

Notes on the Difficulty of Studying the Corporation

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INTRODUCTION

In the award-winning documentary *The Corporation*, public intellectuals and activists characterize corporations as “externalizing machines,” “doom machines,” “persons with no moral conscience,” and “monsters trying to devour as much profit as possible at anyone’s expense.”¹ In other footage, people on the street personify corporations:

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1. THE CORPORATION (Zeitgeist Films 2003). Some scholars insist on distinguishing between the corporation as a legal entity “entitled to operate in the legal system and in particular to own assets, to enter into contracts and to incur liabilities,” and the firm as “the economic activity developed as a consequence of the cluster of contracts connecting the corporation owning these assets to various holders of resources required in the firm’s operations.” Jean-Philippe Robé, *The Legal Structure of the Firm*, 1 ACCT. ECON. & L. Article 5 (2011). For the purposes of this Article, I use the term corporation as it appears in popular discourse, which collapses this distinction. In popular dis-

“General Electric: a kind old man with lots of stories;” “Nike: young, energetic;” “Microsoft: aggressive;” “McDonald’s: young, outgoing, enthusiastic;” “Monsanto: immaculately dressed;” “Disney: goofy;” “The Body Shop: deceptive.”²

The documentary, like screenwriter and legal scholar Joel Bakan’s book *The Corporation: The Pathological Pursuit of Profit and Power*, imparts dissonant messages about corporations. On the one hand, the film challenges the appropriateness of extending legal personhood to them.³ On the other hand, it perpetuates and reinforces the popular trope of personhood by framing corporations as actors with the capacity—and legal obligation—to formulate and act upon an intention: maximizing profits for shareholders.⁴ Evaluating corporations according to standard criteria derived from individual clinical psychology,⁵ the film finds that the dominant institution of our time is a psychopath. And not just your run-of-the-mill human psychopath. Corporations are jacked up with superpowers: omniscience, immortality, unlimited size, and mobility.⁶ The film serves up the orthodox corporation as a figure of unbearable terror and infinite irresponsibility.

This Article argues that Bakan and his film collaborators implicitly draw on a liberal model of personhood to depict the corporation as *Homo economicus*, the ideal culprit in a forensic context. After examining the social appeal and problematic legal foundations of this account, I turn to how social studies of the state and anthropological theories of personhood may extend social analysis of corporations in other directions, if corporations are understood as open and unstable phenomena. I then draw on my research on mining in Indonesia to explore the issue of violence and human rights abuses carried out by state forces in extractive industry zones, using this material to explore the limits of the model of the corporation as a free-standing, self-constituting subject in forensic contexts.

course, anxieties are more frequently expressed around corporations, corporate control, and corporate power rather than around “the firm,” “business enterprises,” or “business entities.”

2. THE CORPORATION, *supra* note 1.

3. JOEL BAKAN, *THE CORPORATION: THE PATHOLOGICAL PURSUIT OF PROFIT AND POWER* (2004).

4. *Id.*

5. The criteria are drawn from AMERICAN PSYCHIATRIC ASSOCIATION, *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS: DSM-IV* (4th ed. 1994).

6. See TED NACE, *GANGS OF AMERICA: THE RISE OF CORPORATE POWER AND THE DISABLING OF DEMOCRACY* (2005).

I. THE CORPORATION AS *HOMO ECONOMICUS*

The mistake that people make, they think [corporations are] people like us. They think they have feelings, politics, belief systems. They really don't, they only have one thing: the bottom line. How to make as much money as they can in any given quarter. That's it.

– Michael Moore⁷

These are special kind of persons which are designed by law to be concerned only for their stockholders. . . . So they're concerned only for the short-term profit of their stockholders, who are very highly concentrated.

–Noam Chomsky⁸

All publicly traded corporations have been structured, through a series of legal decisions, to have a peculiar and disturbing characteristic. They are required, by law, to place the financial interests of their owners above competing interests. In fact, the corporation is legally bound to put its bottom line ahead of everything else, even the public good.

– Narrator, *The Corporation*⁹

The Corporation universalizes and homogenizes corporations, bundling together disparate examples of corporate misbehavior to declare “the corporation” a psychopath (by this logic, “the human,” too, is a psychopath).¹⁰ Despite significant roots in Canada, the film focuses on U.S. corporate history, and deemphasizes national idiosyncrasies.¹¹ Two conventional U.S. touchstones furnish evidence that corporations are obligated to relentlessly maximize profits: the case *Dodge v. Ford Motor Company* and the conservative Chicago school of economics thinker Milton Friedman, who is duly trotted out to restate his 1970 doctrine that “the social responsibility of business is to increase its profits.”¹²

In *Dodge*, the Dodge brothers, as Ford stockholders, sued the company over Henry Ford's plan to curtail shareholder dividends in order to

7. THE CORPORATION, *supra* note 1.

8. *Id.*

9. *Id.*

10. *Id.*

11. *E.g.*, William Cary, *Federalism and Corporate Law: Reflections Upon Delaware*, 83 YALE L.J. 663 (1974) (discussing how the United States is unusual in that incorporation occurs at the state rather than at the federal level, prompting states to develop business-friendly laws in a competitive “race to the bottom”).

12. *Dodge v. Ford Motor Co.*, 170 N.W. 668 (Mich. 1919); Milton Friedman, *The Social Responsibility of Business Is to Increase Its Profits*, N.Y. TIMES MAG., Sept. 13, 1970.

invest company profits in expanding plants with the express social purpose of providing more employment to workers and more affordable cars to consumers.¹³ The Michigan Supreme Court allowed the company to proceed with the planned expansion, and even allowed that directors retain “implied powers to carry on with humanitarian motives such charitable works as are incidental to the main business of the corporation,”¹⁴ but ordered it to use remaining cash resources to pay dividends to shareholders.¹⁵ While Bakan cites *Dodge v. Ford* as the go-to case supporting the “legal principle that managers and directors have a legal duty to put shareholders’ interests above all others and no legal authority to serve any other interests,”¹⁶ many dispute this perspective, perhaps none so vigorously as legal scholar Lynn Stout. Stout argues for eliminating the case from the canon of corporate law, noting that it is flawed and dated, derives from a court with limited influence in corporate law, and is largely treated as irrelevant in corporate law and practice, as well as by courts and legislatures.¹⁷ Corporate law casebooks regularly reproduce *Dodge* and return to an “offhand remark” made by the court to the effect that a business corporation exists “primarily for the profit of the stockholders,” with “the powers of the directors . . . to be employed for that end.”¹⁸ This statement, Stout argues, “lacks any foundation in corporate law,” which generally defines corporate purpose as “anything ‘lawful,’” rather than as profiting shareholders.¹⁹ The American Law Institute’s official statement on the purpose of business corporations embraces competing values, and notes that those companies whose primary objective is profit are still obliged to act within the boundaries of the law and to take into account ethical considerations.²⁰ Corporate law tends to defer to managerial

13. *Dodge*, 170 N.W. at 671.

14. Lynn A. Stout, *Why We Should Stop Teaching Dodge v. Ford*, 3 VA. L. & BUS. REV. 163, 168 (2008).

15. Ian B. Lee, *Is There a Cure for Corporate “Psychopathy”?*, 42 AM. BUS. L.J. 65, 72 (2005).

16. BAKAN, *supra* note 3, at 36.

17. Stout, *supra* note 14, at 163–76. The statement was also irrelevant to the court’s decision, which hinged on Ford using his status as a majority shareholder (not as a corporate director) to oppress minority investors. *Id.* at 167. Stout characterizes the dicta itself as “mealy-mouthed,” and notes that it treats profit-seeking as the “primary” but not exclusive corporate goal. *Id.* at 168. Stout attributes the enduring popularity of *Dodge v. Ford* in the case law canon to law professors’ desire to provide law students with a simple answer when they innocently ask, “What do corporations do?” *Id.* at 175. Like parents who turn to stories of cabbages and storks when their children ask them where babies come from, law professors “are tempted to default to *Dodge v. Ford* and its charming and easily understood fable of shareholder wealth maximization.” *Id.*

18. *Id.* at 165.

19. *Id.* at 172.

