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ARTICLE

Capitalism and the Semiotics of Corporate Personhood in a Law of Human Persons

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Abstract
The semiotic construction of corporate persons in law is key to the contemporary organization of global capitalism. The economic capacities enjoyed by corporations stem significantly from how the semiotics of corporate personhood work within domestic and international legal orders fundamentally designed for human persons. Signs (especially in documents—laws, incorporation papers, tax filings, etc.) construct corporations as legal persons—entities modeled on human persons yet differently bound to human embodiment. Corporations multiply themselves through the creation of legally independent corporate persons ("subsidiaries"), while unifying themselves through their control over these persons. Unlike human offspring, corporations' corporate offspring are easily created, may take up residence in almost any jurisdiction, and always obey their parents. The paper will discuss the implications of these features of corporations with respect to tort liability, international trade, property, taxation, and private militaries.

Keywords: capitalism; corporations; liability; performativity; personhood; taxation

Introduction

The semiotic construction of corporate persons in law is key to the contemporary organization of global capitalism. The economic capacities enjoyed by corporations stem substantially from how the semiotics of corporate personhood work within domestic and international legal orders fundamentally designed for human persons. By semiotics of corporate personhood, I mean the way signs (especially in documents—laws, incorporation papers, tax filings, etc.) construct corporations as legal persons—entities modeled on human subjects yet differently bound to human embodiment. Corporations are commonly conceptualized as economic actors, property holders, and even as property themselves. Of course, corporations wield immense influence through their control and utilization of vast resources. However, like humans, corporations are born without property. The legal formation of a corporation is not the making of a property holder, but the semiotic constitution of a person, a formally autonomous legal actor. Attention has focused on advantages stemming from the resources corporations have, but this article will concentrate on how the fundamental features of corporations advantage them, especially how they differ from those of human legal persons. Specifically, the article will show how the fundamentally semiotic character of corporate persons advantages them in the application of a variety of laws made for "natural persons," what Anglo-American law calls individual humans as legal subjects.

We can distinguish two sources of advantages corporations enjoy under laws applied similarly to humans and corporations: (1) the *vast resources* that corporations often possess; (2) the *semiotic features* of the creation, sociopolitical identity, and political relations of corporate persons.

The first source of advantage, *vast resources*, has been the focus of recent concern about corporate personhood in the US. The vast resources corporations amass give them greater capacity to exercise rights that were once possessed only by human persons as citizens. Adam Winkler has shown how corporations brought this about. From soon after the ratification of the US Constitution, corporations have successfully striven to gain the same Constitutional rights as individuals. The Supreme Court cases of *Citizens United*, which granted corporations a limited First Amendment right to participation in US elections, and *Hobby Lobby*, which extended religious liberty to corporations, are simply the most recent in a long series of decisions extending Constitutional rights to corporations. As Winkler observes, "Today corporations have nearly all the same rights as individuals: freedom of speech, freedom of the press, religious liberty, due process, equal protection, freedom from unreasonable searches and seizures, the right to counsel, the right against double jeopardy, and the right to trial by jury, among others" (2018, 8). The power of corporations to use their vast resources to exercise these rights is of great concern. However, these concerns also apply to American oligarchs as human individuals as much as to their corporate embodiments—Jeff Bezos as much as Amazon.com Inc. For example, although it is difficult to track the sources of independent expenditures in US election campaigns, ultra-wealthy individuals appear to contribute as much or more than corporations (Committee for Economic Development 2017).

This article will focus on the second source of advantages, the *semiotic features* of corporate persons that distinguish them from human persons. As I'll show below, even the least resourced corporation has capacities that Jeff Bezos as a human person does not. Corporations are empowered not only by what they have but what they are, specifically, how they differ from human persons in the ways they are created, how they are socially-politically identified, and how they relate to one another. Although both human and corporate persons are semiotic entities, corporate persons are more predominantly so (Urban and Kyung-Nan 2015). Corporate persons are the effects of performative speech acts such as a charters or articles of incorporation that are written, registered, copied, and filed; they endure through the circulation of names and seals in documents of many kinds. Especially important is that a corporate person has a different relation to human bodies than a "natural" person. From the 1890s, critics of the large corporations erupting into American life argued that corporations acted amorally because the corporation has no "soul" (Marchand 1998, 7). However, more salient to how corporations operate in the global economy is that they have no *body*. To be more precise, corporations, unlike "natural persons," do not depend on a stable

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index to a single, rigidly designated (Kripke 1980), living, embodied, and emplaced human being, with all biological, physical, social, and legal limitations. Both natural and corporate persons are constructed through semiotic processes. As I'll argue, the key difference lies in the way humans are involved in these semiotic processes. Since at least the early sixteenth century, the challenges of fitting corporations into laws regulating human persons have been diagnostic of the degree to which laws assume legal persons have a body and a soul or mind. *Habeas corpus*, literally, "you shall have the body," functionally a command from a court to bring a detained person before it, has been considered the foundation of due process since the Magna Carta (Garrett 2012). Semiotically liberated from any particular body, corporate persons can act in ways no human person can.

This article will not assess whether corporations should be persons in law (Greenfield 2006) or social analysis (Welker 2014). Rather, it will analyze the semiotic dimensions of corporate persons within the Anglo-American legal tradition and how their semiotic characteristics empower corporate activities in contemporary global capitalism. This article first discusses the semiotic processes of (1) corporation creation, (2) domicile and identifications, and (3) political relations. In a human idiom, we might call these, respectively, their birth, their sociopolitical identity, and their kinship relations. The article then turns to political and economic effects of these semiotic dimensions of corporate personhood on corporate liability, taxation, and other forms of regulation.

Before we get to these issues, however, I will discuss how corporate persons were modeled on or iconized as human legal persons within sixteenth-century English royal and judicial courts. The signs and contexts of corporate personhood have shifted since this period, but the formulations of these courts were recruited as authoritative for the legal treatment of corporations through the end of the nineteenth century, when modern corporation law was established. Throughout this article, I will draw on the ways that Anglo-American law figured corporations from the sixteenth century to the late-nineteenth century in order to defamiliarize the aspects of contemporary corporations which have become rather taken for granted in a world organized by corporations.

