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## History and the Anthropology of Firms: A Legal Perspective

### Abstract

Many years ago, social theorists noted the wary, dawning recognition on the part of both historians and anthropologists of the possibility that "history itself was inherently cultural, and culture, inherently historical" (Dirks, Eley, and Ortner, 1994:6). There was some hesitation at the start of anthropology's version of a "historic turn" (McDonald 1996), a shift in the field that, as Sherry Ortner observed, might have been characterized equally validly as "a move from structures and systems to persons and practices" as the more obvious "shift from static, synchronic analyses to diachronic, processual ones" (1994:402). Anthropologists' wariness of the unruly prodigal concept of "culture" was also encouraged by this historical shift.

### Disciplines

Anthropology | Business | Business Organizations Law | Cultural History | Law | Legal

## History and the Anthropology of Firms: A Legal Perspective

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Many years ago, social theorists noted the wary, dawning recognition on the part of both historians and anthropologists of the possibility that “history itself was inherently cultural, and culture, inherently historical” (Dirks, Eley, and Ortner, 1994:6). There was some hesitation at the start of anthropology’s version of a “historic turn” (McDonald 1996), a shift in the field that, as Sherry Ortner observed, might have been characterized equally validly as “a move from structures and systems to persons and practices” as the more obvious “shift from static, synchronic analyses to diachronic, processual ones” (1994:402). Anthropologists’ wariness of the unruly prodigal concept of “culture” was also encouraged by this historical shift. An historical perspective raises questions about the durability, contingency, and cohesiveness of “culture” (Dirks et al 1994). With the shift to historicity occurring, as it did, simultaneously with a number of other challenges and changes to the discipline (perhaps most notably the insistent incursions upon anthropological theory of postmodernist critiques), some measure of disciplinary discomfiture was to be expected. Much of this self-conscious reassessment persists and is apparent in anthropology’s intermittent disciplinary re-positioning and boundary-policing in relation to the discipline of history, a theme which has been present ever since Maitland’s claim that “anthropology must become history or be nothing” (Comaroff 1982:142, paraphrasing Maitland 1936: 249). An equally present anxiety appears in “studying up” to gain access to and represent elites, such as the “bosses” of business firms, who often tend to be the focus of the work of business anthropologists (e.g., Carrier 2013; see also Nader 1972, Gusterson 1997). The combination of these two persistent forms of disciplinary discomfort contributes to a uniquely generative ground for a reconsideration of the potential for methodological cross-fertilization between anthropology and history with respect to business enterprise.

When anthropologists get uncomfortable, it seems, they get introspective. This is as true for the growing importance of anthropological ways of looking at business today as it was for the earlier engagement of anthropologists with historiography. As historiography was becoming an established, valued tool for anthropologists, anthropologists debated the proper relationship between the two disciplines. For Jean and John Comaroff, using history involved reading

archival records ethnographically, on the theory that “once the motives, intentions, and imaginings of persons living or dead are allowed to speak from the historical record, it becomes impossible to see them as mere reflections of monolithic cultural structures or social forces” (1991:10). This kind of history was at odds with a history that made fine distinctions between “reality” and “representation,” as well as with the persistent popular division of representation into realism (factual, documentary) and rhetoric (evaluative, interpretive, expressive). If forms of representation were “part of culture and consciousness,” then historical consciousness could not be confined to “one expressive mode” (1991:35). Meanwhile, Ortner and others argued that the key theoretical difficulty giving rise to the day’s anthropological insecurities was the seeming inability to account for several interrelated features of social life: (1) the way that society, while “a human product,” seemed also to bind the scope of human action and thought; (2) the way that society (as an earlier anthropology had emphasized) was “an objective reality” that was nonetheless somehow also constructed; and (3) the way that human beings, in one view the authors of society, were also and at the same time “a social product” (1994:402, quoting Berger and Luckmann 1967:61). An uncritical anthropological accounting of history alone – history as a preface – was no solution to this conceptual difficulty. The efforts of Ortner, Dirks, and others promoted a variety of historical anthropology characterized by “a kind of dislodging of a whole series of assumptions about what culture is and how it works” (Dirks et al 1994:6; see also Spear 1994).