20. See ERIC W. ORTS, BUSINESS PERSONS: A LEGAL THEORY OF THE FIRM xii (1st ed. 2013).

judgment rather than second-guess it in hindsight,²¹ and acts of corporate social responsibility themselves can almost always be given a profit-oriented rationalization.²² Courts generally shield corporate directors from any legal obligation to maximize shareholder wealth, and have in various cases upheld stakeholder interests over shareholder profits.²³ If directors and executives do not have an enforceable legal duty to maximize shareholder wealth, Stout notes, today they are nevertheless “far more likely to *perceive* themselves to have such a duty.”²⁴

This perception is due in large part to the extraordinary success of the shareholder value movement that blossomed in the turbulent 1980s, when 29% of Fortune 500 companies were subject to hostile takeover attempts.²⁵ The movement drew its intellectual justification from adherents of the “agency theory” or “law and economics” school of thought, which depicts corporations as nothing more than a “nexus of contracts” between individuals.²⁶ This line of analysis typically frames shareholders as purely profit-oriented “owners” of corporations, and managers as agents whose interests must be aligned with those of their shareholder principals through devices such as stock options. Various scholars have criticized the legal misconceptions and anemic view of humanity on which the shareholder value movement rests. They point to its promotion of social and economic inequality and environmental destruction, and its production of dysfunctions such as a short-term focus that can lead it to fail (sometimes spectacularly) on its own terms.²⁷

21. Lee, *supra* note 15, at 72.

22. MARINA WELKER, ENACTING THE CORPORATION: AN AMERICAN MINING FIRM IN POST-AUTHORITARIAN INDONESIA 14, 26–27 (2014).

23. See, e.g., GERALD F. DAVIS, MANAGED BY THE MARKETS: HOW FINANCE RESHAPED AMERICA (2009); LYNN SHARP PAINE, VALUE SHIFT: WHY COMPANIES MUST MERGE SOCIAL AND FINANCIAL IMPERATIVES TO ACHIEVE SUPERIOR PERFORMANCE (2003); LYNN A. STOUT, THE SHAREHOLDER VALUE MYTH: HOW PUTTING SHAREHOLDERS FIRST HARMS INVESTORS, CORPORATIONS, AND THE PUBLIC 29 (2012); Stout, *supra* note 14.

24. STOUT, *supra* note 23, at 53.

25. Gerald F. Davis & Tracy A. Thompson, *A Social Movement Perspective on Corporate Control*, 39 ADMIN. SCI. Q., 141, 158 (1994).

26. For classic statements of agency theory, see Michael C. Jensen & William H. Meckling, *Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure*, 3 J. FIN. ECON. 305 (1976); Eugene F. Fama, *Agency Problems and the Theory of the Firm*, 88 J. POL. ECON. 288 (1980). For critiques of the hegemonic hold of such views in business schools, see RAKESH KHURANA, FROM HIGHER AIMS TO HIRED HANDS: THE SOCIAL TRANSFORMATION OF AMERICAN BUSINESS SCHOOLS AND THE UNFULFILLED PROMISE OF MANAGEMENT AS A PROFESSION (2007); William W. Bratton, Jr., *The “Nexus of Contracts” Corporation: A Critical Appraisal*, 74 CORNELL L. REV. 407 (1989) (discussing law schools); Charles R.T. O’Kelley, *The Entrepreneur and the Theory of the Modern Corporation*, 31 J. CORP. L. 753 (2006).

27. See, e.g., KAREN HO, LIQUIDATED: AN ETHNOGRAPHY OF WALL STREET (2009); STOUT, *supra* note 23; William Lazonick & Mary O’Sullivan, *Maximizing Shareholder Value: A New Ideol-*

Rather than questioning the shareholder-centered orthodoxy prevalent in finance,²⁸ Bakan lends credence to its more extreme practices and justifications. Bakan argues that the “corporation’s legally defined mandate is to pursue, relentlessly and without exception, its own self-interest, regardless of the often harmful consequences it might cause to others.”²⁹ Bakan then takes Milton Friedman one step further. Whereas Friedman acknowledges that companies must operate within the bounds of both law and ethical custom,³⁰ Bakan claims that “the corporation’s mandate to pursue its own self-interest, itself a product of the law, actually propels corporations to break the law.”³¹ The conclusions Bakan draws from the supposed legal requirement that corporations maximize shareholder profits have the effect of naturalizing the worst corporate behavior. The corporation is, in this view, legally determined to behave in a way that flouts the law whenever potential profits outweigh penalties.

Although Bakan’s claim that corporations are legally obliged to maximize profits for shareholders lacks legal foundations, it nevertheless stands as a significant folk theory of corporate legal purpose. This folk theory not only circulates in executive suites and investment banks as part of the ideological complex of shareholder value,³² but also appears in casual conversations and academic analyses,³³ wherein it allows critics to construct corporations as ideal culpable subjects endowed with will, purpose, desire, and a capacity for action.³⁴

ogy for Corporate Governance, 29 *ECON. & SOC’Y* 13 (2000); Marina Welker & David Wood, *Shareholder Activism and Alienation*, 52 *CURRENT ANTHROPOLOGY* S57 (2011).

28. Ira Bashkow, *Afterword: What Kind of a Person Is the Corporation?*, 37 *POLAR: POL. & LEGAL ANTHROPOLOGY REV.* 296, 304 (2014).

29. BAKAN, *supra* note 3, at 1–2.

30. Friedman, *supra* note 12.

31. BAKAN, *supra* note 3, at 80.

32. *See* HO, *supra* note 27.

33. *See* PETER BENSON, *TOBACCO CAPITALISM: GROWERS, MIGRANT WORKERS, AND THE CHANGING FACE OF A GLOBAL INDUSTRY* 57 (2011) (stating that a corporation has a “fiduciary duty” to “constantly maximize profits” for shareholders); KIM FORTUN, *ADVOCACY AFTER BHOPAL: ENVIRONMENTALISM, DISASTER, NEW GLOBAL ORDERS* 104 (2001) (“[T]he overarching responsibility of a corporation is singular—maximization of shareholder wealth.”); *KILLER COMMODITIES: PUBLIC HEALTH AND THE CORPORATE PRODUCTION OF HARM* 196 (Merrill Singer & Hans Baer eds., 2009) (stating corporations’ “duties . . . up and down the supply chain [are] to maximize profits for shareholders”).

34. This tendency to unify actors and attribute will to them in forensic contexts is also apparent in literature on the state. *See* AKHIL GUPTA, *RED TAPE: BUREAUCRACY, STRUCTURAL VIOLENCE, AND POVERTY IN INDIA* 55 (2012) (arguing that commitment to disaggregating the state allows for occasions where “branches and levels of the state may act cohesively,” adding that “one would be justified in saying that the state acted to perpetrate violence on a group of people, as in the pogroms against Muslims in Gujarat in 2002 and the riots of 1984 against Sikhs in Delhi”).

Critics may be troubled by corporations accessing rights through legal personhood, but they exploit the trope for their own purposes.³⁵ As John Locke argued, “person” is a forensic term, useful for assigning blame.³⁶ In conventional Euro-American thought, according to political theorist Iris Marion Young, culpable subjects are ideally intentional subjects.³⁷ In our blaming practices, “we tend to see those blamed as guilty of willful harm.”³⁸ Experimental philosopher Joshua Knobe has shown that when people are confronted with a hypothetical case in which business activities have produced side effects that are either beneficial or harmful to the environment, they are more likely to classify benefits as unintentional and harms as intentional.³⁹

Discussing later work with cognitive neuroscientists, Knobe describes his team’s finding that people apply their “theory of mind” to corporations as “disturbing” and “worrisome.”⁴⁰ In doing so, people lose sight of corporations’ complex structures and attribute to them thoughts, goals, and intentions. Corporations, he implies, cannot possibly possess these qualities.⁴¹ But assessments of corporate criminal liability in certain legal settings rest on the (nonuniversal) assumption “that business entities are ‘moral actors’ with identifiable intentions and purposes, which may therefore ‘deserve’ criminal punishment.”⁴² Legally recognizing the firm as an “entity” or “person” is foundational to the application of criminal law in such cases.⁴³

Like much critical scholarship and activism, *The Corporation* wavers on the question of whether its subject exists as an independent entity capable of formulating thoughts and intentions.⁴⁴ One of its interviewees,

35. See generally Suzana Sawyer, *Disabling Corporate Sovereignty in a Transnational Lawsuit*, 29 POLAR: POL. & LEGAL ANTHROPOLOGY REV. 23 (2006). Sawyer argues that an understanding of ChevronTexaco as a “natural person” serves contradictory agendas, helping corporate management and legal counsel in sidestepping responsibility for environmental harms in Ecuador, but also helping plaintiffs demanding corporate accountability.