Semiotics of early corporate persons

Much of the popular debate on political status of corporations in the US has focused on "corporate personhood," seeing personhood as a legal status that inevitably extends the rights of human individuals to corporations. Following the *Citizens United* Supreme Court decision, voters in Missoula, Montana, and other cities passed resolutions declaring that "corporations are not human beings" (Szpaller 2011). The economist and former US labor secretary, Robert Reich, wrote, "Corporations aren't people. They can't know right from wrong. They're incapable of criminal intent. They have no brains. They're legal fictions – pieces of paper filed away in a vault in some bank" (2012). Nowadays protest signs, bumper stickers, and blog posts skeptically declare, "I'll believe corporations are people when Texas executes one."

However, personhood has been *the* fundamental feature of corporations since at least their late-sixteenth-century forms. The late-nineteenth-century legal scholars Maitland and Pollock observed that every legal system

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> seems compelled by the ever-increasing complexity of human affairs to add to the number of persons provided for it by the natural works to create persons who are not men. Or, rather, to speak with less generality and more historical accuracy, a time came when every system of law in Western Europe adopted and turned to its own use an idea of non-human persons… (1895, 469)[1]

The original goal of corporate personhood was to create a juridical person semiotically unconnected with a particular, living, human body. The word *corporation* comes from the Latin term *corporatio*, derived from *corporare*, which means "to form into a body" or "to embody." The centrality of a substitute bodiliness is clear when we recognize that the concept was a secular extension of canon law from the twelfth century. Kantorowicz (1957) described the late-medieval theological concept of *dignity*, a kind of spiritual presence that continued despite the passing of an incumbent bishop. In the late-fifteenth century, this concept of dignity was recast in a secular idiom as a "corporation sole." At issue was the sixteenth-century difference between office and person. An office was understood as status or role conferred upon a human person, who acted with the authority of the office but had personal responsibility. An office had to be inhabited and animated by a human actor. When bishops were conceptualized as office holders, the bishopric property, held by the bishop, would fall into legal limbo until a new person was ordained as bishop, which could sometimes take years. To solve this problem, canon law constructed bishops, abbots, and other ecclesiastical officeholders as "corporations sole" to transmute the office into a legal actor, a person distinct from the biological human who held it. Properties were held by the corporation sole rather than the "natural person" who occupied the office. This legal arrangement allowed the Church to maintain continuity of property control through the deaths and succession of officeholders.

In the late-sixteenth and early-seventeenth centuries, Edward Coke, the English jurist and legal theorist whose foundational writings guided English common law for several centuries, laid out the key features of corporate persons within common law. As Coke put it, "Persons… are of two sorts, *persons natural* created of God…and *persons incorporate or politique* created by the policy of man (and therefore they are called bodies politique)" (Coke [1628] 1823 L.1. C. 1 Sect. 1. 2.a, my emphasis). "Persons incorporate" were of two sorts, "sole" or "aggregate," such as guilds, towns, and universities. However, both kinds were constructed as a body created by human government ("policy") as a substitute for the single "natural" body they lacked. A corporation sole, via rituals of consecration that indexically linked the corporation to a single person, could appear in court. By contrast, "a Corporation aggregate of many is invisible, immortal, & resteth only in intendment and consideration of the Law" (Coke [1611] 1738, 32b). This invisibility prevented their participation in courts: "a corporation aggregate of many cannot appeare in person; for albeit the bodies naturall, whereupon the bodie politique consists, may be seene, yet the bodie politique or corporate itselfe cannot be seene, nor doe any act but by atturney" (Coke [1628] 1823 L. 2. C. 1 Sect. 90.

[1]Gordon (2018) analyzes contemporary examples of personhood extended to rivers, mountains, forests, and even nature as a whole. Gershon (2014) shows how contemporary US jobs seekers attempt to mimic the branding of corporations by adopting their own brand identities.

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66b). Using their corporate names "they are persons able to purchase, and to implead and to be impleaded, to sue and to be sued" (Coke [1628] 1823, L.2.C.11. Sect. 200 132.b).

Early corporations were "created by the policy of man" through the production and publication of performative documents known as "letters patent." The work of such documents, like other performative speech acts, as Michael Silverstein (1979, 2022) has shown, depends not only on the formal linguistic features of the discourse itself—such as grammatical structure or explicit performative markers—but also on a complex array of contextual conditions that enable the act to be recognized and take effect. These conditions include the social identities of the participants, the institutional frameworks authorizing the act, material characteristics of the speech "event," and the broader circulation and uptake of the discourse within specific fields of power and value.

As Coke declared, citing a precedent from 1375, "none but the King alone can create or make a Corporation" ([1611] 1738, 33b). The authorized medium of this creation were called "letters patent," which Coke often referred to as an "Act," something the king does. Monarchs typically created a corporation in response to a petition from those who hoped to be part of one, all of whom would be named individually as petitioners in letters patent. However, petitioners were always referred to in the third person ("they"). The addressees of letters patent were referenced by a greeting to an open field of interlocutors defined by any kind of encounter with the document itself (cf. Warner 2002). Elizabeth opened the letters patent creating what we now call the English East India Company (EIC) as follows:

> ELIZABETH, by the Grace of God, Queen of England, France, and Ireland, Defender of the Faith, &c. To all our Officers, Ministers and Subjects, and to all other People, as well within this our Real of *England* as elsewhere, under our Obedience and Jurisdiction, or otherwise, unto whom these our Letters Patents shall be seen, shewed, or read, greeting.

"Letters" in this context refers to a formal written document. Unlike the modern understanding of letters as personal correspondence, in this legal and historical context, "letters" referred to official documents. "Patent" derives from the Latin word *patens*, meaning "open" or "exposed." This refers to the physical format of these documents, which were delivered "open" with the seal visible, rather than closed or sealed shut. This open format signified that the document was meant to be read by all, not just the recipient.

Letters patent were graphic artifacts (Hull 2012, 259) combining discourse genre (Briggs and Bauman 1992) and typical material qualities. Letters Patent were written on parchment, a material far more expensive and durable than paper. Parchment was primarily made from the skins of sheep or goats. However, significant royal documents used calfskin, whose smoother, white, and more uniform surface and greater cost indexed the prestige of the crown and the matter of the document. The process of creating letters patent began when the petitioners submitted a formal petition to the monarch through the Privy Council. If the king or queen approved, instructions were given to draft a charter. Crown lawyers prepared the text, after which clerks of chancery drafted, "engrossed" (produced the final formal version), and certified the document.

