CORPORATE LAW

The alter ego model and the challenge of ambiguity: a review of Meridian Global Funds Management Asia Limited v. Securities Commission

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Introduction and background

Determining corporate *mens rea* has been the most potent challenge to the development of corporate criminal liability. This is because the corporation being an artificial entity has no emotive feeling and the criminal law developed with the natural person in mind[1]. How then does the law fix the mental state of the artificial entity? It seems only two options were available. One is to close one's eyes to the idea that a corporation can commit a crime and continue to 'turn a blind eye' to criminal infractions committed by corporations. The other is to struggle to bring the corporation within the ambit of the criminal law and make it "fit" the requirements of the criminal law. The second option seems the better option, especially in view of the continuing and glaring incidences of corporate crimes.

Hence, there had been attempts over the years to develop a model for "corporate *mens rea*". In the course of balancing the gap and bringing the corporation within the purview of the criminal law via finding corporate *mens rea*, different attribution models have been developed across jurisdictions in the Commonwealth and beyond. Countries, especially commonwealth countries, have moved from merely limiting corporate criminality to only strict liability offences, to the application of the civil law vicarious liability model,[2] the alter ego model, the organization model, the management failure model, and lately the corporate culture model. It seems, however, that in terms of scope and length of use, the alter ego model has been the most successful model for determining corporate *mens rea*.

Yet, it is not without its challenges. One of which is highlighted by the decision of the Privy Council in *Meridian Global Funds Management Asia Ltd v. Securities Commission*.[3] This article discusses the alter ego model and finds that it is not without its limitations. It also reviews the *Meridian* case and argues that the decision was reached in error; it finds that such error is one of the reasons why the alter ego model is not the best attribution model as it is ambiguous and still awaits clear definitions, which are reflected by inconsistencies in judgments of the English courts. It therefore recommends that the better option will be to jettison the alter ego model and adopt the corporate culture model as developed in Australia. This will prevent ambiguities resulting in difficult and inconsistent court judgments.

The emergence of the alter ego attribution model

The alter ego[4] model was originally developed in England as a civil law principle. The case of *Lennards Carrying Co Ltd v. Asiatic Petroleum Co Ltd*[5] was one of the earliest cases where the model was propounded. Viscount Haldane was of the view that the mental element of the corporation could be found in the 'directing mind' of the corporation. It seems that the model supports the fiction theory of corporate personality and admits the abstract entity nature of a corporation. It projects that the

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[1] Khairat Oluwakemi Akanbi & Kafilat Omolola Mohammedlawal "Interrogating Challenges of Corporate Crime Control in Nigeria" (2020) 25 (2) *Coventry Law Journal*, 66-67

[2] The vicarious liability theory was adopted from the civil law of tort and means that a master is responsible for the acts of the servant done in the course of employment. One of the limitations of using this approach to determine the corporate *mens rea* amongst others is that the master's liability is only in respect of employee's actions and does not extend to directors. In this context, the master is the corporation.

[3] [1995] UKPC 5.

[4] Known as the identification and directing mind model.

[5] [1915] AC 705 HL

corporation exists only in the eyes of the law and that it can only act through its human agents. Under this theory, certain categories of persons within the company are to be regarded as the mind of the company, and it is the mind of these persons that the mind of the company is located. Thus, the corporate *mens rea* will be the *mens rea* of the directing mind. In this case, a ship owned by Lennards Carrying Co was transporting some goods to Asiatic Petroleum Co, but the ship sank and the cargo was lost. It was proven that the director of Lennards knew or ought to have known that the ship had defects that led to its eventual sinking. The question in issue was whether the knowledge by the director of Lennards could be imposed on the company. It was held by the House of Lords that the company could be liable for the acts of the director as the director is a directing mind of the company. Per Viscount Haldane:

> …a corporation is an abstraction. It has no mind of its own any more than it has a body of its own; its active and directing will must consequently be sought in the person of somebody who for some purposes may be called an agent, but who is really the directing mind and will of the corporation, the very ego and centre of the personality of the corporation.

Lennard's case seems to solve the problem of corporate *mens rea* for a while as cases decided after it followed the approach. For example, the 1944 trio of *DPP v. Kent & Sussex Contractors Ltd,*[6] *R v. ICR Haulage Ltd,*[7] and *Moore v. Bresler,*[8] all adopted the alter ego model to extend criminal liability to corporations for offences requiring *mens rea*. Thus, it became settled that those who control the affairs of the corporation could be regarded as the embodiment of the corporation and have the corporate *mens rea*.