36. JOHN LOCKE, AN ESSAY CONCERNING HUMAN UNDERSTANDING 278 (Adamant Media Corp. 2001) (1689).

37. Iris Marion Young, *Katrina: Too Much Blame, Not Enough Responsibility*, DISSENT, Winter 2006, at 41, 42.

38. *Id.*

39. Joshua Knobe, *Theory of Mind and Moral Cognition: Exploring the Connections*, 9 TRENDS IN COGNITIVE SCI. 357, 358 (2008).

40. See Joshua Knobe, Op-Ed., *Do Corporations Have Minds?*, N.Y. TIMES (June 16, 2015), http://opinionator.blogs.nytimes.com/2015/06/15/do-corporations-have-minds/?_r=0

41. *Id.*

42. ORTS, *supra* note 20, at 134.

43. *Id.*

44. Philip Abrams, *Notes on the Difficulty of Studying the State*, 1 J. HIST. SOC. 58 (1988). Abrams pointed to a related tension in Marxist scholarship on the state: for purposes of theory the state was known to be unreal, but for purposes of practice it is treated as real. He attributed this

philosopher and activist Vandana Shiva, flatly proclaims, “The corporation is not a person. It doesn’t think.”⁴⁵ Shiva goes on to accuse the developers of Monsanto’s seed terminator technology, or so-called suicide gene, of possessing brutal minds.⁴⁶ And yet, locating agency and responsibility solely in the beliefs and practices of human individuals does not seem to get it quite right either. Chomsky insists that “every one of us under some circumstances could be a gas chamber attendant and a saint,” arguing that it is in particular institutional roles that people become “monsters because the institution is monstrous.”⁴⁷

The Corporation contains footage of free marketeers, executives, and consultants discussing deeply disturbing ideas and practices, but the filmmakers also underscore the humanity and basic niceness of many executives by focusing on repentant, reformed, and enlightened capitalists and their epiphanal moments (e.g., Roy Anderson and Robert Monks).⁴⁸ In one particular scene, Sir Mark Moody-Stuart, then-CEO of Shell, and his wife incongruously serve tea and coffee to a group of Earth First! activists on their front lawn.⁴⁹ An activist banner proclaiming the denizens of the Moody-Stuart residence as “MURDERERS” hangs over the roof of the house, while in the foreground the CEO’s wife apologizes for not having any soymilk for the vegan activists.⁵⁰ In their initial interaction, one activist deliberately averts his gaze from the CEO’s wife; the mutual human recognition implied by ordinary dialogue perhaps seems too incompatible with the unilateral accusation implied by the banner:

Mrs. Moody-Stuart: Who are you?

John (Earth First! Activist): My name’s John.

Mrs. Moody-Stuart: You’re not looking at me when you say it. You have to be a little bit careful because I’m very sensitive to people

dissonance to the fact that an abstract-formal entity has little appeal as an object of political struggle. Abrams wrote:

The seriousness and comprehensiveness of the struggle to conquer political power call for a serious view of the autonomous reality of political power. Paradoxically, they call for a suspension of disbelief about the concrete existence of the state. In effect to opt for political struggle thus becomes a matter of participating in the ideological construction of the state as a real entity.

Id. at 70. Whereas the state is amenable to being seen as pursuing various goals (from serving capital or elite interests to a more progressive set of functions), we have a ready-made, one-size-fits-all account of what the business corporation is all about—it is bent on maximizing profits.

45. *THE CORPORATION*, *supra* note 1.

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

who are not friendly. [To husband] Did you know that we are being recorded and filmed?

Sir Mark Moody-Stuart: No.

Activist: Well, you'll see yourself on television then.

Mrs. Moody-Stuart: I think it would have been polite to have mentioned it. I mean, here we are . . .

John: Politeness? This man is involved in a corporation which is funding directly police, which this corporation has admitted . . .

Mrs. Moody-Stuart: Who is the corporation?

John: A corporation is an organization of individuals, and this individual [Mark Moody-Stuart] is part of that corporation so he's responsible.⁵¹

John's description of the corporation as an "organization of individuals" illustrates the struggle to define the agents responsible for corporate-related violence including, in this case, the execution of Ogoni environmental activist Ken Saro-Wiwa by the Nigerian government.⁵² If it is a "sleight of hand" to assume that a corporation is merely "composed of (or acted for) by a set of individuals" and thereby "consists of those individuals,"⁵³ the common alternative view of the corporation as a macro-actor modeled on the intentional and autonomous liberal subject is also difficult to square with corporate complexity. Both of these understandings of the corporation show the difficulty of construing actors and agency in nonhuman terms. The view of the corporation as an intentional macro-actor can serve pragmatic ends. In forensic contexts, it supports critical analysis and, in legal systems where criminal intent can be imputed to corporations, creates a potential path to justice, retribution, and deterrence.⁵⁴ At the same time, this view provides a very limited account of the broader set of relations that may give rise to violence and harm, as

51. *Id.*

52. See Michael Watts, *Resource Curse? Governmentality, Oil and Power in the Niger Delta, Nigeria*, 9 *GEOPOLITICS* 50 (2010).

53. Bashkow, *supra* note 28, at 305.

54. ORTS, *supra* note 20, at 51. Orts notes that, in practice, the legal standard of culpability often applied is strict liability ("no-fault liability requiring proof only of a causal connection without a culpability or state of mind requirement, which is only very rarely the standard for criminal liability and sometimes used for tort liability"), rather than intentional harm, recklessness, or negligence. *Id.* at 134. He attributes this to "the complexity of modern business organization and the difficulty of tracing some kinds of harm to a clearly wrongful cause or act by a specific legal person (either an individual or an entity)." *Id.* at 135.

I explore in my discussion of the Indonesian mining context below. But first I turn to insights from social studies of the state and personhood.

II. BEYOND THE LIBERAL SUBJECT

Like the fiction of humans as rational, sovereign, self-constituting, self-maximizing liberal individuals, the conceit of the profit-maximizing corporation as “just a scaled-up version of Economic Man” appears brittle in the face of the complexity and contradictions that make up actual organizational life.⁵⁵ To take better account of the “multiplicity of social relations constitutive of the corporation,”⁵⁶ I turn to (1) social studies of “the state,” understood as a set of material relations and processes rather than a metaphysical entity; and (2) anthropological theories of personhood that emphasize relationality, interdependence, and context. These theories construe persons as mutable, partible, composite, and permeable.

My approach to the corporation draws inspiration from scholarship on the state, as evidenced in my title alluding to Philip Abrams’s influential article.⁵⁷ By historicizing, localizing, and disaggregating state practices, historians, sociologists, anthropologists, geographers, and political theorists have called into question the integrity of the state as a coherent, unified, bounded, and autonomous agent.⁵⁸ In this work, the challenge is

55. Bashkow, *supra* note 28, at 304. For a discussion of corporate complexity, internal divisions, and jurisdictional disputes, as well as of passionate and irrational behavior and Oedipal dramas displayed in cubicles, corner offices, and factory floors, see STEVE COLL, *PRIVATE EMPIRE: EXXONMOBIL AND AMERICAN POWER* (2012); ROBERT JACKALL, *MORAL MAZES: THE WORLD OF CORPORATE MANAGERS* (1988); GIDEON KUNDA, *ENGINEERING CULTURE: CONTROL AND COMMITMENT IN A HIGH-TECH CORPORATION* (rev. ed. 2006); ERICA SCHOENBERGER, *THE CULTURAL CRISIS OF THE FIRM* (1997); WELKER, *supra* note 22; Phillip O’Neill & J. K. Gibson-Graham, *Enterprise Discourse and Executive Talk: Stories That Destabilize the Company*, 24 *TRANSACTIONS INST. BRIT. GEOGRAPHERS* 11 (1999); Erica Schoenberger, *Interdisciplinarity and Social Power*, 25 *PROGRESS HUM. GEOGRAPHY* 365 (1997); Nigel Thrift & Kris Olds, *Refiguring the Economic in Economic Geography*, 20 *PROGRESS HUM. GEOGRAPHY* 311 (1996). A range of social theorists have argued that the liberal person and *Homo economicus* are historically significant ideologies rather than analytic models offering useful insight into actual human behavior. *E.g.*, MARY DOUGLAS & STEVEN NEY, *MISSING PERSONS: A CRITIQUE OF THE SOCIAL SCIENCES* (1998); MAURICE GODELIER, *THE ENIGMA OF THE GIFT* (Nora Scott trans., 1999); BRONISLAW KASPER MALINOWSKI, *ARGONAUTS OF THE WESTERN PACIFIC: AN ACCOUNT OF NATIVE ENTERPRISE AND ADVENTURE IN THE ARCHIPELAGOES OF MELANESIAN NEW GUINEA* (E. P. Dutton & Co., 1950) (1922); MARCEL MAUSS, *THE GIFT: THE FORM AND REASON FOR EXCHANGE IN ARCHAIC SOCIETIES* (W.D. Halls trans., Routledge Classics 1990) (1950); KARL POLANYI, *THE GREAT TRANSFORMATION: THE POLITICAL AND ECONOMIC ORIGINS OF OUR TIME* (2d ed. 1991); MARSHALL SAHLINS, *STONE AGE ECONOMICS* (1972).