The draft was then reviewed and approved by the Privy Council. Once finalized, the charter was “passed under the Great Seal,” meaning the Lord Chancellor affixed the monarch’s Great Seal to officially authorize it. The Great Seal, which embodied royal authority and was unique to each monarch, hung below the document as a pendant seal, attached by cords or parchment strips. For major royal grants like corporate charters, the seal was typically made with green wax and suspended by silk cords to signify the high status of the grant. The monarch’s personal signature was not required; the Great Seal served as the Crown’s legal approval.

In a variety of ways, the language of letters patent creatively indexed the enactment of the corporation and the sovereign’s active role in bringing it into being. Royal charters frequently began with a triad of formulaic phrases: “especial Grace, certain Knowledge, and mere Motion,” each phrase specifying the fulfillment of a different contextual condition of an authoritative and valid incorporation. “Especial Grace” signaled the monarch’s discretionary favor, indicating that the grant was an act of sovereign generosity rather than obligation. “Certain Knowledge” declared that the monarch was acting on full and accurate understanding, thereby shielding the grant from claims that the Crown was misinformed. “Mere Motion,” from the Latin term *mero motu*, emphasized that the act originated entirely from the sovereign’s will, not from any acquiescence to a petition or any kind of coercion.

Letters patent were dense with explicitly performative terms (Austin 1975; Silverstein 1979). The monarch’s actions were expressed in the simple present tense—not descriptively, as in “we are giving” or “we are granting,” but performatively, as in “we do give and grant.” This use of the present tense did not report an ongoing action but rather enacted it, aligning the monarch’s expressions with an order of law, what Silverstein (1993, 52) calls *nomic calibration*. In this context, the present tense served to frame the monarch’s speech as creating a durable legal reality: the very act of writing made it so. The utterance did not merely communicate a decision already made, but *was itself* the instrument by which the corporation came into being. In examining the key features of the charter in the case of *Sutton’s Hospital*, Coke himself noted this feature, observing that many provisions in the charter of incorporation referred to future conditions (e.g., succession, property, governance), but that “when he [the king] cometh to the clause of incorporation, he doth it *per verba de praesenti tempore* [by words in the present time]. ‘And the said persons and their Successors by the name, &c. We do by these presents for ever hereafter really and fully Incorporate, &c.’”

Queen Elizabeth I listed the names and titles of each of the 218 petitioners then brought the East India Company into existence with the following text:

> [We] do give and grant unto our said loving Subjects, before in these Presents expressly named, that they and every of them from henceforth be, and shall be one Body Corporate and Politick, in Deed and in Name, by the Name of *The Governour and Company of Merchants of London, Trading into the East-Indies* …

A similar use of the explicitly performative language is evident elsewhere in the charter such as when the Queen declares,

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> we do order, make, ordain, constitute, establish and declare, by these Presents, and that by the same Name of *Governor and Company of Merchants of London, Trading into the East-Indies*, they shall have Succession …

In this passage, the explicit performatives ("order," "make," "ordain," "constitute," "establish," and "declare") align an actual speech event with the enduring order of law. Here the phrase "by these Presents" is crucial—it signals that the legal transformation is effected not just by the monarch's will but through the very document itself, which stands in as agent and evidence of sovereign action.

Lastly, a witnessing formula at the end of letters patent underscored the monarch's presence and authority in enacting the corporation, for example, "In witness whereof we have caused these our letters to be made patent. Witness Ourself at Westminster, the Thirty-first Day of December, in the Three and Fortieth Year of our Reign." This conclusion affirmed the charter's authenticity through a reaffirmation of an essential condition of its effectiveness, that it expresses the will of the sovereign.

Coke, commenting on such incorporative acts, drew an analogy between incorporation and baptism, emphasizing the performative force of corporate naming. Coke metapragmatically characterized the royal naming of incorporation as like a baptism with the King as the officiant: "The name of incorporation is as a proper name or name of baptism: In this case Sutton [the petitioner] as God-father giveth the name, and by the same name the King doth baptize the incorporation." Here Coke positioned the monarch not merely as a grantor but as a kind of spiritual officiant, consecrating the corporation into legal personhood through naming.

The form of corporate names during this period reflected a desire to tether these invisible legal persons to living human persons. Like the *The Governour and Company of Merchants of London, Trading into the East-Indies*, corporations were often named by combining terms for the paramount officer and general membership: *dean* and *chapter* (a group of clergy) for church corporations; *master* or *president* and *fellows* for academic colleges; *mayor* and *comunalty* [commonality] for municipal corporations.[2] Additionally, corporate charters would always designate the first human person to occupy the paramount office (his successors would be officially chosen by the corporation), as in the EIC charter: "we do assign, nominate, constitute and make, the said *Thomas Smith*, Alderman of *London*, to be the First and present Governor of the said Company." Via office-holding a corporation would always be indexically tethered to a human person, even though the actual human persons holding the offices would change. As corporations developed more robust forms of personhood over the eighteenth century, reference to a paramount officer was increasingly dropped from names of corporations as the need for an individual, human-like supplement waned.

[2]For legal purposes, most of the oldest UK and US colleges have retained their original names in this form: *The Chancellor, Masters and Scholars of the University of Oxford; The Chancellor, Masters and Scholars of the University of Cambridge; The President and Masters or Professors of the College of William and Mary in Virginia; The President and Fellows of Harvard College; The President and Fellows of Yale College.* US Colleges formed in the mid-eighteenth century tended to drop the reference to the paramount officer: *The Trustees of Columbia University in the City of New York; The Trustees of the University of Pennsylvania.* Formed in 1804, Brown University dropped direct reference to the membership: *The Corporation of Brown University.*

Another feature of early incorporation documents is that they empowered corporations only for certain activities that were seen to serve the public interest. As in the EIC, this purpose was often included in the very name of the corporation, but the text of the letters patent included a number of specific restrictions, for example, on the amount of silver they could export and shipping arrangements. Charters required corporations to follow these provisions in addition to the common law applying to all subjects and activities.

As I will discuss below, sorting out the place of corporate persons in a law fundamentally designed for human persons has been a problem since the earliest corporations. However, early charters, declaring corporations "able and capable in law," laid out a series of speech acts within the established order of English courts that a company could and must be the speaker and addressee of. The EIC charter declared,

> … they and their Successors, by the *Name of The Governour and Company of Merchants of London, Trading into the East-Indies*, may plead and be impleaded, answer and be answered, defend and be defended, in whatsoever Courts and Places … in such Manner and Form, as any other, our liege People of this our Realm of England …

The phrases "in such Manner and Form, as any other, our liege People of this our Realm" construct the company like a human person within legal affairs.