Initially, the anthropomorphic approach, made famous by the dictum of Lord Denning in *H L Bolton & Co v T J Graham & Sons,*[9] was used in explaining the alter ego model. He likened a company to a human being with limbs and brains. He held that some people within the company are like hands and legs with which the company moves, while others are like the brain and nerve centre that controls what it does, and that the directing mind should be regarded as the brain that controls what it does. Therefore, the persons regarded as the brain and nerve centre are the directing mind and will, the alter ego of the company, and it is in them that the corporate *mens rea* is located. In practical terms, the directors of a company or persons under the direction of the shareholders, the board of directors or a person with authority co-ordinate with the board of directors given to him under the articles of association, are the directing mind or alter ego of the company.

This approach was consolidated in the case of *Tesco Supermarkets Ltd v Nattrass,*[10] where the House of Lords refused to identify a local manager of a supermarket chain as its directing mind. In this case, Tesco advertised a sales discount on one of the products. The adverts were through posters displayed at their stores. After a while, they ran out of stock on the discounted products and replaced it with the normal priced product. However, a manager of one of the branches of Tesco failed to remove the poster that advertised the discount. Hence, a customer was charged the normal price that was higher than the discounted price on the poster. Tesco was charged with an offence under the Trade Descriptions Act 1968 for false advertising. In its defence, it pleaded due diligence and that the conduct of the manager could not be attached to the company. At trial, Tesco was convicted on the ground that the store manager could not be treated as "another person" for the purpose of satisfying the defence under the Trade Descriptions Act 1968,[11] because he represented the company in respect of his supervisory duties. On further appeal to the House of Lords, it was held that the store manager could not be regarded as a directing mind and thus his conduct not attributable to the company. It was held that under the alter ego

[6] [1944] 1KB 146
[7] [1944] KB 551
[8] [1944] 2KB 515
[9] [1957] 1 QB 159.
[10] [1972] AC 153.
[11] Section 24

model, persons classified as directing mind must not be acting for the company but as the company itself and in this case the store manager did not qualify as such.[12]

As stated, this theory has proved to be the most successful in terms of jurisdictional scope and duration of use, and has also been applied in both civil and criminal cases.[13] Thus, countries like Australia, India, Malaysia, Canada and Nigeria have all adopted the alter ego theory in varying degrees. In the Australian case of *Trade Practices Commission v Tubemakers of Australia Ltd,*[14] the court held that the corporate *mens rea* could be attributed to the board of directors, managing director or someone to whom the full management powers had been delegated.[15] While the concept of corporate criminal liability generally still remains unsettled in Malaysia because of some conceptual problems,[16] the alter ego model has been adopted and used in a number of cases. For example, in *Yue Sang Cheong Sdn Bhn v Public Prosecutor,*[17] the Malaysian federal court held that the *mens rea* of a company is to be determined from those entrusted with the exercise of the powers of the company, in other words, the directing mind of the company. Similarly, the High Court in *Public Prosecutor v. Kedah & Perlis Ferry Service Sdn Bhd,*[18] where the company was charged with knowingly being in possession of un-customed goods, held that the company was not guilty as the officers and agents of the company had no knowledge that the goods were un-customed. Thus, the company's *mens rea* will be that of its officers and agents.[19]

In the Indian case of *Iridium India Telecom Ltd v. Motorola Inc. & Others,*[20] the alter ego approach was also adopted. In this case, Iridium India Telecoms invested in a business at the instance of Iridium Inc., which was a subsidiary of Motorola Inc. The project failed and Iridium Inc. filed for liquidation. Consequently, Iridiun India commenced a criminal action against Motorola Inc. for criminal conspiracy and cheating. At the High Court, it was held that Motorola Inc. was incapable of committing the offence of cheating and criminal conspiracy because it had no *mens rea*. This decision was quashed on appeal and the Indian Supreme Court held that a corporation was capable of *mens rea* and such *mens rea* can be found in persons who control the affairs of the corporation. It adopted and justified the alter ego theory that the directing mind of the company must be such that it will be obvious that the company thinks and acts through them.

