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Imagining Corporate Personhood

Corporations are people, my friend . . . Of course they are. Everything corporations earn ultimately goes to the people. Where do you think it goes? Whose pockets? Whose pockets? People's pockets. Human beings, my friend. [Mitt Romney, cited in Stein and Siegel, 2011]

Corporations are treated as fictional persons for legal purposes in the United States and many other countries. The doctrine of corporate personhood permits corporations to make and enforce contracts on behalf of their investors.¹ Legal personhood also limits the liability of shareholders and officers, protections known as the “corporate veil.” As jural persons, corporations do not have the same rights as natural persons or citizens, distinctions that have recently been addressed in a series of important decisions by the U.S. Supreme Court.

In the most famous of these cases, *Citizens United v. Federal Election Commission* (558 U.S. [2010]), the Supreme Court ruled that corporations have a First Amendment right to free speech, including the right to make unlimited political contributions. The 2010 decision has been widely criticized for making it easier for corporations to influence elections. It also incited a political movement that challenges the special privileges associated with corporate personhood, including activists who stamped dollar bills with the slogan: “Corporations are not people. Money is not free speech. Amend the Constitution.” The decision in *Federal Communications Commission v. AT&T* (562 U.S. [2011]) went the other way, with the Supreme Court ruling that corporations do not have a right to personal privacy that protects them against the disclosure of federal records. Finally, the Supreme Court ruled in *Burwell v. Hobby Lobby Stores, Inc.* (573 U.S. [2014]) that corporations have the right to religious freedom. Consequently, they cannot be compelled to pay for federally mandated health insurance that includes coverage for birth control. The decision has become a flash point for reproductive politics, as well as continuing debates about the nature of corporate personhood.

The inconsistency in these rulings—that corporations have the right to free speech and religion, like natural persons, but lack a corresponding right to privacy—suggests that these decisions are being made on a case-by-case basis rather than uniformly applying an established definition of corporate personhood. The metaphor of corporate

personhood allows the courts to treat corporations as legal “persons in some respects and as nonpersons for other purposes” (Berger 2004:181).²

The metaphor of corporate personhood also extends beyond its legal interpolation. Like all metaphors, the comparison between corporations and persons influences how we think about both terms. It suggests that corporations are similar to people in some ways and consequently share some of their capabilities and habits. This helps to explain the attribution of human characteristics and motives to corporations, including references to corporations as benevolent, greedy, caring, or irresponsible. Corporations are also personified in the form of their charismatic founders or chief executive officers, whose behavioral traits may be regarded as iconic assets (Bose 2010; Isaacson 2011; Rajak 2014). Corporations increasingly promote themselves using the virtuous language of responsibility, sustainability, and transparency, although their critics invoke the same vocabulary in pointing out their shortcomings (Kirsch 2014; Rajak 2011a, 2011b; Shever 2012; Welker 2014). Both corporations and their critics mobilize the metaphor of corporate personhood.

The articles in this symposium examine how the metaphor of corporate personhood is used in nonlegal contexts. They suggest that analysis of the metaphor and its uses provides valuable insight into contemporary debates about capitalism. On the one hand, references to corporate personhood can be a means of embedding accountability within an otherwise diffuse organization. Such references are not so much a category error as a means of addressing corporate responsibilities and, therefore, a potential starting point for critique rather than the misapprehension of a legal metaphor.³ On the other hand, corporations invoke the metaphor of corporate personhood to extend their power and influence. Given the wide range of contexts in which the metaphor is invoked, anthropological attention to corporate personhood is relevant to a number of important political and economic debates.

Recent attention to corporate personhood is closely related to the growing significance of branding in contemporary capitalism (Foster 2007; Manning 2010). Branding no longer focuses primarily on the relationship between consumers and commodities, but increasingly addresses the relationship between corporations and shareholders (Bashkow 2008; Foster 2008; Welker and Wood 2011). In the era of shareholder capitalism, corporate reputations have become a valuable asset. Shareholder capitalism is associated with greater participation in the stock market by individual investors, which has been spurred by the dismantling and privatization of public pensions and corporate retirement plans, as well as threats to entitlement programs (Welker and Wood 2011:S59). These trends push individuals to participate in the stock market despite widespread recognition of corruption and bias against small investors. They have also fueled social choice and green investment funds, as well as other forms of shareholder politics (Foster 2008). Corporations are thus increasingly concerned with managing their brands even when they do not produce commodities sold directly to consumers.