The final factor in a performative act is what Silverstein calls the "uptake," how the addressees or audience interprets and responds to the act. In the case of letters patent, this took three forms. First, after a royal charter was issued, an official copy was "enrolled" to create a permanent royal record. Enrollment involved making a formal, official copy of the letters patent and entering it into a public ledger, "Patent Rolls," consisting of many individual letters patent sewn end to end chronologically to form a long scroll.[3] The Crown kept a certified copy for legal reference in case the original was lost or disputed. This process was a crucial state act of memory, ensuring the transaction was preserved for future legal use. Enrollment was essential for the document's legitimacy; without it, the grant might be seen as informal or legally defective. Second, the original document would be delivered to the grantees, like the EIC petitioners, who would publicize it through meetings and by having copies printed and circulated in commercial circles—and they would begin to take the actions authorized by the grant. Third, significant royal grants, such as those for trading companies or peerage titles, were often publicized through royal proclamations issued by the monarch or Privy Council. These proclamations were typically posted in public places like town halls, market squares, or church doors, making them known to society at large. Major privileges like the creation of a corporation might also be formally announced by heralds or posted on public noticeboards.

[3] The term "enrollment" comes from the Old French *enroller*, meaning "to put on a roll," referring to the long rolls of parchment used for records in medieval and early modern England.

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Creation, domicile and identifications, political relations

Despite significant changes, there are strong continuities in the fundamental semiotic characteristics of corporations from the sixteenth century to the present. What is common from the earliest incorporations until the present is the disjunction between the attributes of individuals constituting the corporation (members, shareholders) and the attributes ascribed to the corporate person. The legal limitations that are, at base, dependent on the characteristics of a single, embodied human being have mostly never applied to corporate persons. However, changes in political-economic arrangements have reshaped the consequences of this corporate characteristic. There are three key features of corporate personhood that contrast with modern human personhood in ways that are consequential for the global structuring of capitalism today: the creation of a corporate person; their domicile and identifications; and the political relations among corporations.

Creation of a corporate person

We can cast the history of incorporation as series of changes in the performative actions and the contextual conditions required for them to bring corporations into existence. As I will show, in the early sixteenth century, forming a corporate person was, along many dimensions, considerably more difficult than forming a human person. Since then, incorporation has become faster, cheaper, more routinized, less public, less exclusive, less emplaced, and requiring less human participation and political negotiation.

In the early era of business corporations, considerable work was involved in persuading a political authority to produce a declaration of incorporation. Queen Elizabeth issued her Letters Patent for the EIC after more than eighteen months of planning and energetic advocacy at her Court by a group of London Merchants. In the US, from the post-Revolutionary era through the mid-nineteenth century, incorporation was performed by state legislatures, with "private acts" replacing royal letters patent as the instrument. Forming a corporation remained a similarly arduous political process and incorporation was still considered a privilege not a right. Incorporators had to politic to get US state governments to pass a law to create each new corporation, a so-called "private act" that applied only to a specific individual, group, or entity, rather than to the public at large. Those who wanted a corporation had to persuade lawmakers and sometimes navigate opposition from competing interests. Charters could be vetoed, delayed, or modified based on political, economic, or even moral considerations. Like royal charters, legislative corporate charters declared a narrow purpose, often imposed strict limits on corporate activity. Charters also often fixed the duration of the corporation, for example, at twenty or thirty years, and included state oversight and revocation clauses.

Charters were private acts, but they required corporations to serve a clearly defined public purpose. The private acts that chartered corporations were more varied in form than English royal charters, but the private act establishing the *The Milford Rail Road and Canal Company* in Delaware in 1833 was typical. The handwritten act began by declaring that both houses of Delaware had approved the creation of a company for particular stretches of railroad and canal.

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> Sect 1 Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met, two thirds of each branch of the Legislature concurring therein, That a company shall be established for making a railroad and cutting a canal … from the town of Milford to …
>
> Sect 3 And be it enacted That the subscribers to the capital stock of such aforesaid, their successors and assigns shall be and they are hereby created a Corporation by the name "The Milford Rail Road and Canal Company" and by that name shall have power and capacity to sue and be sued … to purchase, take, enjoy, sell and alien, lands, tenements and hereditaments, goods, chattels, rights, credits and effects … to have have a common seal …

Such private acts were not required to be signed by the governor and this one came into force when the clerk for the senate noted how it had been passed (Senate, "by paragraphs,"—each paragraph was voted on; House of Representaives, "viva voce"—members said "aye" or "nay" and the presiding officer determined the result).

By the mid-nineteenth century, most states enacted what was known as "free incorporation" under general laws of incorporation that simplified and democratized the incorporation process, and abandoned the requirement that a corporation serve any specified public interest. Incorporation became a registration procedure administered by secretaries of state that did not require individual approval by the state legislature. This much less public registration procedure, centered on filing rather than publicity, remains in place today. For example, under Delaware's corporation law, the certificate of incorporation for Wal-Mart Inc. was submitted to the Delaware Secretary of State on Halloween in 1969. The certificate, authored by the incorporators themselves, was nine pages long, in Courier type, with page numbers added by hand at the bottom. The official document that performatively created the corporation, with the seal of the Secretary of State and the signatures of the secretary and assistant secretary, made no mention of the State of Delaware or the Secretary of State as an agent of the incorporation, in alignment with the view that corporations are not wholly created by the state but merely recognized by them (Horwitz 1977). The text reflexively characterizes itself as a certification that the certificate of incorporation had been "filed," a certification that itself performs the "filing" and creates the corporation. The entire text said simply,

> I, Eugene Bunting, Secretary of State of the State of Delaware do herby certify that the above and foregoing pages numbered from 1 to 9, both numbers inclusive, is a true and correct copy of Certificate of Incorporation of the WAL-MART. INC.", as received and filed in this office the thirty-first day of October, A.D. 1969 at 10 o'clock A.M.

Today, under US laws of general incorporation, there are two roles for human persons in the incorporation from the would-be corporation side. The first are the incorporators, usually attorneys, identified by name and office address, who prepare, sign, and file the corporation's Certificate of Incorporation. The second are the initial directors, also identified by name and office address. The incorporators typically have a metaphysically ephemeral role in the new corporation. The certificate of incorporation for Walmart, for example, ushered the incorporators out of the corporation at the

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instant the corporation is formed, ceding all power to the individuals specified as the initial board of directors: "The powers of the incorporators … shall cease upon filing of this Certificate of Incorporation and the business of the corporation shall be carried out by its initial Board of Directors." One of the advantages of incorporating in Delaware is that unlike others states that require several directors, Delaware requires only one director.