With respect to Nigeria, the alter ego model has been adopted, but only in respect of civil cases.[21] In *Nigerian Bank for Commerce & Industry v. Integrated Gas (Nig) Ltd,*[22] the Court of Appeal affirmed the decision of the trial court and held that:

> It must be realised that although a company is a separate legal person, it can do nothing for itself nor think for itself since it is a fiction and does not exist in the physical world...certainly not all biological persons working for and within a company will one look up to determine the mental manifestation of the company....the directors, managers, the general managers or

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[12] It should be noted that the issue of delegation of responsibility was seen as due diligence on the part of the company

[13] *El Ajou v. Dollar Land Holdings Plc* [1994] 2 ALL ER 85 CA

[14] (1983) FCA, 99

[15] This principle has equally been applied by Nigerian courts as evidenced by the cases of *Nigerian Bank for Commerce and Industry v. Integrated Gas (Nig) Ltd* (1999) 8 NWLR 613, 129; and *Adeniji v. State* (1992) 4 NWLR 597, 53.

[16] Hasani Moh'd Ali " A Review of Corporate Criminal Liability in Malaysia" (2008) ICCLR 192

[17] (1973) 2MLJ 77

[18] (1978) 2 MLJ 221

[19] However, as stated, the concept of corporate criminal liability remains unsettled in Malaysia. Therefore, the courts have not been consistent in their approach to the corporate mens rea. Thus, both the vicarious liability and alter ego approaches are being used.

[20] AIR (2011) SC 20

[21] There is a long line of civil cases where the alter ego approach has been adopted. Thus, it is safe to assert that the alter ego has been solidly engraved in the Nigerian civil law. See *Trenco v African Real Estate Ltd* (1978)1LRN 146, *Faith Enterprise Ltd v Basf (Nig) Ltd* (2001) 8 NWLR (pt.715) 62, Adeniji v. State (1992) 4 NWLR pt.597, 53

[22] (1999) 8 NWLR pt. 613, 129

> the managing directors, represent the directing mind and will of the company and control what it does. The state of mind of this category of officials is the state of mind of the company and is treated by the law as such.

However, Nigeria is yet to have definite direction with respect to the corporate *mens rea*. Thus, corporations are only prosecuted for strict liability offences.

Successful, yes, but, a perfect model?

The "success" of the alter ego model is probably because it provided the first definitive approach to the problem of corporate *mens rea,* as hitherto the civil law vicarious liability model was used.[23] It represented a better alternative to the vicarious liability that was too wide and contradicts the concept of individual liability that is the hallmark of the criminal law.[24] It has proved to be especially good in prosecuting small one-man corporations as the directing mind is easily linked with the crime. Besides, in small corporations, it is practically impossible for the directing mind not to "know" when the company has committed infractions against the criminal law.[25]

However, the fact that only a selected few of "the directing mind(s)' are those whose acts can be attributed as the company's acts can also be a disadvantage. This is especially true in large corporations, where corporate actions are a result of a systemic process rather than a specific action by a particular person or group. Besides, the reality of corporate practice suggests that it may be difficult to envisage that the directing mind will actually commit the *actus reus* and *mens rea* of the offence. For example, in *Attorney General's Reference No2 of 1999*,[26] the reality of the directing mind being disconnected from the commission of a criminal offence is reflected. Here, the court's opinion was sought in respect of whether a non-human defendant can be convicted without the guilt of its directing mind.[27] The criminal prosecution commenced as a result of an accident involving collision of two trains that killed seven people leaving several others injured. There was evidence that the safety devices on the HST had been switched off, which caused the driver to miss the signals of impending red. In addition, the driver was a lone driver without any competent person beside him. These facts supported the argument that the company had been negligent in the conduct of its business. Thus, one of the issues was whether the company owner of the HST could be convicted of gross negligence manslaughter, despite the fact that the directing mind was not involved in the act. It was argued for the prosecution that it was not necessary to follow the alter ego; rather the ingredients of the offence itself should be a factor in determining the theory of attribution to use.[28] The case for the defendant was that it is impossible to find a company guilty unless its alter ego is identified and linked with the crime. The court agreed that a non-human defendant could not be convicted of gross negligent manslaughter without the guilt of its directing mind. From this case, it is apparent that the alter ego may not be a suitable model for prosecuting large corporations as the directing mind may be so disconnected from the offence.

In addition, the theory has the propensity to make the corporation an innocent victim in cases when the directing mind acts contrary to the corporation's policy. In *Moore v. Bresler*,[29] the court held that a company may be liable for the acts of its servant even if the act was committed to the fraud of the

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[23] See *Moussel Brothers Ltd v London & North-Western Railway Co* [1917] 2KB 836

[24] The application of the vicarious liability to corporate *mens rea* means that the company will be liable for the acts of its officers and agents done in the course of employment. This had the propensity to punish innocent companies unduly for acts of its officers and agents. This is unlike the identification model approach that limits the category of officers of the company whose acts can bind the company to those who are in actual control of the company.