Now, however, the “depthless subject with no sense of history” lamented by Dirks et al (1994:14) has been revealed anew as problematic. Today, in the wake of a seemingly endless tide of corporate and financial perfidy and disaster, business institutions (and the people acting within them) have tended to become a flat subject for too many anthropologists. We, of course, exclude the editors, contributors, and readers of the *Journal of Business Anthropology*, whose work has valiantly countered this trend within mainstream anthropology.

In 2009, Marina Welker described two dominant analytics in the critical anthropological literature of business entities: a “bad apples” approach that focused on individuals – CEOs or financiers as supermen and/or psychopaths – and an institutional approach that diminished the importance of individual agency, instead pointing to larger forces in examining the negative social effects of firms. The dominance of these two approaches meant that even when the individuals involved with the management and governance of corporations were imagined as “coherent political actors” (Dirks et al 1994:14), they were either inflated into the bad actors whose personalities overwhelm the businesses in which they operate or deflated into actors whose political and moral preferences were necessarily ineffective in the face of the deterministic force of shareholder value (Welker 2009:148). The analysis of the innards of the

business firm becomes, in either of these views, nursery rhyme simple: if the firm is bad, and you have directive agency within it, you must be bad. If the firm is bad, and you are good, you must lack the agentive power to change its behavior. It becomes very difficult to imagine the firm otherwise.

Here is where the early debates regarding to the importance of individual agents in understanding the persistency and contingency of cultural life gain new legs. The historical anthropologies developed by Comaroff and Comaroff (1991, 1992), Ortner (1989), Moore (1987), and others who have followed them hold aloft at once the “real” and the “constructed” nature of social life. They demonstrate that an examination of the quotidian practices of seemingly seamless, timeless entities will be one way to work toward their demystification, their disaggregation – and their historicization (cf. Orts forthcoming). We believe that the same will be true in particular of anthropological investigations of business firms in their historical context, which should include an appreciation of their intricate legal structures and complex evolution.

Teemu Ruskola (2014) advances a similar point in relation to comparative legal research on the business corporation, emphasizing the necessity of efforts to render and keep visible the historical contingency and the cultural specificity of liberal theories of enterprise organization. The stakes are great. The *Citizens United* case, for example, might be considered a paradigmatic result of a “just-so” reading of the idea of business firms as legal persons and the possibilities of corporate citizenship (Sepinwall 2012). On a close analysis, however, the case reveals significant theoretical questions about how we conceive of the social construction of business firms and the legal rules that govern and constrain them (Orts 2013: 239-50). Anthropological research on business might be seen to play a similar role, contextualizing and denaturalizing assumptions implicit in liberal theory. Greater attention to comparisons and historical context will likely bring more critical attention to the way we – anthropologists, historians, legal scholars, and the public – imagine and naturalize business firms.

The paucity of counter-narratives to entrenched economic theories of the firm has limited a number of disciplines (Orts 2013: ix-xviii). Legal scholars have worked to develop legally grounded theories of the corporate form, its “personality,” and its place in society (Ho 2012; Iwai 1999; Millon 1990, 2001; Orts 1998, 2013; Ruskola 2000, 2005, 2014). Anthropologists have also begun to work to develop alternative theories (see, e.g., Aiello and Brooks 2011, Dolan et al 2011, Foster 2010, Gordon forthcoming; see also Urban and Koh 2013). Part of the continuing task of theorizing contemporary firms involves a descriptive analysis of how social and ethical commitments become drawn and redrawn by the various participants in business firms, including owners such as shareholders and creditors, managers and other employees, and other

constituent groups (Gordon forthcoming; Orts 2013). Historically and legally informed ethnographic research is particularly well-suited to make contributions to this field.