The metaphor of corporate personhood has also come to affect how we think about ourselves. One example of the transference is the way individuals and corporate

managers are seen as appropriate subjects for similar technologies of reform in self-help books and manuals for improving managerial skills, both perennial best sellers. The American “rhetoric of self-making” (Battaglia 1995) is increasingly inflected by business metaphors, especially the image of the ideal individual as an independent entrepreneur. In particular, participation in the job market promotes a view of the individual as a branded, corporate self (Gershon 2014). An example of how this metaphor is deployed in political rhetoric is the former U.S. vice presidential candidate Paul Ryan’s argument that individuals should be freed from their unproductive dependence on government entitlements so they can participate more fully in the economy. Here individuals are seen as independent entities for whom anything short of complete autonomy is regarded as counterproductive.

Alternatively, one might ask whether other models of the person might be better suited to the metaphor of corporate personhood than the Euro-American view of the self as a “bounded, unique, more or less integrated . . . [and] distinctive whole” (Geertz 1983:59). For instance, what would be the implications of thinking about the person as the sum of many relationships (Wagner 1991)? The view that some corporations or banks are “too big to fail” because they are essential to the economy might be seen as an example of a relational perspective on corporate personhood (Riles 2011).⁴

In contrast, Mitt Romney’s assertion that we should have let the automobile industry in Detroit go bankrupt rather than use federal funds to bail them out represents an alternative perspective. His private equity firm Bain Capital engaged in a form of predatory capitalism that dismantles corporations and sells off their most valuable assets, leaving stripped down, highly leveraged companies that often struggle to stay in business. Although destructive forms of capitalism are justified with reference to the impartial efficiency of the free market, private equity firms like Bain Capital minimize their risks through the sale of corporate assets and by ensuring that the reorganized companies pay their fees before meeting the demands of other creditors. Romney’s view of corporations mirrors his perspective on individuals, especially

[The] forty-seven percent . . . who are dependent upon the government, who believe that they are victims, who believe the government has a responsibility to care for them, who believe that they are entitled to health care, to food, to housing, you-name-it. That, that’s an entitlement. And the government should give it to them. [Corn 2012]

The argument that both persons and corporations should operate independently in the marketplace contradicts a relational model of personhood.

Another possibility is a performative model of personhood in which corporations and individuals adopt roles appropriate to the context. This might help explain the contradiction between Romney’s attempt to position himself as a political centrist in the final days of his presidential campaign and the remarks he made about the “forty-seven percent” to a group of wealthy donors. A performative model of corporate personhood could similarly help explain the contradictions between the virtuous language of corporate social responsibility and the negative outcomes of “actually

existing capitalism” (Benson and Kirsch 2010:64). Yet corporations steadfastly assert that their policy statements accurately represent their core values, even as they fight against regulatory efforts to achieve the same goals. A performative approach to corporate personhood could help reveal the ways corporations do and say things that are incompatible or even contradictory, much like individuals. To some extent, this might be the consequence of how corporations are composed of individuals who possess their own views, although it can also be seen as an intentional strategy to manage their public reputations while simultaneously protecting their economic bottom line.

It is also possible to invoke the language of actor network theory in the identification of the corporation as an actor with agentic capabilities that persist through time and have significant effects in the world (Law and Hassard 1999). But actor network theory tends to leave important questions about power unanswered. What does it mean, for example, to attribute intentionality to a corporation in contrast to disaggregating the perspectives of those persons who direct and contribute to its operation? Should the focus be on the attitudes and opinions of the individuals employed by the corporation, or on the consequences of actions undertaken by the corporation? It is not simply that good intentions are insufficient, or that persons who work for corporations sell their labor under conditions of constraint. Rather, the disciplining of individual differences to ensure that employees do not compromise profitability is standard operating procedure for the corporation. Another analytic option would be to recognize that corporations are assemblages of persons and things (Ong and Collier 2005), although this approach also makes it difficult to hold corporations accountable for their social and environmental impacts.

