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The Unemotional Corporation

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Recommended Citation

Sepinwall, A. J. (2014). The Unemotional Corporation. *INSEAD Knowledge*, 1-3. Retrieved from https://repository.upenn.edu/lgst_papers/73

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The Unemotional Corporation

Abstract

Because corporations are not capable of experiencing emotions, we should stop thinking of them as persons.

Corporations are monsters – not in the sense that they are hell-bent on evil but in the sense that they lack certain capacities that are the hallmarks of our humanity. In particular, and like most supernatural creatures populating both mythology and the movieplex, corporations lack the ability to appreciate what it might feel like to be the victim of a wrong and, not unrelatedly, the ability to feel bad when they do wrong. To put it in our folk terminology, the corporation lacks a heart.

Disciplines

Banking and Finance Law | Business Organizations Law | Commercial Law | First Amendment | Law | Organizations Law



KNOWLEDGE

RESPONSIBILITY

The Unemotional Corporation

Amy J. Sepinwall, Assistant Professor, Department of Legal Studies and Business Ethics at The Wharton School, University of Pennsylvania | March 21, 2014

Because corporations are not capable of experiencing emotions, we should stop thinking of them as persons.

Corporations are monsters – not in the sense that they are hell-bent on evil but in the sense that they lack certain capacities that are the hallmarks of our humanity. In particular, and like most supernatural creatures populating both mythology and the movieplex, corporations lack the ability to appreciate what it might feel like to be the victim of a wrong and, not unrelatedly, the ability to feel bad when they do wrong. To put it in our folk terminology, the corporation lacks a heart.

Does it matter that corporations are heartless? It does, if having a heart, or to put it more formally, a capacity for emotion, is a prerequisite for personhood – a prerequisite, that is, for enjoying rights and bearing responsibility for one's wrongs. On a conception of personhood that identifies a capacity for emotion as necessary for personhood we have reason to ask whether the corporation is a person.

The rights of corporations

The question, though hardly new, seems to press upon us with renewed urgency given recent American judicial decisions expanding corporate rights, on the one hand, while rejecting the prospect of corporate responsibility for international wrongs, on the other. Thus, in its much-reviled **2010 Citizens United decision**, the United States Supreme Court conferred upon corporations political free speech rights very much like those that individual Americans enjoy.

And in the next few months the Court will **consider claims** that corporations, like individuals, have conscience-based rights that, for example, immunise them from needing to offer contraceptive coverage in their health plans, as the Affordable Care Act would require. At the same time, case law in the last few years has **protected corporations** from liability in human rights abuses like torture and rape on the ground that corporations are not the kind of beings contemplated by the relevant treaties, statutes and doctrines.

Emotional capacity

In my work, I seek to argue that emotions are necessary for personhood and that the corporation does not possess a capacity for emotion. To offer some flavour for those arguments here, one needs a capacity for emotion, first, to know the difference between right and wrong: More specifically, one needs to be able to contemplate what it will feel like to be on the receiving end of the act one is evaluating, which requires in turn rich imaginative capacities as well as experiences that allow one to reflect on what it felt likely to be in that or a similar situation at some time in the past.

Second, the practice of blaming seems to require that the target of blame is capable of feeling bad: Blaming her will induce the horrible sensations that go along with being an object of reproach – the sinking feeling in her stomach, the internal cringe, etc. – for the infliction of that unpleasant set of sensations may well be a significant part of what the practice of blaming is about.

If I am right that personhood requires a capacity for emotion and that the corporation lacks that capacity, then the corporation would not qualify as a person. That would put the final nail in the coffin of corporate personhood.

Where does it end?

One might think this a significant outcome. In fact, its implications for our treatment of corporations are marginal at best. Much of what concerns us about the rights and responsibilities properly borne by corporations does not in fact turn on corporate personhood. In particular, I contend, we might recognise corporate rights even if corporations are not persons. Thus, for example, we might recognise the right to privacy of a non-profit advocacy group in order to protect its members' rights not to have their membership disclosed to government officials. The National Association for the Advancement of Colored People (NAACP) successfully asserted this right when the state of Alabama demanded to see the NAACP's membership rolls at the height of the civil rights protests, in the 1960s.

Alternatively, corporations might legitimately be denied certain rights that we take to be foundational in our constitutional regime even if it turned out that they were persons. Thus we would almost surely continue to think corporations ineligible to vote in political elections even if we were to become convinced of their personhood. Similarly, I argue, we may be licensed in holding corporations morally and hence criminally responsible for their wrongful acts even if they are not persons.

Prosecuting and punishing corporations could be justified, that is, on the basis of the deterrence that a corporate conviction could yield. Alternatively, we might have good reason to reject corporate criminal liability even if it turned out that corporations were persons – for fear, perhaps, of the undue suffering that would befall the corporation's innocent employees and shareholders if the corporation were to be convicted.

In sum the corporate personhood debate is a red herring. We need to move away from thinking about what kind of entity the corporation is, and turn instead to questions regarding the moral and political interests of *individuals* that are at stake in recognising or denying corporate rights, or in holding or not holding corporations responsible for their wrongs.

Recommended Reading:

Peter A. French, *Collective and Corporate Responsibility* (1984); Margaret Gilbert, *Sociality and Responsibility* 129 (2000)

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March 21, 2014