To be sure, the business firm – or more specifically, and more usually, the multinational corporation – has been commonly cast as a type of acceptable anthropological “other.” Despite the importance of business firms and corporations in our daily lives, and despite their powerful presence in ethnographic explorations of the effects of global capitalism – and despite, too, decades of real interest of ethnographers in the effects of corporations (e.g., Fortun 2001, Kirsch 2006, Nash 1989, Sawyer 2004), particularly in Japan (e.g., Allison 1994, Clark 1979, Moeran 1996, Rohlen 1974) – there have nevertheless been very few anthropological views on these organizations that move beyond an exegesis of their harmful effects. As Welker et al. note,

We have yet to see the emergence of a sustained line of scholarship and inquiry that would extend to the corporation the same critical weight or significance accorded the nation-state. . . . To date, one cannot discern a coherent set of research questions or competing schools of thought characterizing the anthropology of corporations. (2011:s4-s5)

Anthropology has lacked, in other words, both a depth and a diversity of approaches to the question of corporate and other business forms. Welker (n.d.) has analogized the difficulties in the anthropological study of the corporation to the difficulty that Abrams noted in scholarship of the nation-state. Scholars, while ostensibly disaggregating the state in theory, found it necessary in practice to act as if “the state” were a bounded, agentive, solid entity (Abrams 1988). Welker likens this to current characterizations of the corporation: failing to demystify it, anthropologists have tended to represent it as smooth, all-powerful, and unknowable (n.d.:7-10; Cf. Ballard and Banks 2003:293-4, Subramanian 2010:480). Unlike the anthropology of the nation-state, however, the anthropology of corporations and other business firms has remained ahistorical and under-theorized.

Yet anthropologists are particularly well-suited to destabilize the paradigmatic conception of business firms as all powerful, all encompassing, and an overwhelming force – a notion that Welker et al. conjecture is connected to “a parochial view that derives from the peculiar legal career of corporations in the United States” (2011: s5). The suggestion of these and other anthropologists of large-scale elites for countering the aggrandizing effect of more abstracted impressions of business firms is underlain by the same methodological insight reached by Ruskola (2014) – the understanding that careful attention to the quotidian particularities of business firms can be central in historicizing them (see e.g. Aiello and Brooks 2011, Ehrenriech 2010, Miyazaki and

Riles 2005). The idea is to “shift away from default conceptualizations of corporations as solid, unified, self-knowing, and self-present actors that relentlessly maximize profits and externalize harm,” as well as to turn from an overemphasized denunciation of business harms at the expense of a more agnostic inquiry that may include the social benefits of business as well (Welker et al 2011: s5-s6).

We recommend an historical anthropology of business that concerns itself with the shifting stability of business enterprise (Gordon forthcoming), as well as a theoretical view that holds simultaneously in sight “top-down” and “bottom-up” perspectives on the history and present context of business firms (Orts 2013: 9-17, 253-56). As the development of the use of historical methodologies in anthropology makes clear, the various ways in which one might engage with the shards and the stories of the past have deep theoretical implications in addition to the practical ones. Historicizing the business firm, in steering clear of representations characterized by either a monolithic smoothness or an unrealistic supposition of contingency and malleability, requires, as Ortner argued, “the retrieval of both dimensions – everyday practice and tacit consciousness on the one hand, purposeful projects and strategic consciousness on the other” (2001:82). In the process, our knowledge of business institutions and the participants in them will likely be advanced in surprising and deeply revealing new directions.

## References

- Abrams, Philip 1988. “Notes on the difficulty of studying the state (1977).” *Journal of Historical Sociology* 1(1): 58-89.
- Aiello, Leslie C., and James F. Brooks, eds. 2011. “Corporate lives: new perspectives on the social life of the corporate form.” *Current Anthropology* 52(S3).
- Allison, Anne 1994. *Nightwork: Sexuality, pleasure, and corporate masculinity in a Tokyo hostess club*. Chicago: University of Chicago Press.
- Ballard, Chris and Glenn Banks 2003. “Resource wars: the anthropology of mining.” *Annual Review of Anthropology* 32: 287-313.
- Benson, Peter, and Stuart Kirsch 2010. “Capitalism and the politics of resignation.” *Current Anthropology* 51(4): 459-486.
- Berger, Peter, and Thomas Luckmann 1967. *The social construction of reality*. Garden City, New York: Doubleday.
- Carrier, James G. 2013. “Business Literature and Business Understandings of Business.” *Journal of Business Anthropology* 2(2): 120-32.
- Cattelino, Jessica R. 2011. “One hamburger at a time: revisiting the state-society divide with the Seminole Tribe of Florida and Hard Rock