Taking the metaphor of corporate personhood seriously entails consideration of how it enters contemporary political debates about corporations and capitalism, rather than limiting our attention to its application within legal domains. Given that metaphors are always partial, it is important to ask what is neglected or obscured when corporations are construed as persons. Here I briefly digress by pursuing the method of making familiar practices appear strange (Riles 2006). I do so by invoking my ethnographic research in Papua New Guinea. The Yonggom people with whom I work possess a transactional model of personhood that emphasizes the creation of persons through exchange (Kirsch 2006). They regard participation in constructive social relations through reciprocity as the *sine qua non* of humanity. In contrast, the neoliberal division of society into givers and takers, and the negative characterization of the latter, makes little sense in a worldview based on reciprocity, which relies on productive interactions between givers and takers, including the obligation to reverse the flow of exchange in the future.

Living downstream from the environmentally destructive Ok Tedi copper and gold mine, the Yonggom came to regard the mining company, BHP Billiton, as a kind of corporate sorcerer (Kirsch 2006). To the Yonggom, a sorcerer is someone who fails to fulfill the social responsibilities of personhood. The Yonggom accused the mining company of behaving like a sorcerer by denying its relationship to the people living downstream along the polluted Ok Tedi River and Fly River. They blamed the mining

company for a variety of accidents and injuries that in the past would have been attributed to individual acts of sorcery. They mobilized their views on reciprocity in their critique of corporate practices, an example of “reverse anthropology” (Kirsch 2006).

When legal action and the accompanying international approbation forced BHP Billiton to abandon the mine in 2001, the company transferred its shares in the project to a trust fund based in Singapore. The company’s objective was to limit its liability for future environmental impacts from the mine. But BHP Billiton did not anticipate that the prices of gold and copper would skyrocket after it relinquished its shares in the project and probably would not have taken this action had it known the full cost to its bottom line. The Yonggom and their neighbors were critical of the mining company for leaving the country and evading its responsibilities for the damage to their rivers and forests. They objected to the short-term horizons of contemporary capitalism and the self-serving mobility of the corporation (Kirsch 2008:283–84; see also Bashkow 2006). The state nationalized the Ok Tedi mine in late 2013, although it has not succeeded in gaining control over the \$1.4 billion trust fund.

Criticism of the mining company reveals a fundamental contradiction in the metaphor of corporate personhood: corporations selectively claim the rights of natural persons while ignoring the social responsibilities of personhood. This recognition may help explain the disquiet so many Americans felt when Romney argued “[c]orporations are people, my friend . . . human beings.” Corporations may possess some of the attributes of personhood, but as the examples from Papua New Guinea suggest, corporations relate to others through the market rather than reciprocal relations (see Fisher 2014; Riles 2011). The metaphor of the corporate sorcerer provides the Yonggom with the means to identify the mining company’s failure to fulfill its responsibilities to the people living downstream.

Similarly, the contributors to this symposium consider how corporate personhood is imagined in a variety of contexts. Peter Benson describes how corporations try to shift the responsibility for the damage caused by tobacco and firearms to individuals and families. There are elements of a relational model of corporate personhood in the claim that corporations that manufacture and sell guns are composed of parents who share the concerns of other members of society. Yet the emphasis on family sentiments is intended to obscure recognition of the differential responsibility for harm. Benson points out that efforts to hold families responsible for gun safety sidesteps corporate responsibility for the casualties of shootings. Similarly, the tobacco industry seeks to deflect criticism of smoking by emphasizing “healthy decisions” rather than its responsibility for producing a product that is harmful to consumers. In these examples, corporate personhood is briefly decomposed to transfer social responsibility from the corporation to the body politic, a practice with lethal consequences.

In her article, Kedron Thomas invokes earlier anthropological discussion of corporate groups, notably Eric Wolf’s characterization of Maya villages in Guatemala as “closed, corporate peasant communities” (Thomas 2014). Wolf understood the composition of these communities to be the historical outcome of their engagement