56. FORTUN, *supra* note 33.

57. See Abrams, *supra* note 44.

58. For a range of works on the state that develop a historical and disaggregated perspective, see ANTHROPOLOGY IN THE MARGINS OF THE STATE (Veena Das & Deborah Poole eds., 2004); PHILIP CORRIGAN & DEREK SAYER, *THE GREAT ARCH: ENGLISH STATE FORMATION AS CULTURAL*

not simply to take such entities apart, but to understand how ordinary actors put them together in everyday life and enact them as collective subjects that exist and bear interests, rights, and obligations.⁵⁹

Analytic philosophers have argued for the existence of corporate agents, variously called joint, collective, or plural subjects, through the pooling of will and intention towards single goals.⁶⁰ This work often uses hypothetical examples and imaginary conversations between disembodied human subjects. In organization theory, some have similarly argued that organizations merit the ontological status of actors because they possess intentionality, responsibility, sovereignty, goals, values, self-reflexivity, and self-identity.⁶¹ In such renderings the corporation appears to be “intangibly strong”;⁶² it has no corpus, no body. But, as Mitchell argues, we derive the seemingly metaphysical effect of the state as actor, along with abstract traits such as sovereignty, from material relations and practices such as “[s]etting up and policing a frontier [which] involves a variety of fairly modern social practices—continuous barbed-wire fencing, passports, immigration laws, inspections, currency control, and so on.”⁶³ Scholars conducting social studies of the corporation can

REVOLUTION (1985); AKHIL GUPTA, *RED TAPE: BUREAUCRACY, STRUCTURAL VIOLENCE, AND POVERTY IN INDIA* (2012); JOEL S. MIGDAL, *STATE IN SOCIETY: STUDYING HOW STATES AND SOCIETIES TRANSFORM AND CONSTITUTE ONE ANOTHER* (Margaret Levi et al. eds., 2001); STATE OF AUTHORITY: THE STATE IN SOCIETY IN INDONESIA (Gerry van Klinken & Joshua Barker eds., 2009); STATES OF IMAGINATION: ETHNOGRAPHIC EXPLORATIONS OF THE POSTCOLONIAL STATE (Thomas Blom Hansen & Finn Stepputat eds., 2001); THE ANTHROPOLOGY OF THE STATE: A READER (Ardhanna Sharma & Akhil Gupta eds., 2006); Abrams, *supra* note 44; Begoña Aretxaga, *Maddening States*, 32 ANN. REV. ANTHROPOLOGY 393 (2003); Vincent-Wayne Mitchell, *Consumer Perceived Risk: Conceptualisations and Models*, 33 EUR. J. MARKETING 163 (1999); Mary Margaret Steedly, *The State of Culture Theory in the Anthropology of Southeast Asia*, 28 ANN. REV. ANTHROPOLOGY 431 (1999).

59. ANNEMARIE MOL, *THE BODY MULTIPLE: ONTOLOGY IN MEDICAL PRACTICE* (2002); MAX WEBER, *Bureaucracy*, in FROM MAX WEBER: ESSAYS IN SOCIOLOGY 196 (Hans H. Gerth & C. Wright Mills eds., trans., 1946).

60. MARGRET GILBERT, *ON SOCIAL FACTS* (1989); CHRISTIAN LIST & PHILIP PETTIT, *GROUP AGENCY: THE POSSIBILITY, DESIGN, AND STATUS OF CORPORATE AGENTS* (2011).

61. Brayden G. King, Teppo Felin & David A. Whetten, *Perspective—Finding the Organization in Organizational Theory: A Meta-Theory of the Organization as a Social Actor*, 21 ORG. SCI. 290 (2010).

62. MOL, *supra* note 59, at 12.

63. Timothy Mitchell, *Society, Economy, and the State Effect*, in STATE/CULTURE: STATE-FORMATION AFTER THE CULTURAL TURN 76, 90 (George Steinmetz ed., 1999). Compare Mitchell, *supra* (discussing state sovereignty, and focusing on more negative, repressive, and exclusionary technologies), with JESSICA CATTELINO, *HIGH STAKES: FLORIDA SEMINOLE GAMING AND SOVEREIGNTY* (2008) (discussing how Florida Seminoles, who were once federal welfare recipients, today exercise political and economic sovereignty through casino wealth). Cattelino explores more positive forms of the materialization of Seminole sovereignty in, for example, housing and kitchen appliances, medically insured bodies, government buildings and thatched chickees, and nutritionally balanced senior-citizen hot meals. *Id.*; see also Michel Callon & Bruno Latour, *Unscrewing the Big*

draw from theorizations of the state an attunement to (1) the relations and processes involved in the ongoing making of corporations; (2) the role of geography and history in shaping corporations; and (3) the ways that material practices inform abstract conceptions of corporations.

Relational models of personhood developed by anthropologists working in South Asia and Melanesia can further open corporations to multidimensional analysis.⁶⁴ Applied to corporations,⁶⁵ a relational model that treats persons as partible (subject to external claims and extractions), composite (made up of heterogeneous parts), and permeable (assimilating ideas and substances from the outside) allows us to explore how corporate identity and interests are distributed and highly contextual, produced through interactions and temporary associations among humans, animals, and objects in particular places.⁶⁶ Always in the process of being enacted, corporations are able to incorporate parts that originated elsewhere without fully assimilating them.⁶⁷ Where the liberal person model, which assumes an indivisible, consistent, self-present, and self-knowing subject, is poorly equipped to handle complexity and contradiction, these are ordinary features of relational models.

David Graeber linked Strathern's notion of the partible person to value in the following way:

People have all sorts of potential identities, which most of the time exist only as a set of hidden possibilities. What happens in any given social situation is that another person fixes on one of these and thus "makes it visible." One looks at a man, say, as a representative of his clan, or as one's sister's husband, or as the owner of a pig. Other possibilities, for the moment, remain invisible. It is at this point that a theory of value comes in: because Strathern uses the

Leviathan: How Actors Macro-Structure Reality and How Sociologists Help Them to Do So, in ADVANCES IN SOCIAL THEORY AND METHODOLOGY: TOWARD AN INTEGRATION OF MICRO- AND MACRO-SOCIOLOGIES 277, 283–84 (K. Knorr-Cetina & A. V. Cicourel eds., 1981).

64. E.g., MARILYN STRATHERN, THE GENDER OF THE GIFT: PROBLEMS WITH WOMEN AND PROBLEMS WITH SOCIETY IN MELANESIA (1988); McKim Marriott, *Hindu Transactions: Diversity Without Dualism*, in TRANSACTION AND MEANING 109 (Bruce Kapferer ed., 1976).

65. Robert J. Foster, *The Uses of Use Value: Marketing, Value Creation, and the Exigencies of Consumption Work*, in INSIDE MARKETING: PRACTICES, IDEOLOGIES 42 (D. Zwick & J. Cayla eds., 2011); Robert J. Foster, *Property and Personhood: Prospectus for an Anthropology of Corporations*, in THE CORPORATION: A CRITICAL, INTERDISCIPLINARY HANDBOOK (André Spicer & Grietje Baars eds.) (forthcoming).