- International." *Current Anthropology* 52(s3): s137-s149.
- Clark, Rodney 1979. *The Japanese company*. New Haven: Yale University Press.
- Comaroff, John L. 1982. "Dialectical systems, history and anthropology: Units of study and questions of theory." *Journal of Southern African Studies* 8(2): 143-72.
- Comaroff, Jean, and John L. Comaroff 1991. *Of revelation and revolution, volume 1: Christianity, colonialism, and consciousness in South Africa*. Chicago: University of Chicago Press.
- Comaroff, John L., and Jean Comaroff 1992. *Ethnography and the historical imagination*. Boulder: Westview Press.
- Dirks, Nicholas B., Geoff Eley, and Sherry B. Ortner 1994. "Introduction to Culture/Power/History." *Culture/Power/History*: 3-46.
- Dolan, Catherine, and Dinah Rajak 2011. "Introduction: ethnographies of corporate ethicizing." *Focaal* 60(1): 3-8.
- Dolan, Catherine, Christina Garsten, and Dinah Rajak, eds. 2011. "Corporate ethicizing." *Focaal* 60(1).
- Ehrenreich, Susanne 2010. "English as a business lingua franca in a German multinational corporation: meeting the challenge." *International Journal of Business Communication* 47(4): 408-431.
- Ferguson, James 1994. *The anti-politics machine*. Minneapolis: University of Minnesota Press.
- Fortun, Kim 2001. "Advocacy after Bhopal." *Environmentalism, Disaster, New Global Order*: Chicago and London: University of Chicago Press.
- Foster, Robert 2010. "Corporate oxymorons and the anthropology of corporations." *Dialectical Anthropology* 34(1): 95-102.
- Gordon, Gwendolyn, forthcoming. "The contingent corporation: ethnographic insights into the nature of the firm."
- Greenhouse, Carol 1996. *In a moment's notice: Time politics across cultures*. Ithaca: Cornell University Press.
- Gusterson, Hugh 1997. "Studying up revisited." *PoLAR: Political and Legal Anthropology Review* 20(1): 114-119.
- Ho, Virginia Harper 2012. "Theories of corporate groups: corporate identity reconceived." *Seton Hall L. Rev.* 42: 879-951.
- Ho, Virginia Harper 2013. "Of enterprise principles and corporate groups: Does corporate law reach human rights?" *Columbia Journal of Transnational Law* 52: 113-72.
- Iwai, Katsuhito 1999. "Persons, things and corporations: The corporate personality controversy and comparative corporate governance." *American Journal of Comparative Law* 47: 583-632.