with colonial society. Similar issues arise in the present in relation to the participation of these communities in competing forms of enterprise, the mass production of branded clothing by transnational companies in large-scale, foreign-owned factories known as *maquilas* and small-scale workshops producing counterfeit versions of the same apparel. In her discussion of the clothing workshops where she conducted research, Thomas identifies a key distinction that echoes Wolf's attention to the moral economies of Maya communities. Whereas the workers in the *maquilas* learn basic skills that enable them to obtain other low-wage jobs, the people employed in the smaller workshops gain experience that allow them to start workshops of their own. In contrast to the temporary work provided by the mobile *maquilas*, whose abrupt departures not only deprive employees of their jobs but also their back pay, the workshops provide steady employment. Although the *maquilas* and workshops produce similar garments, the trademarked clothes produced in the *maquilas* receive legal protection even when the workers do not, whereas these relationships are reversed in the smaller workshops. Thomas describes how her informants' identification with brand pirates through the production and consumption of counterfeit clothing entails a collective thumbing of their noses at the inequities of the global economy.⁵

Robert Foster directs our attention to new forms of "connected capitalism" in which corporations increasingly partner with NGOs. These relationships are intended to maximize share value, the rationale for what is sometimes called the "business case" for corporate social responsibility. Foster argues that these relationships emerge at a particular historical moment when corporations are increasingly challenged by their critics (see Benson and Kirsch 2010). The resulting partnerships are often formed with NGOs that might otherwise be critical of corporate practices. So the Coca Cola Company, facing international criticism for competing with other users of scarce water supplies, elects to collaborate with an environmental NGO on an initiative promoting clean water. This might be understood as an example of "greenwashing" through which corporations seek to enhance their reputations as a defense against critique. But Foster points to the embodiment of the corporation in the form of the corporate CEO who can establish social relationships through strategic partnerships. He suggests that the resulting collaboration more closely resembles a patron-client relationship than a horizontal relationship between equal partners. Participation in these relationships also furthers the transformation of NGOs into recognizable brands.⁶ These relationships ease the conduct of business by allowing corporations to promote themselves as good citizens. The partnerships also support the view that markets are able to solve social and environmental problems without regulatory intervention by the state, even as they undemocratically exclude other publics from participation.

Dinah Rajak's article is concerned with the mobilization of nostalgia for the corporate past by Anglo American plc, the foremost mining company in South Africa. The imagery of corporate personhood requires the "crafting of a fitting biography" (Rajak 2014). This takes the form of a foundational myth of a corporation that has always been dedicated to the social good despite the countervailing narrative about its complicity in the genesis of the apartheid state, which ensured the mining industry's access to an inexpensive and disciplined workforce. Anglo American even managed to

benefit from economic sanctions against apartheid that restricted the international flow of capital by making domestic investments that buttressed its economic influence in South Africa. This supports a view of the corporation as a project that must continually be renegotiated rather than as a historical accomplishment. Mythologizing the founders of the corporation is a key strategy for promoting the corporation as a moral self, which is integral rather than incidental to the exercise and reproduction of corporate power. Promoting an image of Anglo American as “progressive and patriotic” also enhances its role in postapartheid political governance.

As Paul Manning (2010) observes, branding is increasingly applied to a “new range of experiences, services, and quasi-commodities that are not in themselves conventional economic objects” (34). Ilana Gershon provides an example of this phenomenon in her analysis of how job seekers conceptualize their need to establish a personal brand. The work of individual brand management includes the production of a steady stream of text messages, Tweets, and blog posts. This creates dual anxieties for individuals who strive to create a coherent, recognizable, and employable self while demonstrating the ability to meet the demands of corporate employers searching for a flexible workforce. Gershon draws on debates in linguistic anthropology to illustrate how these processes require job seekers to animate a visible, public identity, showing how economic transformations affect the rhetoric of self-making. She argues that the core metaphor of the self is undergoing a shift from “possessive individualism” in which property is central to identity and political rights, to a more entrepreneurial model in which one “owns oneself as though one was a business” (Gershon 2014). In short, corporate personhood also becomes a personal status that prospective employees struggle to achieve for themselves.

The articles in this collection creatively illustrate the productivity of the metaphor of corporate personhood. Anthropologists have long recognized the significance of the metaphors we live by (Lakoff and Johnson 1980), but insufficient attention has been paid to the ways legal metaphors influence social life. The analogy between corporations and personhood suggests new ways to address the role of corporations in society while also serving as a resource for corporations to extend their political and economic reach. These articles point to the ways that the figure of corporate personhood has been invoked to disarm critique, craft alternative moral economies, create strategic partnerships, narrate corporate history, and reorganize the job candidate’s sense of self. Examining how corporate personhood is imagined and mobilized also challenges us to address pressing questions about the social and moral responsibilities of personhood writ large.