Nowadays, incorporation application forms can be completed online in 15 minutes, with on-line incorporation services like Stripe Atlas offering packages for as little as $250. Stripe Atlas promotes its incorporation service as "Fast, trusted, automated," inviting potential customers, "Tell Atlas about your company and co-founders in a simple, guided workflow, then generate and sign legal documents in a few minutes" and "no phone calls, faxes, or trips to the post office needed" (https://stripe.com/atlas). Stripe submits the certificate of incorporation to Delaware, which typically files it in 4–6 days.

The Stripe Atlas incorporation site asks no questions about public purpose – this legal requirement was mostly eliminated with general corporation laws. Delaware General Corporation Law §122(12) empowers corporations to "transact any lawful business which the corporation's board of directors shall find to be in aid of governmental authority." However, acting "in aid of governmental authority" is a capacity not a mandate and certificates of incorporation, like Walmart's, usually declare that the corporation may "engage in any lawful act or activity."

Domicile and identifications

Another difference between human persons and corporate persons is that it is very easy for parent corporations to choose the polity to which their corporate offspring will belong, their "domicile" in corporation law. Within the US, some corporations, without physical bodies, have even avoided some of the ethnic and racial identifications of the human individuals who form them, and thereby sidestepped some of the discrimination faced by their human incorporators.

Around 33 countries, mostly in the colonized Americas, have unrestricted *jus soli* ("right of the soil") or birthright citizenship guaranteed by constitutions or statutes (World Atlas 2024). With some restictions, a child born within these country's borders or territory is granted citizenship in that country—even if their parents are not citizens. Under the Fourteenth Amendment of the US Constitution, the US grants citizenship to any human person born on US soil, allowing citizens of other countries who are present in the US to give birth US citizens. Of course, the US, like many of these countries, restricts entry of foreign persons to the point of severely limiting the practical impact of this provision.

A growing number of countries will grant citizenship to wealthy individuals willing to invest in exchange for a controversial "golden passport" (Surak 2023). Most of these countries are micro-states, like St. Kitts & Nevis, Antigua, Malta, and Vanuatu, though larger states like Turkey, Egypt, and Cambodia have recently expanded what are known as "citizen by investment" programs. St. Kitts and Nevis calls itself the "Pioneer of the Global Investor Immigration Industry since 1984" and grants citizenship in exchange for contributions, as little as a $250,000, to the treasury or real estate or other business investments. However, worldwide only around 50,000 individuals naturalize through such programs each year (Surak 2023, 18). Estimates vary, but annually perhaps as many as two million people globally are naturalized in countries after highly restrictive, arduous, years-long processes. But by and large, the state citizenship of human persons is based on that of their parents, especially their fathers, or spouses.

In contrast, we might say that most countries have something like birthright citizenship for corporate persons, and parent corporations need not travel to birth their offspring in other countries. Some countries place restrictions on foreign corporations in some business areas, like uranium mining (Canada), broadcasting (Hong Kong), and a variety of security-related industries (China). Some countries also require that some number of board members be citizens, for example India, which requires at least one director on the board be Indian. The US government passed a law in 2024 that banned TikTok Inc.—incorporated in Delaware as a subsidiary of ByteDance headquartered in China but incorporated in the Cayman Islands—out of concerns that its identity as a Chinese corporation makes it a privacy and security risk.

For the most part, however, corporate persons are uncontroversially created in most countries with few capital requirements and little concern for which polity their parent corporation belongs to. Even China has allowed "Wholly Foreign-Owned Enterprises" with loosening restrictions since 1986. Delaware, a leader in incorporation services for more than a century, invites incorporators from anywhere:

> Any person, partnership, association or corporation, singly or jointly with others, and without regard to such person's or entity's residence, domicile or state of incorporation, may incorporate or organize a corporation. (Delaware Corporation Law Title 8, Ch. 1 Subchapter, § 101a)

In addition to elective nationality, corporations throughout the Anglo-American world have been found to lack racial and ethnic identities, though this lack could be seen to make them de facto white. Richard Brooks (2006) gives us a rich account of the Virginia case that established what came to be the US legal consensus that a corporation, as a purely legal person, cannot have a race, and that characteristics of the members/shareholders of a corporation are independent from the corporation's. The case, *People's Pleasure Park Company v. Rohleder*, began in 1906 when Major Joseph B. Johnson, a former slave, purchased land with a racial covenant that restricted its transfer to "colored persons." To circumvent this restriction, he bought the land under the name of a corporation he established, the People's Pleasure Park Company. The shareholders of the corporation were all Black and it was chartered to develop a pleasure park for Black people. The land for the amusement park had originally been plotted for a white-only development that never attracted many house buyers. Florence Rohleder, one of the few residents, sued to stop the sale to People's Pleasure Park Co. on the grounds that it would violate the racial covenant in the deeds. The Virginia Supreme court was asked to determine whether the corporation itself could be considered a "colored person" under the terms of the covenant, raising significant legal and racial questions about the application of such discriminatory clauses to corporate entities.

The Virginia Supreme Court ruled that a corporation "is a person which exists in contemplation of law only, and not physically" and "[I]n law, there can be no such thing as a colored corporation" (cited in Brooks 2006, 2025, 2047). Brooks argues that the explicit reasoning given by the court, that only a physical human body can have racial characteristics, was only part of its thinking. He observes “Southern courts at this time imbued race into things and persons with great facility,” like cemeteries, books, churches (2006, 2026). In all such cases, indexical relations were sufficient to construct anything as racially Black. In this case, the indexical relation of the corporation to its Black shareholders would have sufficed to characterize the corporation Black. However, the court was more concerned to preserve the independence of a corporate person from its human persons, since this was the foundation of limited liability.

Political relations among corporations

Finally, corporate persons nowadays can relate to one another legally in ways that human persons cannot: one corporation can completely dominate another and deprive it of its capacity for fully independent decision-making and action. The legal ability of corporations to dominate other corporations arose in the US at the end of the nineteenth century and became a global norm over the course of the twentieth century.