- Jain, S. Lochlann 2011. "Survival Odds." *Current Anthropology* 52(S3): s45-s55.
- Kirsch, Stuart 2006. *Reverse anthropology: Indigenous analysis of social and environmental relations in New Guinea*. Stanford: Stanford University Press.
- Maitland, F.W. 1936. *Selected essays*. Cambridge: Cambridge University Press.
- McDonald, Terence J., ed. 1996. *The historic turn in the human sciences*. Ann Arbor: University of Michigan Press.
- Merry, Sally Engle 2011. "Measuring the world." *Current Anthropology* 52(S3): s83-s95.
- Millon, David 1990. "Theories of the corporation." *Duke Law Journal* 1990: 201-262.
- Millon, David 2001. "The ambiguous significance of corporate personhood." *Stanford Agora: An Online Journal of Legal Perspectives* 2.
- Miyazaki, Hirokazu, and Annelise Riles 2005. "Failure as an endpoint." *Global assemblages: Technology, politics, and ethics as anthropological problem*: 320-31.
- Moeran, Brian 1996. *A Japanese advertising agency: An anthropology of media and markets*. London: Curzon.
- Moore, Sally Falk 1987. "Explaining the present: Theoretical dilemmas in processual ethnography." *American Ethnologist* 14(4): 727-36.
- Nader, Laura 1972. "Up the Anthropologist." *Reinventing Anthropology*: 284-311. New York: Pantheon Books.
- Nash, June C. 1979. "Anthropology of the multinational corporation." *The politics of anthropology: From colonialism and sexism toward a view from below*: 421-446.
- Nash, June C. 1989. *From tank town to high tech: The clash of community and industrial cycles*. Albany: SUNY Press.
- Ortner, Sherry B. 1989. "Cultural politics: Religious activism and ideological transformation among 20th century sherpas." *Dialectical Anthropology* 14(3): 197-211.
- Ortner, Sherry B. 1994. "Theory in anthropology since the sixties." *Culture/Power/History*: 372-411.
- Ortner, Sherry B. 2001. "Specifying agency: The Comaroffs and their critics." *Interventions* 3(1): 76-84.
- Orts, Eric W. 1998. "Shirking and sharking: A legal theory of the firm." *Yale Law & Policy Review*, 16: 265-329.
- Orts, Eric W. 2013. *Business persons: A legal theory of the firm*. Oxford: Oxford University Press.

- Orts, Eric W. (forthcoming). *Rethinking the firm: An interdisciplinary interpretation*. Oxford: Oxford University Press.
- Partridge, Damani James 2011. "Activist Capitalism and Supply-Chain Citizenship." *Current Anthropology* 52(S3): s97-s111.
- Rohlen, Thomas P. 1974. *For harmony and strength: Japanese white-collar organization in anthropological perspective*. Berkeley and Los Angeles: University of California Press.
- Ruskola, Teemu 2000. "Conceptualizing corporations and kinship: Comparative law and development theory in a Chinese perspective." *Stanford Law Review* 52: 1599-1729.
- Ruskola, Teemu 2005. "Home economics: What is the difference between a family and a corporation?" *Rethinking commodification: cases and readings in law and culture*. New York: New York University Press.
- Ruskola, Teemu 2014. "What is a corporation? Liberal, Confucian, and socialist theories of enterprise organization (and State, family, and personhood)." *Seattle University Law Review* 37: 637-662.
- Sawyer, Suzana 2004. *Crude chronicles: Indigenous politics, multinational oil, and neoliberalism in Ecuador*. Durham: Duke University Press.
- Sepinwall, Amy J. 2012. "Citizens united and the ineluctable question of corporate citizenship." *Connecticut Law Review* 44: 575-1725.
- Silbey, Susan S., and Austin Sarat 1987. "Critical traditions in law and society research." *Law and Society Review* 21(1): 165-174.
- Spear, Thomas 1994. "History or anthropology?" (book review). *Journal of African History* 35(1): 133-34.
- Subramanian, Ajantha 2010. "Comment." *Current Anthropology* 51(4): 479-480.
- Urban, Greg and Kyung-Nan Koh 2013. "Ethnographic research on modern business corporations." *Annual Review of Anthropology* 42: 139-58.
- Welker, Marina, Damani J. Partridge, and Rebecca Hardin 2011. "Corporate lives: New perspectives on the social life of the corporate form." *Current Anthropology* 52(S3): s3-s16.
- Welker, Marina 2009. "'Corporate security begins in the community': Mining, the corporate social responsibility industry, and environmental advocacy in Indonesia." *Cultural Anthropology* 24(1): 142-79.
- Welker, Marina n.d. "Notes on the difficulty of studying the corporation" (Unpublished manuscript, n.d., part of the Third Annual Adolf A. Berle Jr. Symposium).

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