Notes

These articles were originally presented at a session on “Imagining Corporate Personhood” at the annual meetings of the American Anthropological Association in 2012, which was cosponsored by the Association for Political and Legal Anthropology and the American Ethnological Society. Peter Benson and I co-organized the event. Previous commitments prevented Elana Shever from including her paper in

this collection. Although she was unable to participate in the session, Kedron Thomas generously allowed us to include her work here.

1. The doctrine of corporate personhood is generally attributed to a case against a railroad company for its failure to pay taxes (*Santa Clara Co. v. Southern Pacific Railroad Co.*, 118 U.S. 394, 1886), although it arises from comments made by the court reporter (see Pollman 2011:1642–1644). It is also referred to as the “natural” or “real entity” theory of the corporation in contrast to claims that corporations are simply associations of natural persons, partnerships between shareholders, or the managers of collectively-held property (Ciepley 2012:4–5, n.3).
2. Supreme Court Justice Benjamin N. Cardozo’s famous admonition that “metaphors in law are to be carefully watched, for starting as devices to liberate thought, they often end by enslaving it,” addressed the relationship between parent corporations and their subsidiaries (see Smith 2007:924–925).
3. Scholarly attention to corporate personhood seems to have supplanted research on corporate culture prominent in organizational psychology and business management during the 1980s and 1990s.
4. In contrast to the U.S. government bailout of the banks and some corporations during the recent recession, individuals whose houses became worth less than their home loans generally had to declare bankruptcy, which suggests the limitations of a relational model of personhood in a capitalist economy.
5. Even anticorporate NGOs borrow freely from the language of branding (Conley and Williams 2005:11).
6. Brand pirates, and pirates in general, are intriguing counterparts to the figure of the corporate person. The U.S. Supreme Court decision in *Kiobel v. Royal Dutch Petroleum* (133 S. Ct. 1659 [2013]) restricted the conditions in which transnational corporations can be held accountable for international human rights violations under the Alien Tort Claims Act of 1789, which was originally intended to bring pirates on the high seas to justice in the United States.

References Cited

- Bashkow, Ira
- 2006 *The Meaning of Whitemen: Race and Modernity in the Orokaiva Cultural World*. Chicago: University of Chicago Press.
- 2008 Will the Real Leviathan Please Sit Down? The Structural Agency of the Corporation. *Delaware Journal of Corporate Law* 30:767–818.
- Battaglia, Debora
- 1995 Problematizing the Self: A Thematic Introduction. *In Rhetorics of Self-Making*. Debora Battaglia, ed. Pp. 1–15. Berkeley: University of California Press.
- Benson, Peter, and Stuart Kirsch
- 2010 Capitalism and the Politics of Resignation. *Current Anthropology* 51(4):459–486.

- Berger, Linda L.
2004 What is the Sound of a Corporation Speaking? How the Cognitive Theory of Metaphor Can Help Lawyers Shape the Law. *Journal of the Association of Legal Writing Directors* 2:169–208.
- Bose, Purnima
2010 General Electric, Corporate Personhood, and the Emergence of the Professional Manager. *In Cultural Critique and the Global Corporation*. Purnima Bose and Laura E. Lyons, eds. Pp. 28–63. Bloomington: University of Indiana Press.
- Ciepley, David
2012 Neither Persons nor Associations: Why Recent Corporate Law Scholarship Undercuts Citizens United and the Constitutional Rights of Corporations. http://works.bepress.com/david_ciepley/1, accessed August 10, 2014.
- Conley, John M., and Cynthia A. Williams
2005 Engaged, Embed, and Embellish: Theory Versus Practice in the Corporate Social Responsibility Movement. *Journal of Corporation Law* 31(1):1–38.
- Corn, David
2012 Secret Video: Romney Tells Millionaire Donors What He REALLY Thinks of Obama Voters. *Mother Jones*. September 17. <http://www.motherjones.com/politics/2012/09/secret-video-romney-private-fundraiser>, accessed August 10, 2014.
- Fisher, Edward F., ed.
2014 *Cash on the Table: Markets, Values, and Moral Economies*. Santa Fe: School for Advance Research Press.
- Foster, Robert J.
2007 The Work of the New Economy: Consumers, Brands, and Value-Creation. *Cultural Anthropology* 22(4):707–731.
2008 *Coca-Globalization: Following Soft Drinks from New York to New Guinea*. London: Palgrave MacMillan.
- Geertz, Clifford
1983 *Local Knowledge: Further Essays in Interpretive Anthropology*. Pp. 55–70. New York: Basic Books.
- Gershon, Ilana
2014 Selling Your Self in the United States. *Political and Legal Anthropology Review* 37(2): 281–295.
- Isaacson, Walter
2011 *Steve Jobs*. New York: Simon & Schuster.
- Kirsch, Stuart
2006 *Reverse Anthropology: Indigenous Analysis of Social and Environmental Relations in New Guinea*. Stanford: Stanford University Press.
2008 Social Relations and the Green Critique of Capitalism in Melanesia. *American Anthropologist* 110(3):288–298.
2014 *Mining Capitalism: The Relationship between Corporations and their Critics*. Berkeley: University of California Press.