In the late-sixteenth and early-seventeenth centuries, however, this was not the case. Then, corporations often joined as “members” of new corporations, which only gradually transformed from membership-based to shareholder corporations. Nearly 55 London companies were original members of the Virginia Company of London under its second 1609 charter, including the Company of Haberdashers, Company of Fishmongers, and Company of Grocers, to name a few. These companies “adventured” (invested) in the Virginia Company’s enterprise and a representative of each company was given a single vote, like all the other members—aristocrats, knights and other gentry, and commoners. The one-member-one-vote governance structure precluded any member, no matter how politically powerful or wealthy, from gaining legal control. And the charter of each company defined and limited its purposes. Therefore, the question of one company controlling another could never arise, even as corporations transformed into joint-stock corporations and one-member-one-vote gave way to share-based voting (Dunlavy 2004).

In the US, even after the introduction of general incorporation laws around the country in the mid-nineteenth century, there were no laws explicitly prohibiting corporations from buying shares in other corporations. Incorporations under general incorporation laws greatly weakened the old charter-based limitations on the activities a corporation was allowed to engage in. However, it wasn’t until the 1880s that railroad and banking holding corporations began tentative experiments in stock buying in a regulatory gray zone. The more common method of combining corporations, used by Rockefeller’s Standard Oil and others, was to place them under the control of a single board of a trust.

“Combination,” as it was called in the period, raised concerns about the concentration of power, the obscurity of responsibility for actions, and the reduction in local control of business. Beyond these political concerns, one could also see a corporation’s control of another corporation as anathema to the core principle of corporate personhood. As Mark puts it, the personification of the corporation “defines, encourages and legitimates the corporation as an autonomous, creative, self-directed economic being” (Mark 1987, 1443). From another perspective, it is precisely the semiotic framing of

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subsidiary corporations as independent persons that permits their de facto domination by their parent corporations.

The Thirteenth Amendment, ratified in 1865, declared that "Neither slavery nor involuntary servitude … shall exist within the United States, or any place subject to their jurisdiction." The Thirteenth Amendment, unlike the Fourteenth Amendment, does not use the disputed term "person"—and corporations would be disinclined to argue it applies to their relations with subsidiaries.

However, some thirty years after the Thirteenth Amendment declared that no natural person could be owned by another natural person, New Jersey in 1889 and Delaware a decade later explicitly granted the ability of corporations to hold shares in any other corporation anywhere. As semiotic creatures lacking a physical body or soul, one corporation could own or control another without violating moral sanctions against human ownership. Delaware law declared,

> Every corporation created under the provisions of this Act shall have power to purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of the shares of the capital stock of, or any bonds, securities, or evidences of indebtedness created by, any other corporation or corporations of this State, or any other State, and while the owner of such stock to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon. (Delaware General Corporation Law Section 133, 1899)

Since then, corporations have been allowed to acquire controlling stakes in other corporations and reproduce through the creation of new subsidiaries, corporations of which they hold a controlling share position. The 1899 Delaware corporation law became a blueprint for corporation law throughout the US, and this principle underpins much of the global corporate landscape. Despite the gradual acceptance of the domination of corporate parents over their children, the US and the European Union severely limit what we might think of as marriages, namely circular shareholding or cross-shareholding arrangements in which independent corporations own significant portions of each other stocks.

Although parent corporations usually allow their subsidiaries some degree of autonomy, they strive to create an organizational unity dominated by the parent corporation through a variety of socio-semiotic means: meetings and reporting, board membership, ethics and compliance policies, standardized processes, cultural formatting, and much more. Registered corporation documents semiotically translate the hierarchical organizational unity constructed by these efforts into two formally autonomous, self-directed economic agents. A 2022 analysis showed that some 370,320 corporations globally are subordinated to 6,186 major corporations (Barklie 2022). The corporation is born free, and everywhere it is in chains.

Corporate persons in global capitalism

Making and assembling the vast array of elements to construct a large multinational corporation—offices, factories, employees, trademarks, debt, shares, shareholders, documents, technology infrastructure—is a slow process. However, I have argued that corporate legal persons, unlike human legal persons, can be formed quickly, cheaply, and with little effort through a predominantly semiotic process. And, freed from the restrictions placed on embodied persons, corporations can reproduce themselves in almost any sovereign country or jurisdiction with legally independent offspring, which they nevertheless control absolutely. Let me now turn to sketch some of the ways the semiotics of corporate personhood structure contemporary global capitalism.

Limitation of liability

The limitation of liability for shareholders of corporations, often considered to be a fundamental feature of corporations, is a direct outgrowth of the construction of corporations as persons. It's common to talk about corporations having limited liability, but it would be more accurate to say that corporations have *separate* liability, because they are persons independent from the persons who make them up (an incumbent, freemen, fellows, or shareholders). The limitation of liability of stockholders is explicitly granted in most corporation law. For example, Delaware General Corporation Law states that "the stockholders of a corporation shall not be personally liable for the payment of the corporation's debts" (DGCL Section 102(b)(6)). However, more fundamentally, shareholders' limitation of liability can be seen as outgrowth of the semiotic framing of corporations as independent persons within an individualistic moral framework in which the fundamental assumption is that one person is not responsible for the actions of another person.

We could say the corporate person itself, unlike a human person under US laws, has almost *no limitation of liability* at all. By contrast, liability is limited for human persons in a variety of Anglo-American legal contexts. Personal bankruptcy law limits the liability of a debtor, allowing, for example, individuals to keep a primary residence up to a certain value and other personal property. Medical malpractice laws often cap the damages a patient can recover from health-care providers. So-called Good Samaritan laws protect individuals who voluntarily provide assistance in emergency situations.

In all these cases, the law balances the responsibility of the actor against some moral or social good: the dignity and welfare of the individual (personal bankruptcy); ensuring the availability and manageable cost of medical care; and encouraging bystanders to help in emergency situations. Some legal scholars have similarly argued that limited liability developed to serve a range of advantageous functions such as facilitating investment, managerial freedom, and a market for shares (e.g. Easterbrook and Fischel 1985). However, while large seventeenth- and eighteenth-century corporations, participating in vibrant stock markets, exercised limited liability in practice, it was not granted by charter or law.

Today, when a corporation (1) commits outrageous misconduct, like fraud or another violation of the law, and (2) is clearly controlled by another corporation, lawsuits sometime successfully hold the controlling parent corporation liable, but this act, known as "piercing the corporate veil," is extremely rare. We can compare these to cases in which one human person is held liable for the actions of another despite not being directly involved (such as parents for the acts of minor children or an accomplice in a crime). Such liability is difficult to show since the presumption is strong that liability must be personal.