66. BRUNO LATOUR, REASSEMBLING THE SOCIAL: AN INTRODUCTION TO ACTOR-NETWORK-THEORY (2005).

67. MOL, *supra* note 59, at 148.

phrases “making visible” and “giving value” more or less interchangeably.⁶⁸

Consider this statement in relation to the corporation. We can now see the shareholder value movement as one (rather than the sole) understanding of how the corporation is to be enacted, an understanding that fixes on the corporation’s relation to shareholders, and on the shareholders’ purported desire to maximize profits at the expense of people and planet. But we can still accommodate other kinds of understandings and enactments of corporations: as employers of workers; as producers of goods and services for consumers; as consumers of resources; as generators of pollution and waste; as debtors and creditors; as taxpayers in relation to municipal, regional, or state governments; as lobbyists with a stake in the rules according to which they will operate; and as subcontractors, partners, and competitors in relation to other business enterprises. Maximizing profits for shareholders is often invoked in debating how corporations ought to be enacted in these other relations, but it does not universally or consistently play the most foundational and determining role. The corporation is multiple.⁶⁹ In various contexts and relations, people draw out and make visible a range of corporate qualities and potentialities that are open to both valorization and critique. Our tendency to personify corporations (e.g., as expressed by the people on the street *The Corporation*) is influenced by the marketing, public relations, and advertising industries as well as more critical media.⁷⁰

68. DAVID GRAEBER, TOWARD AN ANTHROPOLOGICAL THEORY OF VALUE: THE FALSE COIN OF OUR OWN DREAMS 39–40 (2001).

69. MOL, *supra* note 59, at 84 (providing an account of how the body (singular) is multiple (many) in the hospital). In her study of atherosclerosis, Mol suggests that the disease has a “manyfoldedness,” but “hangs together” or is “coordinated” into a “patchwork singularity,” “composite reality,” or “coherence-in-tension.” *Id.* at 72, 83–84. Similarly, Callon and Latour, *supra* note 63, at 294, depict the Leviathan state as imbricated, incapable of being stabilized by any one metaphor (e.g., machine, market, code, body, war),

[N]ot just *one* Leviathan but many, interlocked one into another like chimera, each one claiming to represent the reality of all, the programme of the whole. Sometimes some of them manage to distort the others so horribly that, for a while, they seem the only soul in this artificial body.

Id.

70. See THE CORPORATION, *supra* note 1. Analyzing the rise of “public relations” in the early twentieth century, business historian Roland Marchand argues that the task of the fledgling industry was to endow the jural person of the corporation with virtues, distinctive personalities, neighborliness, and connections to small-town America in a period of rising public concern and outrage over the concentration of power in corporations. See generally ROLAND MARCHAND, ADVERTISING THE AMERICAN DREAM: MAKING WAY FOR MODERNITY (1998). As such, public relations consultants along with advertising and marketing professionals have promoted a conception of the corporation as “soulful” actors. *Id.* Various experts build “brands,” which are “composite semiotic objects” that can extend into various contexts (e.g., the retail store, kitchen pantry, or bathroom cupboard) where

An anthropological perspective on personhood as multiple and relational has some compatibility with a legal perspective on the dynamic identities of humans and corporations. Orts, citing Joseph Vining, notes that just as humans shift among various identities over the course of a day, a year, or a lifetime (e.g., “sports player, parent, drug taker, dancer, corporate director, juror, investor, automobile salesman, artist”), and come to court in one of these roles (e.g., “tenant farmer, drug user, religious believer, or investor”), a firm may have legal standing “in different roles: as an employer, as a party to a contract with a supplier of goods, or as a bearer of certain constitutional rights.”⁷¹

Since the corporate form was invented under Roman law, legal scholars have debated whether corporations (be they charities, religious organizations, universities, municipalities, or businesses) are best approached as aggregate collections of individual persons (e.g., members or shareholders), artificial creatures of the state, or real and natural entities, arguing as well over what entitlements and responsibilities flow from the theory adopted.⁷² Pointing to the indeterminacy of corporate personhood,

they function as “prosthetic personas.” Paul Manning, *The Semiotics of Brand*, 39 ANN. REV. ANTHROPOLOGY 33, 35, 38 (2010). Some brands explicitly figure the organization as an individual with a coherent character and narrative (e.g., Betty Crocker), whereas others invoke qualities and lifestyle desires to be taken up by individual consumers. *Id.* at 45–46. In his ethnography of advertising agencies in India, Mazzarella portrays advertising executives as primarily oriented to marketing brands to their client firms and executives rather than to the broader public of potential consumers. WILLIAM MAZZARELLA, *SHOVELING SMOKE: ADVERTISING AND GLOBALIZATION IN CONTEMPORARY INDIA* (2003). Foster analyzes how consumers endow brands with value through their shopping and consumption work, which brand managers seek to control and recuperate. ROBERT FOSTER, *COCA-GLOBALIZATION: FOLLOWING SOFT DRINKS FROM NEW YORK TO NEW GUINEA* (2008). Although brands can be seen as intangible sources of power (signifying prestige, goodwill, reputation, and quality), like all signs, they are vulnerable to various forms of appropriation and resignification by producers, consumers, and activists. *Id.*; DANIEL MILLER, *A THEORY OF SHOPPING* (1998); Bishnupriya Ghosh, *Looking Through Coca-Cola: Global Icons and the Popular*, 22 PUB. CULTURE 333 (2010); Constantine V. Nakassis, *Brand, Citationality, Performativity*, 114 AM. ANTHROPOLOGIST 624 (2012); Louise Owen, “Identity Correction”: *The Yes Men and Acts of Discursive “Leverage,”* 16 PERFORMANCE RES. 28 (2011); Elizabeth F. Vann, *The Limits of Authenticity in Vietnamese Consumer Markets*, 108 AM. ANTHROPOLOGIST 286 (2006). In a rather different vein, Shever has discussed the attempts of Shell to “facialize” the company for communities affected by its refining operations in Argentina in ways that have actually regendered the company, from a benevolent and generous masculine patron figure to a neoliberal feminine figure who nurtures relations rather than providing tangible things. Elana Shever, *Engendering the Company: Corporate Personhood and the “Face” of an Oil Company in Metropolitan Buenos Aires*, 33 POLAR: POL. & LEGAL ANTHROPOLOGY REV. 26 (2010).

71. ORTS, *supra* note 20, at 28.

72. See, e.g., William T. Allen, *Our Schizophrenic Conception of the Business Corporation*, 14 CARDOZO L. REV. 261 (1992); Reuven S. Avi-Yonah, *The Cyclical Transformations of the Corporate Form: A Historical Perspective on Corporate Social Responsibility*, 30 DEL. J. CORP. L. 767 (2005); Morton J. Horwitz, *Santa Clara Revisited: The Development of Corporate Theory*, 88 W. VA. L. REV. 173 (1985); Gregory A. Mark, *The Personification of the Business Corporation in American*

John Dewey argued that “‘person’ signifies what law makes it signify[,]” and could “be used simply as a synonym for a right-and-duty-bearing unit.”⁷³ For Dewey, corporations should be understood in terms of their relations with others rather than their inner essence and nature; “will” and “interests” are emergent functions rather than intrinsic force or structure.⁷⁴

Next, I turn to a more empirical exploration of the entanglement of the state and corporation.⁷⁵ One could approach this topic in several ways. In the context of extractive industries in Indonesia, one could study how corporations get involved in the work of welfare and governing and how government agents get involved as investors in the business of extraction. For the purposes of this Article, however, I will focus instead on examples of national forces committing violence in extractive industry zones. Analyzing the violent practices of the armed forces in these zones exposes the inadequacies of viewing the corporation as a self-determining subject modeled on the liberal person.

III. THE CORPORATION, THE STATE, AND VIOLENCE

In early October 2002, I was visiting the administrative offices of PT Newmont Nusa Tenggara’s Batu Hijau copper and gold mine,⁷⁶ when

Law, 54 U. CHI. L. REV. 1441 (1987); David Millon, *Theories of the Corporation*, 39 DUKE L.J. 201 (1990); Elizabeth Pollman, *Reconceiving Corporate Personhood*, 2011 UTAH L. REV. 1629 (2011); Susanna K. Ripken, *Corporations Are People Too: A Multi-Dimensional Approach to the Corporate Personhood Puzzle*, 15 FORDHAM J. CORP. & FIN. L. 97 (2009); Sawyer, *supra* note 35.

73. John Dewey, *The Historic Background of Corporate Legal Personality*, 35 YALE L.J. 655, 655–56 (1926).

74. *Id.* at 663.