[25] For example, see *R v. Kite & Oll Ltd* (1996) 2 Cr. App. R (S) 295 42, See also Amanda Pinto & Martin Evans, *Corporate Criminal Liability* (London, Sweet & Maxwell 2008) 221

[26] (2000) 2 Cr. App. R. 207

[27] The Attorney General referred two questions for the court's opinion by virtue of section 36 of the Criminal Justice Act 1972

[28] This argument seems to have been influenced by Meridian.

[29] [1994] 2 All ER 515

company itself. In this case, the branch manager who also doubled as secretary of the company together with a sales manager, sold some of the company's goods with intent to defraud the company. In the process, they made some false returns on purchase tax contrary to s.5 of the Finance (No2) Act, 1940. Both the company and the two officers were charged for an offence under the Act. The company was initially convicted, but on appeal to the Quarter Sessions the conviction was quashed on the ground that the sales were not executed on behalf of the company but done as a fraud against the company. However, on further appeal to the King's Bench Division and relying on the alter ego principle, the conviction was restored on the ground that the officers' actions were the actions of the company.

Another important limitation of this model is the fact that it has not been stretched to determine the level of delegation needed to transfer the directing mind, if at all. However, it has been suggested that the delegation of day-to-day functions is insufficient to justify the attribution of the directing mind.[30] Besides, another shortcoming of this model is the fact that it is derivative and not personal since reliance is being placed on the human agents and not the corporation itself.

Perhaps, the greatest challenge to the model is where to locate the *mens rea* if it is proved that the directors were not in actual control at the time of the commission of the offence. These limitations show that after more than a century, the alter ego model still awaits clear definitions. This ambiguity is reflected in the inconsistencies that has trailed its application by English courts, especially after the decision in the Meridian case.

The decision in *Meridian Global Funds Management Asia Ltd v Securities Commission*

This case mirrors some of the challenges associated with the alter ego model.[31] In this case, two employees of Meridian Global Funds - K the chief investment officer and N, senior portfolio manager - both sought to fraudulently gain control of a New Zealand company known as Euro National Corporation Limited, (E.N.C.). They both bought 49 per cent shareholding of E.N.C in the name of the company without the knowledge of the board of directors and the managing director. Meanwhile, the New Zealand Securities Amendment Act 1988 required that the identity of any person who becomes a substantial shareholder in a public issuer should be disclosed to both the stock exchange and the target company. Thus, Meridian had acquired 49 per cent shares, which is a substantial share in E.N.C., and had not made the required disclosure because the purchase was concealed from it by both K and N. The Securities Commission instituted proceedings against Meridian for violating the provisions of s.20 (3) of the Act, which provides that:

> Every person who, after the commencement of this section, becomes a substantial security holder in a public issuer shall give notice that the person is a substantial security holder in the public issuer to - (*a*) the public issuer; and (*b*) any stock exchange on which the securities of the public issuer are listed.

The trial court held that in order to satisfy s.20 (4) (e), which provides that the notice must be given as soon as the person knows or ought to know that he is a substantial shareholder of a public issuer, the knowledge of K and N should be attributed to Meridian. Thus, Meridian "knew" that it had substantial shares in E.N.C. by November 9 when its employees knew. On appeal to the Court of Appeal in New Zealand, the conviction was upheld on the basis that K was a directing mind of Meridian. It seems this position was strengthened by the fact that K used to be the managing director of E.N.C and there was no evidence before the court that some of his activities were supervised by the board and the managing director, even though he reported in theory to the managing director.[32]

On further appeal to the Privy Council, Meridian argued that it did not have either constructive or actual knowledge of the fact that it had acquired shares in E.N.C. at the time it acquired the shares. It also argued that K was not its directing mind so his knowledge should not be attributed to it. The argument