Corporations large and small use subsidiaries to shield themselves from responsibility. Small construction corporations often set up a separate corporation for each job, so if something goes wrong, the client can only sue a shell corporation with no assets.[4] This is used even more effectively by large multinational corporations. Sawyer (2006) follows the legal dispute about the relationship between Ecuadoran subsidiaries and their parent, Texaco, itself a subsidiary of Chevron. Similarly, in a case brought in The Hague Civil Court by Nigerian farmers and fisherman against Royal Dutch Shell, the parent corporation escaped most of its liability for the pollution and the human rights violations connected with its oil extraction operations by arguing that it was its Nigerian subsidiary that was responsible (Roorda 2021). The effort to hold the parent Shell corporation liable, piercing the corporate veil, turned on the semiotic matter of whether it was directing its subsidiary to take actions that led to the harms, a construction of the case that treats each corporation as independent and then examines the influence of the parent.

Suits against pharmaceutical corporations in the US show even more clearly the consequences of fitting corporations into laws made for human persons. First, in developing pharmaceuticals, a corporation (or group of them) is responsible for R&D and every phase of clinical testing—so a subsidiary would provide no liability protection. Further, to simplify greatly, misdeeds of pharmaceutical corporations are prosecuted under malpractice law designed to sanction individual doctors: the remedy is not only to compensate those harmed but to prevent future harm by revoking a doctor's license to practice medicine. In this legal framework, pharmaceutical corporations found liable for harms would not only have to compensate victims but would be prohibited from selling drugs. But this would be a death sentence for corporations doing valuable work. So the Food and Drug Administration (FDA) has devised a workaround, also dependent on the concept of corporate personhood. The parent company continues conducting business with the government while a subsidiary with no offices or employees is semiotically conjured for the purpose of pleading guilty to the malpractice (Evans 2009)—it is then sanctioned and driven out of business. For example, in 2008 Pfizer was found guilty of fraudulently promoting a drug, Bextra, an anti-inflammatory, off-label use that was not approved by the FDA. Instead of charging Pfizer, prosecutors charged Pharmacia & Upjohn Co. Inc.—a newly-created Pfizer shell company subsidiary whose only function was to act as a corporate scapegoat and plead guilty. This circumventing of liability is analogous to "being charged with a crime" but having "an imaginary friend [take] the rap" (Griffin and Segal 2010).

Tax avoidance

The ability of corporations to translate integrated organizational operations into transactions between formally autonomous corporations is key to avoiding taxes and increasing the profits that parent corporations earn. The US Securities and Exchange Commission and the Internal Revenue Service allow corporations to differently enact themselves in their statements. In their statements of financial gains, corporations frame disparate activities as components of an operationally unified parent-subsidiary

[4] I thank Greg Urban for this observation.

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firm. In annual reports for investors and Security and Exchange Commission filings, corporations report what are called "book" profits, the profits earned worldwide, including from their subsidiaries. However, for purposes of tax filing, corporations translate the *sharing* between parts of their organizations (Widlock 2013) into *transactions* (Strathern 1988) between formally autonomous corporate persons in different jurisdictions—as if semiotically recategorizing their left and rights hands as belonging to different persons, in different locations. This allows a corporation to take earnings from high-tax countries and accumulate them in the accounts of its subsidiaries in low-tax countries. According to one estimate, US corporations had accumulated $2.4 trillion in low-tax jurisdictions by 2017 (Clemente, Blair, and Trokel 2017). Based on 2009 customs data, the Organization for Economic Co-operation and Development reported that 48 percent of US goods imports and around 30 percent of goods exports were conducted through intra-firm trades (Ylönen and Teivainen 2018) that help corporations avoid taxation. Contemporary "free trade" trade arrangements roll back state regulation and allow it to be regulated by corporations.

There are two basic arrangements that achieve this. Both involve the semiotic framing of corporate organizations and actions, for different addressees, as either one entity or several entities. The first involves sourcing commodities through corporate subsidiaries in low-tax countries. The subsidiary pays market rates for a commodity but sells it to the US parent at a high so-called "transfer price," above-market rate. A "transfer price" is the price of a good or service that is exchanged between companies under common control. The US corporation sells its product in the US but, since it has paid so much for the commodity, it shows little profit taxable in US. Profits accumulate in the accounts of the virtually untaxed subsidiary (Figure 1). Starbucks, for example, sources its beans through a its own Swiss subsidiary, Starbucks Coffee Trading Company Sàrl, which buys beans at market rates and sells them to the US parent, Starbucks Corporation, at a mark-up of 15–18 percent (CICTAR 2025), and keeps profits earned from US coffee sales. (Beans themselves, of course are never shipped through Switzerland.) The US parent corporation claims the profits of the subsidiary in its investor reports but not in its US tax filings.

A similar arrangement uses the transfer or licensing of intellectual property to a subsidiary in a low-tax country. Intellectual property is a very broad category, including trademarks, service marks, copyrights, patents, domain names, trade dress, trade secrets, and proprietary technologies. In addition to its trademarks, Starbucks, for example, holds patents for its lids, shelves, card stands, methods of brewing, and workflow software. To use the IP that it developed, the US parent corporation must now pay IP royalty payments to its subsidiary (Figure 2) to license the software for sales in the in the US, often at very high transfer prices.

Microsoft transferred much of its IP to one of its subsidiaries in Puerto Rico after negotiating a virtually 0 percent tax rate with the government of the US territory. The sales producing Microsoft revenues are coming from mainland US customers but US Microsoft earns little after paying licensing fees to its Puerto Rican subsidiary. This arrangement minimizes taxable income in the US mainland by accumulating profits in the accounts of the subsidiary (Figure 3), which has enabled it to avoid as much as $29.8 billion in US taxes (Davalos 2023; Ehrenfreund 2017). There are more inventive versions of these schemes. One,

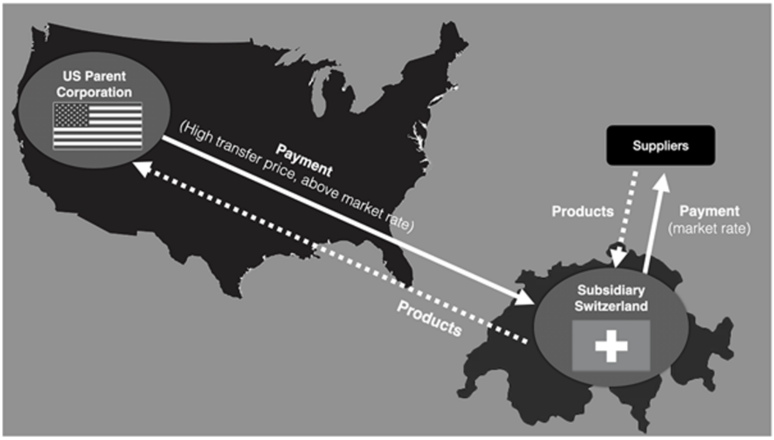

Figure 1. Sourcing: US parent corporation overpays for products sourced through its own subsidiary in a low-tax jurisdiction.