75. Classic discussions of the state have also explored the terrain of corporate-state relations. Callon and Latour, for example, discuss the struggle between state agency Electricity of France and carmaker Renault over the future of the private automobile. Callon & Latour, *supra* note 63, at 286–91. Mitchell traces how a collusion between the Saudi and U.S. governments and the Arabian-American Oil Company (Aramco), a consortium of U.S. oil corporations with exclusive rights to Saudi Arabian oil, “obliged U.S. citizens to contribute unknowingly to the treasury of a repressive Middle Eastern monarchy and to the bank balances of some of the world’s largest and most profitable multinational corporations.” Mitchell, *supra* note 63, at 83. This case, Mitchell argues, demonstrates how

producing and maintaining the distinction between state and society is itself a mechanism that generates resources of power. The fact that Aramco can be said to lie outside the “formal political system,” thereby disguising its role in international politics, is essential to its strength as part of a larger political order.

Id.

76. Built at a cost of \$1.9 billion, the Batu Hijau mine began commercial production in early 2000, and has attracted environmental controversy for pumping up to 160,000 tons of tailings into the ocean every day. Brook Larmer, *The Real Price of Gold*, NAT’L GEOGRAPHIC, Jan. 2009, at 34. Several business partners owned PT Newmont Nusa Tenggara. At the time of my initial research, the

I ran into Pak Kapolsek, the police chief of Sekongkang, the subdistrict of the Indonesian island of Sumbawa where the mine is located. I had been conducting research on the mine's Corporate Social Responsibility initiatives in local villages for almost a year.⁷⁷ When I asked him what he was up to, Pak Kapolsek (Mr. District Police Chief) told me he was checking in with company officials to coordinate security plans for that night's big event: Newmont had invited Aa Gymnastiar, a charismatic Muslim preacher and TV personality, to speak to mine workers and local residents.⁷⁸ For many village residents, this represented a rare opportunity to see a national star in person. Knowing that there had recently been a heated dispute over which bus company would win a contract with Newmont, I asked the police chief whether buses would be available to pick up village residents. His demeanor changed. "Of course there [will] be buses to collect villagers," he snapped, before adding, "You better not write about the dispute. You better only write good things about the region. I'll take note if articles show up in the *New York Times* quoting you saying bad things." He then inserted a finger into a spot on the hip of my jeans where they had begun to fray at the seam, and told me I ought to buy some new clothes. At the time, I was struck by the fact that Pak Kapolsek knew which international newspapers mattered.⁷⁹ When I wrote about our conversation in my field notes that evening, I did not immediately record Pak Kapolsek's inappropriate gesture. It was clearly at odds with norms of contact between the sexes to which I was accustomed in Indonesia, but, coming from a policeman, it was unsurprising, falling at the relatively innocuous and trivial end of a broader spectrum of acts of harassment that women commonly suffer in interactions with police. Only later did it occur to me that rather than simply abusing state power, Pak Kapolsek may have been asserting it. He was not simply taking a small liberty but making a threat.

Denver-based Newmont Mining Corporation owned 45% of the mine through its subsidiary PT Newmont Pacific Nusantara; the Japanese Sumitomo Corporation owned 35% of the mine through its affiliate, Nusa Tenggara Mining Corporation; and the remaining 20% was held by PT Pukuafu Indah, which was controlled by an Indonesian businessman who was also a high-ranking politician during the Soeharto era. PUI-KWAN TSE, THE MINERAL INDUSTRIES OF INDONESIA AND EAST TIMOR 3 (2002), available at <http://minerals.usgs.gov/minerals/pubs/country/2002/idttmyb02.pdf>.

77. All conversations and observations referenced in the remainder of the Article with respect to the Batu Hijau mine are a result of the author's field research. The resulting field notes are on file with the author.

78. For further discussion of Aa Gymnastiar, see JAMES B. HOESTEREY, REBRANDING ISLAM: PIETY, PROSPERITY, AND A SELF-HELP GURU (2015).

79. On the availability of newspapers and reading practices in rural Indonesia, see Anna Lowenhaupt Tsing, *The News in the Provinces*, in CULTURAL CITIZENSHIP IN ISLAND SOUTHEAST ASIA: NATION AND BELONGING IN THE HINTERLANDS 192 (Renato Rosaldo ed., 2003).

Who stuck a finger in my jeans?⁸⁰ Was it the state?⁸¹ The corporation? Perhaps the one acting on behalf of the other? While Weber asserted that “there is no such thing as a collective personality which ‘acts,’”⁸² he acknowledged the importance of the idea of various collective actors, which have

a meaning in the minds of individual persons, partly as of something actually existing, partly as something with normative authority. . . . Actors thus in part orient their action to them, and in this role such ideas have a powerful, often a decisive, causal influence on the course of action of real individuals⁸³

Pak Kapolsek not only oriented himself towards the state and corporation as actors with overlapping interests, he enacted them as intertwined entities that were potentially vulnerable to foreign journalists and researchers. He was, probably quite unconsciously, “doing” both the state and the corporation.⁸⁴

For Weber, bureaucracy achieved its “permanent character” and “practically unshatterable” power through its inculcation of habits, norms, and regulations into individuals.⁸⁵ But, as Mitchell and others emphasize, the “effect” of the state as a metaphysical actor animated by particular goals and rationalities is also constituted through palpable, visible, solid, and discernible material practices and nonhuman elements.⁸⁶ The same is true of the mining corporation, which acquires its place in people’s per-

80. In the context of the Porgera mine in Papua New Guinea, Alex Golub poses a similar question with a much more loaded example by asking: “If a security guard shoots an Ipili trespasser in the back, has ‘the mine’ or ‘an employee’ shot someone?” ALEX GOLUB, *LEVIATHANS AT THE GOLD MINE: CREATING INDIGENOUS AND CORPORATE ACTORS IN PAPUA NEW GUINEA* 7 (2014).

81. Anthropomorphizing by endowing a collective actor with bodily capacities can give poetic force to social critique. See, e.g., Didier Fassin & Estelle d’Halluin *The Truth from the Body: Medical Certificates as Ultimate Evidence for Asylum Seekers*, 107 *AM. ANTHROPOLOGIST* 597, 598 (2005) (asserting that “the French state needs to touch the wounds to believe” and discussing French state demands that asylum seekers obtain from experts medical certificates demonstrating physical or mental torture).

82. WEBER, *supra* note 59, at 102.

83. *Id.*

84. In trying not to exaggerate the deliberate or volitional character of Pak Kapolsek’s enactment of the state and corporation, I draw on Lucy Suchman’s work questioning of the separation between plans and actions, as well as Tim Ingold’s refusal to subscribe to the notion that active intention is followed by passive action or execution. LUCY SUCHMAN, *HUMAN-MACHINE RECONFIGURATIONS: PLANS AND SITUATED ACTIONS* (2d ed. 2007); TIM INGOLD, *THE PERCEPTION OF THE ENVIRONMENT: ESSAYS ON LIVELIHOOD, DWELLING AND SKILL* 415 (2000).

85. WEBER, *supra* note 59, at 228–30.

86. See Mitchell, *supra* note 63; Callon & Latour, *supra* note 63; MATTHEW S. HULL, *GOVERNMENT OF PAPER: THE MATERIALITY OF BUREAUCRACY IN URBAN PAKISTAN* 18–19 (2012); Abrams, *supra* note 44.

ceptions not simply from being a group of human individuals,⁸⁷ but also from the material life of its logos as well as the offices, documents, infrastructure, vehicles, ore, commodities, and waste produced by its mines.⁸⁸

The material lives of the mine and the police are intertwined in Sumbawa, constituted through ties of reciprocity and mutuality that were materialized in Newmont badges issued to police, Newmont's subsidizing the construction of the police station that Pak Kapolsek ran, Pak Kapolsek's involvement in security for events organized by the mine, the conduct of investigations into instances of civil violence targeting the mine, the failure of police to intervene when local residents attacked environmental activists who opposed the mine,⁸⁹ and so forth. The Indonesian police force is poorly staffed and funded, yet police officers, like army officers, pay substantial bribes to obtain their positions as well as to secure promotions with the expectation that they will supplement their pay through bribes as well as legal and illegal business enterprise.⁹⁰ Back in 2002, Batu Hijau housed a unit of the police's Mobile Brigade division, known as Brimob. Brimob is notorious for committing human rights violations.⁹¹ Batu Hijau's most visible security force, however, was a private contractor called 911, a Jakarta-based security firm established by former members of the Indonesian police.