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[30] C Wells, *Corporations and Criminal Responsibility,* 2nd Edition, (Oxford, Clarendon Press, 2011)98.
[31] *Meridian Global Funds Management Asia Ltd v Securities Commission* [1995] 2 AC 500 JCPC
[32] At 502, 505

went further, that its directing mind will be the board of directors and the managing director, since K was neither; he cannot be treated as its directing mind. The duties he performed falls under the supervision and control of the managing director.[33] This argument was rejected by the Privy Council, which dismissed the appeal. It held, per Lord Hoffmann, that ordinarily, rights and duties of companies are determined by primary rules of attribution contained in the company's constitution and implied by the rules of agency and/or company law. However, that if following the rules would defeat the objective of the law, it becomes imperative to devise a special rule of attribution to determine whose acts should bind the company for the purpose of the specific law. Hence, as the purpose of the Act was to ensure the immediate disclosure of the identity of substantial shareholders, in the case of a corporate shareholder the knowledge of a person who had the authority of the company to acquire the shares should be attributed to the company. He said that it is a matter of construction in each particular case whether the particular Act requires knowledge that an act has been done or the state of mind with which it was done. It held that on that basis, K was a directing mind of Meridian.

This decision of the Privy Council set an ambiguous precedent. It suggests that a corporation can be criminally liable for offences carried out by an employee who is not part of the directing mind of the corporation, subject to the provisions of the statute creating the offence. The court was influenced more by the desire to enforce the legislation, and this affected the interpretation of the directing mind since there was no proof that K had the ultimate authority to make decisions for the company as at the time of the purchase. Besides, there was no evidence that the internal control mechanism of the company was inadequate in a way to suggest culpability or even negligence on its part.[34] The Privy Council seems to create a distinction between the application of rules of attribution for common law offences and statutory offences. This distinction cannot be justified. Thus, Meridian was an innocent victim. In addition, it is doubtful whether the alter ego includes the situation when the purported acts "of" the company is one which was not intended or planned for the company's benefit, as was clearly the case here.

Meridian has therefore clothed the alter ego with vagueness and ambiguity that has led to inconsistencies in cases decided after it; thus, it was described as an imperfect guide.[35] For example, in *Attorney General's Reference,*[36] the Court of Appeal reaffirmed that the primary directing mind and will rule still applies,[37] and that the identification/alter ego principle is still the rule of attribution in criminal law, thus, the company's guilt is tied to the directing mind.

However, earlier, in the case of *R v Roziek*,[38] the approach laid down in *Meridian* was adopted. This case involves some form of reversal of roles, as the company was the victim and not the defendant. The defendant had applied for funds to purchase some equipment for two financial companies but gave some false information in respect of the equipment. He was subsequently charged under the Theft Act 1968 for obtaining property by deception. It was argued in his defence that the branch manager of the finance company knew about the false information, so the company was not deceived. He was nevertheless convicted. On appeal, it was argued that the knowledge of the branch manager should be attributed to the company, hence the company knew and was not deceived. Thus, the state of mind of the branch manager, who is ordinarily not a directing mind, was attributed to the company following the decision in *Meridian*.

Later, in *K R v Royal and Sun Alliance Plc,*[39] the court decided that the director of a company was the directing mind and not a junior employee. This case involved an insurance policy containing an exclusion clause for damage or injury done through deliberate actions of the insured. The majority

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[33] Ibid.
[34] At 503
[35] Buxton L.J dissenting in *Odyssey v OIC Run-Off Ltd* (2000) W.L. 19127 (CA).
[36] See (2000) 2 Cr. App. R. 207.
[37] Per Rose L.J.
[38] [1996] 3 All ER 281, 286.
[39] [2006] EWCA Civ. 1454.

shareholder and director of a children's home was guilty of abusing children. The question was whether his acts could be regarded as the deliberate acts of the company for the purpose of the exclusion clause. It was held that the purpose of the exclusion clause was to exclude liability when the injury was caused by the deliberate acts of people who could be regarded as the company and not just mere employees, and the majority shareholder guilty of the abuse was clearly an embodiment of the company and therefore its directing mind. Thus, his deliberate acts will be treated as satisfying the requirements of the exclusion clause; it is immaterial that the victims were third parties. Also, in *R v St Regis Paper Co Ltd,*[40] the Court of Appeal held that, in contrast to Meridian, that attribution could not apply in the context of a charge relating to the dishonest recording of environmental pollution control (an offence that required *mens rea)*. This was because the responsible employee in question who had made the false entries was not the directing mind of the company.