Figure 2. Intellectual property (IP) transfer: US parent corporations transfers IP to subsidiary in low tax jurisdiction and then overpays for license to use it.

known as the Double Irish because it involved the formation of two Irish corporations, was pioneered by Apple in the late 1980s and quickly adopted across the tech industry until it was finally barred by the European Union in 2020. The scheme took advantage of the fact that most countries, including the US, consider the "domicile" of a corporation to be the one it was registered in; but Ireland determined the domicile (and tax liability) of a corporation to be the country it was managed from. If you incorporated a company in Ireland but managed it from Cupertino, for tax purposes your corporation was blissfully stateless. A refinement on the Double Irish rid corporations of a minor Irish tax by adding a Netherlands corporation to the arrangement and was known as the "Double Irish with a Dutch Sandwich." Most tech corporations including

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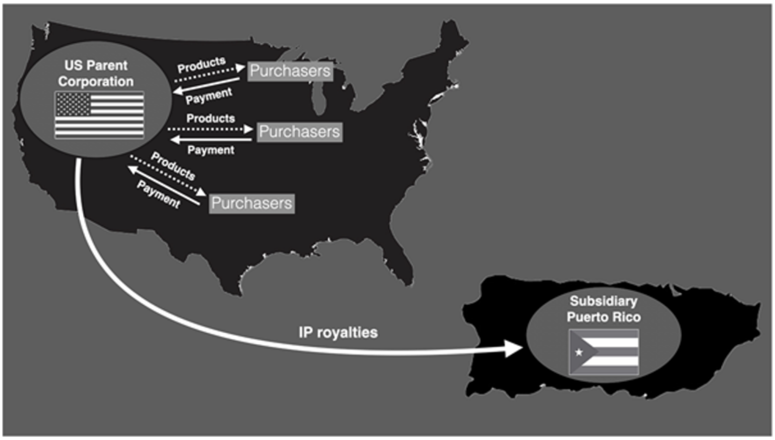

Figure 3. Intellectual property (IP) transfer: US parent corporation pays revenues from US sales as royalties to subsidiary for use of the IP.

all the FAANGs, Facebook (Meta), Apple, Amazon, Netflix, and Google (Alphabet), and many other corporations whose profits can be attributed to intellectual property used such arrangements to minimize taxes.

Avoidance of regulation and other political problems

My last example shows how these same characteristics of corporate personhood allowed the military corporation Executive Outcomes (EO) and its cloud of partner corporations to evade regulation and disguise its activities from political scrutiny—as well as limit its liability and avoid taxation. EO was a UK registered private military corporation operating in Africa in the 1990s, the central corporation of a what we could call a "corporate collective" comprised of more than 20 corporations incorporated in the UK, South Africa, Canada, Isle of Man, Gibraltar, Channel Islands, and British Virgin Islands.

These corporations served a variety of functions: military attack aircraft, air transport, mining, ground forces, telecom, and logistics (Singer 2003). Corporations in this collective (1) shared most of their board members, and/or (2) were owned by EO, and (3) coordinated business arrangements and military activities. Many of them shared the same UK office address (despite incorporations in other countries). Occasionally replies to communications to one corporation would accidentally be sent out on the letterhead of another. The business model and operations of this corporate collective depended on the semiotic separation of all its member corporations, via legal, documentary, and sartorial means.

EO would contract for military services with African governments under threat from insurgencies such as Uganda and Sierra Leone; the governments would pay the mineral extraction corporation in this group through concessions; the mining corporation in turn paid EO and its many partner corporations for extensive military operations involving heavy weaponry like large-scale Soviet attack helicopters (Singer

2003). Although its business and military activities were highly coordinated, no one country could regulate the range of its activities. EO also avoided the political problems that a continued presence in a country would present. EO would deploy for the active combat (defeat counterinsurgents, take back mining facilities), settle things quickly, then announce it was leaving. Soldiers would then take off uniforms with EO insignias and put on the uniforms of another corporation (LifeGuard). This process would repeat, as one corporation succeeded another with unchanged staff, so leaders of countries could say that they had not invited in a long-term foreign military presence.

Conclusion

If corporations have long been conceptualized as persons, their lack of a grounding on a single, rigidly designated, embodied, and emplaced human being has always been recognized as a problem for their participation in economic and legal processes designed for human persons. In the early 1600s, Coke worried not about liability, taxation, and jurisdictions but about a central mode of regulation at the time: *homage*. In sixteenth-century England, homage was a formal, semiotic act through which a vassal publicly acknowledged loyalty and subordination to a lord, often involving ritual gestures such as kneeling and a spoken oath. Though increasingly legalistic by this time, especially in matters of land tenure or ecclesiastical office, it remained a performative action for securing rights or titles—particularly for those holding land directly from the Crown. Coke argued that corporations could not perform homage, because “homage must be done in person, and a corporation aggregate of many cannot appeare in person … the bodie politique or corporate itselfe cannot be seene” ([1628] 1823, L.2. C.1, Sect. 90, 67a).

Like Coke much of the analysis today focuses on how the fundamental features of corporations limit (or should limit) what they do. Much less attention has been paid how these same features enable corporations. Let me end with two observations. First, we often see that actors are disadvantaged when subject to laws written for another type of actor. By contrast, the semiotic features of corporate personhood allow corporations to thrive within legal orders designed for human legal persons. Second, the activities of corporations show the degree to which the working of our laws—well beyond obvious things like writs of habeas corpus and incarceration—are designed for legal persons with a fixed index to a single, rigidly designated physical human body, with all its biological, social, and legal limitations. The semiotic character of corporate persons, which allows them to multiply and coordinate themselves, generates both centralization and unaccountability in our current political economic order.

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