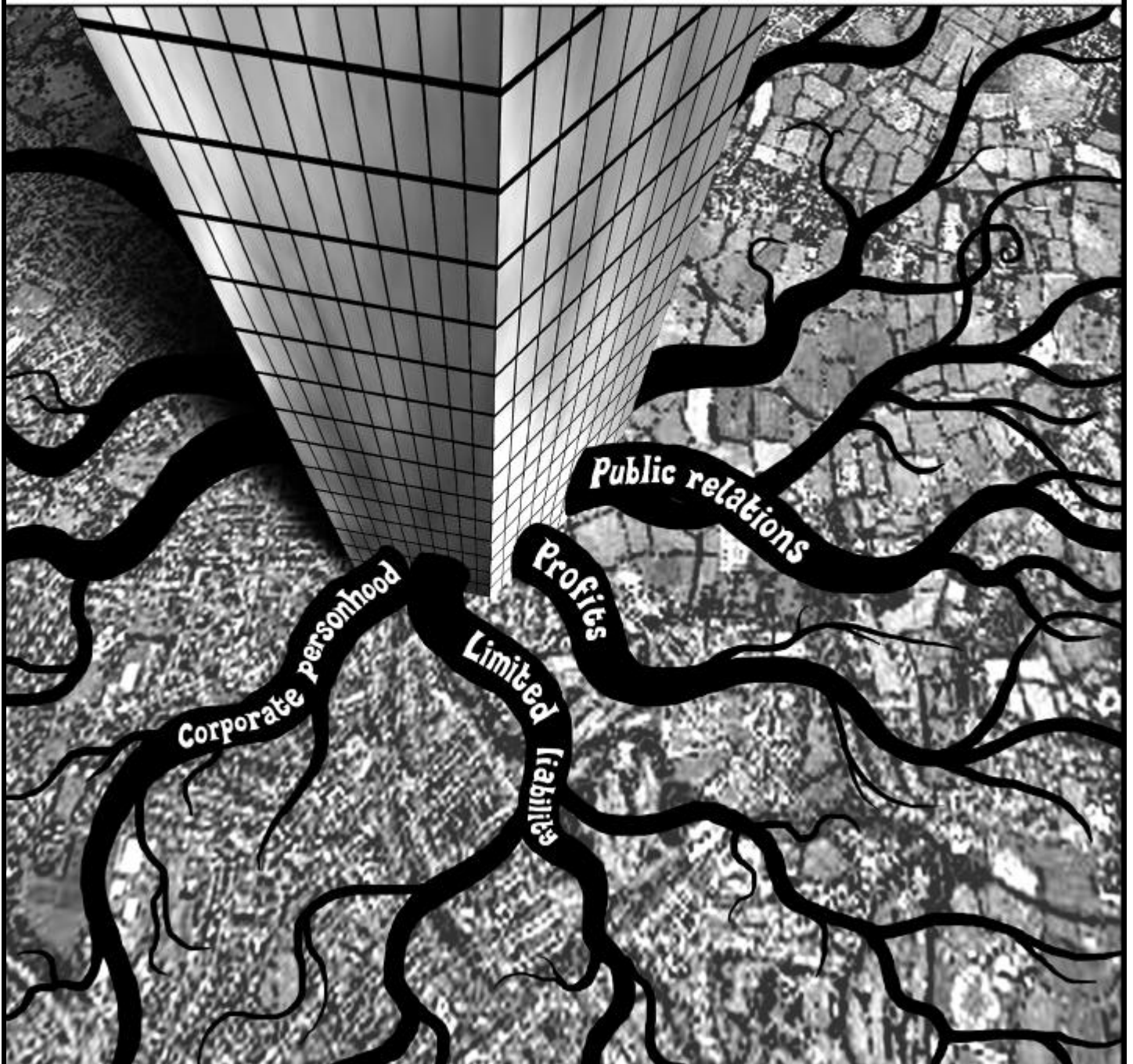


A summary of the 2004 *Corporate Watch* briefing paper:

# Corporate law and structures

Exposing the roots of the problem



by Rebecca Spencer

# Corporate law and structures

## Exposing the roots of the problem

**Corporations are legally obliged to try to make as much money as possible. This means that talk of voluntary corporate social and environmental responsibility is just public relations and greenwash.**

Most of us are not company law specialists and do not realise the full force company law exerts on our society. The briefing aims to explain key aspects of company law to non-lawyers; particularly directors' duty to shareholders, corporate personhood and corporate liability. What does the law on corporations mean? How could understanding it affect attitudes to corporations and corporate reform?

## Current UK Company Law

### Who is a corporation?

#### Directors, shareholders and everyone else

- Legally, a company is owned by its shareholders and controlled by directors.
- Directors have a common-law duty to 'act in the best interests of the company as a whole. This has been interpreted in the courts to mean acting in the best interest of shareholders' investment by maximising profits.
- There is virtually no legal provision for directors to consider other interests, though theoretically they may also consider 'future investors'.
- Since 70% of shares in UK traded public companies are owned by institutional investors, individual shareholders themselves have virtually no power.