In 1994, the Court of Appeal, in the case of *R v British Steel,*[41] again followed the position laid down in *Meridian*. Here, British Steel employed two independent contractors to work on their site under their supervision and with their equipment. Their job was to move a steel platform by crane. In the course of carrying out their duty, the platform was cut without suspending it from the crane; one of the workers walked on a platform that fell on the other worker beneath it causing him to be fatally injured. The injury violated the provisions of s.3 of the Health and Safety at Work Act 1974, which places a duty on an employer to ensure that the health and safety of persons who are not its employees but who can be affected by its activities are protected. The defence for British Steel was that the statutory defence of reasonable practicability suffices as its directing minds had taken reasonable care by delegating supervision to one of its employees. The trial court rejected the argument and convicted British Steel. On appeal, the Court of Appeal dismissed the appeal and held that a corporate employer cannot avoid strict liability imposed by legislation simply by delegating its responsibilities. This case supports *Meridian* to the extent that a corporation cannot escape liability on the basis that the act constituting the offence was carried out by a person who is not a directing mind. Thus, the inconsistencies in the decisions by the English courts suggests that the alter ego model still awaits clarification and is such not the best attribution model.

Curiously, notwithstanding that, Nigerian criminal jurisprudence is yet to adopt an attribution model, the Nigerian company legislation, the Companies and Allied Matters Act,[42] seem to support the ambiguous *Meridian* position. The combined effect of ss.87, 89 and 90 is that persons whose fault can be attributed to the company need not be a director of the company if such person is delegated with the authority. This position contradicts the case law that follows the *Tesco* approach in civil cases.[43] Section 87 provides:

> A company shall act through its members in general meeting or its board of directors or through officers or agents appointed by, or under authority derived from the members in general meeting or the board of directors.

Similarly, s.90 reaffirms the position as it provides that a company will not ordinarily be bound by the acts of its officers and agents unless the members in general meeting, the board of directors or managing director has authorized such act either expressly or by implication. It further provides that such authorization can be prior the act or by subsequent ratification.[44] Thus, it is safe to assert that there are contradictions in Nigeria with respect to attaching liability to corporations. While, the civil case law strictly follows the definition of alter ego as laid down in *Tesco*, the statutory position is the wide and vague definition given in *Meridian*. These contradictions can influence the determination of an attribution model for corporate *mens rea* when the country is ready to adopt or develop one as the case may be.

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[40] [2011] EWCA Crim 2517.
[41] [1995] 1WLR 1356.
[42] CAMA 2019
[43] See Nigerian Bank for Commerce and Industry, supra
[44] Section 90

The way forward

The inconsistencies in the decisions of English courts suggest there is a need for redefinition and re-conceptualization of the alter ego model if it is going to be sustained as an attribution model. There are further questions to be resolved: whether the directing mind can be delegated; the extent of any delegation; what happens when it is proved that the directing mind was not in actual control at the time of the commission of the offence; and whether the discrepancy in its interpretation with respect to statutory and common law offences is justified. These are some of the issues still awaiting definite answers with respect to the conceptualization of the alter ego model.

Besides, in spite of its "success" it is still not the most effective way to attribute the corporate *mens rea*, essentially because it is derivative and contrary to the spirit of the criminal law that is founded on individual liability. As stated above, it is not suitable for prosecuting large corporations where the directing mind is often disconnected from the day-to-day activities of the corporation and by extension disconnected from the offence. In addition, it does not capture the true essence of modern corporate practice, where crimes are mostly committed because of a systemic failure rather than a deliberate act of a directing mind. After all, corporations are primarily formed for lawful purposes. The alter ego model, as evident in the decision of *Moore v. Bresler*, has the propensity to make the company an innocent victim when the directing mind act contrary to the company's directive or even as a fraud against the company. This is the case even when the wrong was committed without the primary intent to benefit the company, as seen in *Meridian*.

Conclusion

No doubt in terms of time and jurisdictional scope, the alter ego model has been the most "successful" attribution model. However, as seen in the course of this article, it is not without its limitations, which is evident by the fact that after more than a century it still awaits clarification. It is suggested that most of the limitations are difficult to surmount; especially the fact that it is derivative will always be a sore point. It is thus recommended that the corporate culture model developed under the Australian Criminal Code Act 1995 provides a better alternative. The main advantage being that it is not derivative but based on the personal liability of the corporation itself. In addition, most of the conceptual challenges of the alter ego model are not applicable to the corporate culture. It is hoped that the English courts, and by extension other courts in the commonwealth where the alter ego model is in use, will in due course consider the corporate culture model. It is also recommended that the Nigerian company and criminal jurisprudence will build a synergy and adopt the corporate culture model.