Newmont's security strategy and relations with Brimob and 911 developed in relation to a broader history of security strategies and relations in the extractive industries, which have been roundly criticized by human rights activists. Around the world, extractive industry companies rely on in-house security, private contractors, state police, military, or some combination thereof to protect their operations. The assiduous and often dangerous efforts of human rights organizations, as well as the increasing pursuit of justice through lawsuits in the home countries of parent corporations, have demonstrated that among various business sectors the extractive industries are disproportionately linked to human rights

87. We must ask which individuals would even belong in this group. Candidates include shareholders, managers, workers, perhaps subcontractors, suppliers, partners, and consumers under some circumstances.

88. On the relation between the materiality of oil and natural gas extraction and corporate social technologies, see Douglas Rogers, *The Materiality of the Corporation: Oil, Gas, and Corporate Social Technologies in the Remaking of a Russian Region*, 39 AM. ETHNOLOGIST 284 (2012).

89. Marina Welker, "Corporate Security Begins in the Community": *Mining, the Corporate Social Responsibility Industry, and Environmental Advocacy in Indonesia*, 24 CULTURAL ANTHROPOLOGY 142, 142 (2009).

90. THE STATE AND ILLEGALITY IN INDONESIA 1, 16 (Edward Aspinall & Gerry van Klinken eds., 2011).

91. MURADI, POLITICS AND GOVERNANCE IN INDONESIA: THE POLICE IN THE ERA OF REFORMASI 72 (2014).

abuses by security forces including rape, assault, torture, and extrajudicial killings.⁹² While each case in which a security officer beats, rapes, tortures, or kills a civilian in the vicinity of a oil or mining operation might be regarded as a highly contingent event, by aggregating and disseminating data about similar events, human rights groups have shown that “human rights abuses” are predictable consequences of extractive industry corporations operating in remote parts of the world. They enact corporations as “human rights abusers” by showing that corporations supply funds, transport, and equipment (including sites and objects used in the torture of individuals) to the security forces that, in a more proximate sense, carry out the abusing. As a consequence of these revelations, which work to “shame” corporations as moral actors,⁹³ many companies now treat human rights abuses as part of their risk profile and corporate responsibility.⁹⁴ Corporations may be held responsible for violence and militarization that arises directly from their presence, although they may only exercise partial control over this militarization.

In Indonesia, the two most notorious cases of human rights abuses in an extractive industry context demonstrate some of the limits to viewing corporations as unitary actors with the capacity (if not always the will) to control the security forces that ostensibly protect them. These examples come from opposite ends of the archipelago: ExxonMobil’s oil fields in Aceh, and Freeport McMoRan’s copper and gold mine in West Papua.⁹⁵ In both cases, oil and mineral extraction fueled separatist movements due to the popular perception that while these regions suffer the brunt of environmental damage, the economic benefits of resource extraction are enjoyed in Jakarta and overseas.⁹⁶ At the same time, the very presence of natural resource wealth holds out the promise that these regions could be economically viable as independent polities. Massive

92. See, e.g., HUMAN RIGHTS WATCH, *GOLD’S COSTLY DIVIDEND: HUMAN RIGHTS IMPACTS OF PAPUA NEW GUINEA’S PORGERA GOLD MINE* (2010); JOHN RUGGIE, *THE UN “PROTECT, RESPECT AND REMEDY” FRAMEWORK FOR BUSINESS AND HUMAN RIGHTS* (2010); Jonathan Drimmer, *Human Rights and the Extractive Industries: Litigation and Compliance Trends*, 3 J. WORLD ENERGY L. & BUS. 121 (2010).

93. In rethinking the classic Althusserian discussion of how the state interpellates an ordinary person on the street through the call of a police officer, Hoesterey examines how the Indonesian celebrity televangelist, Aa Gym, and other religious figures have sought to “shame” the state into adopting antipornography legislation. These efforts attribute moral and affective capacities to the state. See generally HOESTEREY, *supra* note 77.

94. E.g., INT’L CTR. FOR CORPORATE ACCOUNTABILITY, HUMAN RIGHTS, EMPLOYMENT AND SOCIAL DEVELOPMENT OF PAPUAN PEOPLE IN INDONESIA (2005); Drimmer, *supra* note 92.

95. See generally COLL, *supra* note 55.

96. In the neighboring country of Papua New Guinea, conflict over Rio Tinto Zinc’s Panguna in Bougainville led to a full-scale separatist movement, civil war, and mine closure.

military buildups around extractive operations, justified in terms of separatist threats, have further exacerbated conflicts.

The Freeport case merits closer scrutiny for its direct relevance to Newmont's mines in Indonesia because Newmont hired a number of former Freeport executives to manage its Indonesian operations.⁹⁷ Two *New York Times* journalists wrote a lengthy investigative article on Freeport in 2005.⁹⁸ In its opening paragraphs, the article depicts Freeport as maintaining "a nearly impenetrable redoubt" while "cloaked in the protection of the military," and enjoying a "carefully cultivated cocoon of support" and "marriage of mutual convenience" with the Soeharto regime.⁹⁹ These phrases construct the corporation as an intentional and culpable actor that invited in the military to terrorize the local population and quash resistance. Yet this depiction seems quite strange in light of some of the evidence about the relationship between the military and the mine that emerges later in the article.

A former social development officer claims that Freeport "really took it on the chin" with the military, which the company had initially kept at bay.¹⁰⁰ In 1996, environmental and community protests against the mine turned into riots, and rioters ransacked Freeport offices and destroyed some \$3 million in mine equipment.¹⁰¹ Military personnel appeared to be involved in directing the rioters.¹⁰² The various military service units—police, army, navy, and air force—subsequently submitted "wish lists" to the mine.¹⁰³ Freeport purchased \$35 million worth of military infrastructure, in addition to handing over millions of dollars in cash and in-kind payments annually to military commanders, all ostensibly earmarked for various legitimate expenses and programs.¹⁰⁴ One Freeport security official likened the company's compromise with the military to signing "a pact with the devil."¹⁰⁵

97. Rick Ness, one of the former Freeport executives who went on to work at Newmont, was profiled by journalist David Case in 2007. David Case, *Mr. Clean: A Gold Mining Exec Battles Pollution Charges in Indonesia*, MOTHER JONES (Sept. 10, 2007), <http://www.motherjones.com/environment/2007/09/mr-clean-accused-poisoning-indonesian-villagers-rick-ness-tries-prove-his-innocence>.

98. Jane Perlez & Raymond Bonner, *Below a Mountain of Wealth, a River of Waste*, N.Y. TIMES (Dec. 27, 2005), <http://www.nytimes.com/2005/12/27/world/asia/below-a-mountain-of-wealth-a-river-of-waste.html>.

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

In 2002, a year in which, according to its SEC disclosures, Freeport paid \$5.6 million to the military, vehicles on the Freeport road were attacked by gunfire that left one Indonesian and two American schoolteachers dead and others injured.¹⁰⁶ Although the military tried to pin blame for the attack on a disgruntled Papuan separatist, several Freeport officials with whom I met in 2003 readily admitted to me, off the record, that it was the work of military officials who were trying to shake down the company. One Freeport official speculated that the military was jealous of a fund the company had established for local community development, while the *New York Times* journalists were told that military officials were concerned that Freeport might cut their flow of cash, which had come under activist, media, and shareholder scrutiny.¹⁰⁷ Although in human rights and mining industry circles it was common knowledge that the military was involved in the shootings, official Indonesian and American investigations into the shootings did not yield the same conclusion. At a time when the United States was cultivating close ties with the Indonesian military, a potentially important ally in the United States' global war on terror, evidence of their involvement in the deaths of U.S. citizens (never mind the Papuans, East Timorese, and Acehnese also killed over the years) was inconvenient.¹⁰⁸ In addition to extracting funds directly from Freeport, military personnel also controlled prostitution, crime, and drug rings in the vicinity of the mine.