**The dominance of corporations over our economy and society is such that they have come to colonise our thinking. It has become normal to think of corporations as inevitable.**

### Corporations are people too!

#### The corporation and human rights

- A corporation is an artificial person - a 'body corporate' - permitted to do most things a person can do in terms of business.
- There is no distinction between corporations and real people in most aspects of company law – corporations can own shares, become company directors, even solely own other companies.
- Corporations regularly make use of legal precedents which originally related only to real people.
- Under the 1998 Human Rights Act, corporations can claim rights to a fair trial, to privacy, to freedom of expression, and to property.

### Who is responsible?

#### Liability and the 'veil of incorporation'

- Corporations have 'limited liability', which means shareholders are not responsible for the debts of the company or for civil or criminal offences.
- Limited liability also applies where the shareholder is another company – a parent company is largely protected from responsibility for its subsidiary by the legal doctrine of the 'veil of incorporation' – the principle that a company and its owner are separate.
- Making companies liable for criminal offences such as manslaughter is extremely difficult as companies are held to have no 'state of mind' and can only be convicted where an individual is shown to have acted as a 'controlling mind' of the company.

# The effects of current corporate legal structures

## Corporate power

Corporations' economic power and lobbying power over governments makes changing company law extremely difficult, though lawyers generally refuse to see this power. Corporations can afford all the best lawyers. Companies are in some ways legally obliged to use their power over governments as their sole motive is to protect and enhance their profits, which might reasonably be said to include encouraging a corporate-friendly political and legal environment. This leads to the absurd situation where companies are the first to be consulted on legislation about corporate crime.

## CSR – Corporate Sidelining of Reality

Corporate Social Responsibility is the currently popular ideology by which companies claim to be good for society and the environment. However, it ignores the fact that corporations are legally responsible only to their shareholders' profits and are not allowed to consider other interests. This means that CSR is basically a hollow myth – it only works if being good for society and the environment does not conflict with making as much money as possible. CSR also fails to address the problem of those industries which are fundamentally harmful and incapable of reform – arms and tobacco being the obvious examples.

## The corporate mind

The corporation is run as a hierarchical centrally planned economy. However, there is no dictator: shareholders cede control to directors, yet directors are supposedly acting on behalf of shareholders. This means neither shareholders nor directors have ultimate responsibility for the company's actions and purpose. This allows the corporation to plough on regardless, acting single-mindedly in its own best interest. For all the myth-making, corporations have no ethics.



*"Besides engaging a solicitor ... I'd advise a generous donation to prison reform."*

## Corporate psychology –

### Killing from behind a desk

Most people who work and make decisions for corporations think of themselves as basically decent and good, even where they are involved in planning or authorising actions which lead to death, disease and impoverishment of people or destruction of the environment. Working in the corporate environment forces them to develop psychological mechanisms which avoid having to admit their guilt for the activities they are partially responsible for. Part of holding corporations liable may mean holding the individuals within corporations responsible for a share of crimes they have collaborated in.

**In the corporate mind the myth of CSR comes with the unspoken assumption that business values are inherently more important than the environment and society.**

**'I live in the Managerial Age, in a world of 'Admin'. The greatest evil is not now done in those sordid 'dens of crime' that Dickens loved to paint...But it is conceived and ordered (moved, seconded, carried and minuted) in clean, carpeted, warmed and well-lighted offices, by quiet men with white collars and cut fingernails and smooth-shaven cheeks who do not need to raise their voices.'** - C.S. Lewis

# POSSIBLE CHANGES

## Small and large companies

Part of the problem stems from the fact that large companies are governed by rules originally intended for small ones. For example limited liability is a useful protection for small businesses, an opportunity to offload risk for large ones. Small companies are by no means perfect, but their misdeeds are generally the fault of the people who run them, not of a rottenness in their very structures.

## Reforming corporate decision-making

Corporations must be made actively and formally to take account of the interests of workers, customers, suppliers, people living near their operations and the rest of the world. Everyone affected by a company's actions should have some say over the company. This would fundamentally change what corporations do, removing the vacuum of responsibility and possibly turning corporations into a positive part of human society rather than a parasite.

## Reforming corporate personhood and liability

As artificial creations, corporations should not have human rights nor human legal standing. This is necessary to protect the interests of real human beings. Corporations should be held responsible for the actions of subsidiaries, or should not have subsidiaries. Reform of limited liability would discourage irresponsible behaviour and risk-taking.

## Conclusion: a political debate

The suggestions for change offered in this briefing emerge from a political position – they are at present vague and subject to revision. The underlying position is that in order for a society to be democratic, democratic values must be embodied in its institutions, including its economic organisations. Readers are free to agree or disagree.

A step towards democracy can be taken by readers recognising that they are also free to agree or disagree with the the corporate ideology. This ideology draws its strength from pretending to be objective, pragmatic truth, which cannot be argued with. But corporations are in fact merely a legal and ideological construct, organised to advance vested interests. As such, they are as vulnerable to change as any other human-made institution. The more people recognise this, the sooner we can move on.

## Corporate Watch

Corporate Watch is an independent, not-for-profit research organisation working to expose the environmental and social impacts of transnational corporations and the structural and systemic causes behind them. Most research is available free on our website.

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*This is a summary of Corporate law and structures - exposing the roots of the problem a 32-page briefing. Get the full version via the form below or on the web at: [www.corporatewatch.org.uk/publications/corporatestructures.htm](http://www.corporatewatch.org.uk/publications/corporatestructures.htm)*

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