- Lakoff, George and Mark Johnson
1980 *Metaphors We Live by*. Chicago: University of Chicago Press.
- Law, John, and John Hassard
1999 *Actor Network Theory and After*. Oxford: Blackwell.
- Manning, Paul
2010 The Semiotics of Brand. *Annual Review of Anthropology* 39:33–49.
- Ong, Aihwa, and Stephen J. Collier, eds.
2005 *Global Assemblages: Technology, Politics, and Ethics as Anthropological Problems*. Oxford: Blackwell.
- Pollman, Elizabeth
2011 Reconciving Corporate Personhood. *Utah Law Review* 2011(4):1629–1675.
- Rajak, Dinah
2011a *In Good Company: An Anatomy of Corporate Social Responsibility*. Stanford: Stanford University Press.
2011b *Theatres of Virtue: Collaboration, Consensus, and the Social Life of Corporate Social Responsibility*. *Focaal* 60:9–20.
2014 Corporate Memory: Historical Revisionism, Legitimation and the Invention of Tradition in a Multinational Mining Company. *Political and Legal Anthropology Review* 37(2):259–280.
- Riles, Annelise, ed.
2006 *Documents: Artifacts of Modern Knowledge*. Ann Arbor: University of Michigan Press.
- Riles, Annelise
2011 Too Big to Fail. *In Recasting Anthropological Knowledge: Inspiration and Social Science*. Jeanette Edwards and Maja Petrović-Šteger, eds. Pp. 31–48. Cambridge: Cambridge University Press.
- Shever, Elana
2012 *Resources for Reform: Oil and Neoliberalism in Argentina*. Stanford: Stanford University Press.
- Smith, Michael R.
2007 Levels of Metaphor in Persuasive Legal Writing. *Mercer Law Review* 58:919–947.
- Stein, Sam and Elyse Siegel
2011 Mitt Romney Heckled, Says “Corporations are People, My Friend.” http://www.huffingtonpost.com/2011/08/11/mitt-romney-heckled-iowa_n_924426.html Politics, Huffington Post, August 11, accessed August 10, 2014.
- Thomas, Kedron
2014 Corporations and Community in Highland Guatemala. *Political and Legal Anthropology Review* 37(2):231–245.
- Wagner, Roy
1991 The Fractal Person. *In Big Men & Great Men: Personifications of Power in Melanesia*. Maurice Godelier and Marilyn Strathern, eds. Pp. 159–173. Cambridge: Cambridge University Press.

Welker, Marina

2014 Enacting the Corporation: An American Mining Firm in Post-Authoritarian Indonesia. Berkeley: University of California Press.

Welker, Marina, and David Wood

2011 Shareholder Activism and Alienation. *Current Anthropology* 52(S3): 57–70.

Cases Cited

Burwell v. Hobby Lobby Stores, Inc. (573 U.S. [2014])

Citizens United v. Federal Election Commission (558 U.S. [2010])

Federal Communications Commission v. AT&T (562 U.S. [2011])

Kiobel v. Royal Dutch Petroleum (133 S. Ct. 1659 [2013])

Santa Clara Co. v. Southern Pacific Railroad Co. (118 U.S. 394 [1886])