All of this calls into question the image of Freeport as a controlling agent deliberately cloaking itself in military protection. But the idea that the real Freeport is an innocent subject that stands apart from the Indonesian state and was forced into complicity with the military is also problematic. Rather, the corporation and the state enacted one another through these relations, through the "predatory reciprocities" that constitute extractive industries in Indonesia.¹⁰⁹

With this discussion of Freeport in mind, let me return to Newmont's relations with Brimob in Indonesia. In October 2000, Newmont's office in Mataram was bombed.¹¹⁰ No one was injured in the nighttime

106. *Id.*

107. *Id.*

108. EBEN KIRKSEY, *FREEDOM IN ENTANGLED WORLDS: WEST PAPUA AND THE ARCHITECTURE OF GLOBAL POWER* (2012).

109. KENNETH M. GEORGE, *PICTURING ISLAM: ART AND ETHICS IN A MUSLIM LIFEWORLD* 82 (2010).

110. *Bomb Explosion Hits Newmont's Office in Lombok*, *JAKARTA POST* (Oct. 14, 2000), <http://www.thejakartapost.com/news/2000/10/14/bomb-explosion-hits-newmont039s-office-lombok.html>. Mataram, on the island of Lombok, is the provincial capital of West Nusa Tenggara,

bombing. Publicly, Newmont representatives trivialized the incident. One later told me it was “just a fish bomb,” and a spokesperson reported to the media that the bomb only “caused a half-meter-wide hole in the building.”¹¹¹ Privately, Newmont managers took the incident seriously. One executive told me he was convinced that Brimob had carried out the bombing in order to discredit 911, Newmont’s security contractor. He said that police investigating the incident tried to pin the blame on a 911 worker who had caught ten Brimob members trying to steal from Newmont several weeks earlier. With the 911 worker in jail, Newmont representatives accompanied and filmed the police as they undertook their investigation, and picked up and analyzed samples of every substance the police collected (e.g., coffee, milk powder, mouthwash, pieces of a pen) in order to have a separate but parallel record. The police eventually dropped the charges against the worker.¹¹² The executive’s analysis of this incident illustrates parallels between Freeport’s and Newmont’s interactions with national security forces. In both cases, those who are meant to protect instead threaten, putting the mining company’s offices, employees, and contractors at risk. But the scale of violence at Newmont pales in comparison to that at Freeport, in large part because Newmont managed to avoid giving the military any role in its security.

During an interview in 2003, I asked a Newmont security executive in Denver how the company had set about cultivating relations with the Indonesian police and avoiding the military.

Security Executive (SE): We picked the lesser of two evils. We have Brimob on site but we manage them and that’s the key. Brimob is still evil. But we didn’t want TNI [Tentara Negara Indonesia, the Indonesian army] making the moves on us, being subjected to that kind of pressure. They are too corrupt, too powerful, and have too many guns. There is plenty of circumstantial evidence of their activities in crime and corruption

MW: How do you manage Brimob in Sumbawa?

SE: You throw out the assholes, and focus on the leaders. We go to *the* commander in Jakarta and use our influence—through [PT

which includes the islands of Lombok and Sumbawa. For information regarding the conversation to the author, see *supra* note 77.

111. *Id.*

112. Conboy claims that the police later linked the bombing to the militant organization Jemaah Islamiyah (JI), and that JI leaders later considered Newmont again as a potential target before settling instead on two bars in Bali for the October 2002 Bali bombing. KENNETH J. CONBOY, *THE SECOND FRONT: INSIDE ASIA’S MOST DANGEROUS TERRORIST NETWORK* 176 (2006).

Newmont Minahasa Raya president] Rick Ness and others—to get rid of the bad ones. You carry out command and control. At first they were out poaching all the time in the forests with our trucks. The commander would go to Sumbawa Besar on the weekend. He'd be getting drunk and driving around and intimidating people in our vehicle using our name. We said, "We're paying for this, you're supposed to be on call." We got obstinate. We got the good leaders in. You have to have a good NCO [noncommissioned officer]. The Brimob are all going to reflect the image of their commander.

The security executive first describes Brimob as a foreign "evil." He then notes that this evil gets attached to Newmont, and appears to assume its form with the rogue commander careening about "in our vehicle using our name." He then reasserts corporate control with the claim that Newmont is able to exercise "command and control," to "throw out the assholes" and insists that Brimob be "on call" for the company. Over time, Newmont did manage to reduce the Brimob force on-site: in 2002, there were fewer than 100, and in 2004, this number shrank to 30. Newmont went on to eliminate the on-site Brimob force entirely. Although Newmont removed Brimob from its regular security arrangements, the company still had internal security management, the private subcontractor 911, the regular police force outside the gates led by the resident Pak Kapolsek, and informal relations with village residents who mobilized their own understandings of corporate security needs.¹¹³

Newmont executives were proud of keeping the military at a distance, and of their success in keeping Brimob under relative control and then of ridding the Batu Hijau mine of the Brimob presence entirely. In these arenas they take credit. If Brimob had carried out human rights abuses, they might privately distance themselves from blame, although human rights activists, journalists, and lawyers would frame the company as responsible for abuses catalyzed by the mine's presence. Similarly, I heard American executives claim that Newmont had managed to dodge business partnerships with members of the Soeharto family who, in early stages of mine planning, tried to force Newmont's hand by withholding permits. The same executives admitted, however, that this required the company to endure long delays and even threaten to walk from the project—strategies that were only effective because the mine did not promise to be especially lucrative.¹¹⁴ By the same token, this mine attracted less interest from the military than a richer mine like Freeport's in West Papua. Newmont's power to hold unwanted actors and relations at a dis-

113. Welker, *supra* note 89, at 148.

114. *Cf.* Tsing, *supra* note 79 (discussing Bre-X).

tance rested on a relative lack of power in the form of a low-grade orebody.¹¹⁵

Ira Bashkow remarks that “if anything in the world should be refractory to individualistic theorization, it is such a collectively produced, highly structured, relational entity as the corporation.”¹¹⁶ The model of the individual actor capable of self-interest and unconstrained choice, however, is so compelling that it routinely serves as “the first port of call for economists, lawyers, business ethicists, and others—proponents and critics of corporate personhood alike.”¹¹⁷ My discussion of Newmont and Freeport’s security strategies and quandaries in Indonesia should illustrate that companies do not simply choose to collaborate with armed forces and commit human rights abuses so as to increase shareholder profits, as standard critical narratives might have it. Corporations are, rather, embedded institutions, located in national and regional geographic and historical conjunctures that they can shape, but rarely control.

CONCLUSION

In *The Corporation*, Bakan makes the case that corporations unleash great social and environmental harm because they are legally obliged to maximize profits for shareholders.¹¹⁸ This appealingly simple account unfortunately fails to interrogate its own legal foundation, and says nothing about why corporations that are not publicly traded are also socially and environmentally destructive. An alternative role for the corporate critic would be to question and demote rather than to amplify and reinforce the “textbook economics view”¹¹⁹ of the corporation, to allow that corporate executives have the legitimate capacity (without naïvely assuming the natural propensity) to make more ethical choices when they stand at a crossroads rather than naturalizing the worst corporate behavior.

In presenting us with a ready-made culprit, Bakan’s account also has the unfortunate effect of obscuring the wider swathe of actors who share responsibility for capitalist harms. Ian Lee argues that by conceptualizing the corporation as monstrous, Bakan masks the more insidious “banality of evil” that Lee locates in the aggregate decisions of ordinary

115. Newmont officials told me that the tailings (mine waste) Freeport expels into the river contain more ore than the rock Newmont mines at Batu Hijau.

116. Bashkow, *supra* note 28, at 305.

117. *Id.*

118. BAKAN, *supra* note 3; THE CORPORATION, *supra* note 1.

119. SANFORD M. JACOBY, *THE EMBEDDED CORPORATION: CORPORATE GOVERNANCE AND EMPLOYMENT RELATIONS IN JAPAN AND THE UNITED STATES* 3 (2005).

shareholders who buy shares of harmful corporations. Analysis need not halt, however, at the shareholder; we could gaze further to how workers in the United States often become indirect shareholders through the imposition of 401(k) and 403(b) account programs to support their retirement. Similarly, in the case of disasters such as BP's Deepwater Horizon explosion and spill, we can lay blame not only on the monstrous BP, but also on the U.S. government for allowing BP to engage in risky drilling practices despite its poor safety and environmental record, on the media that stoked gas price hysteria, on consumers for their reliance on automobiles, and on planners for creating environments hostile to public transportation. The identities of the actors responsible for harm are not simply given in the world in clearly bounded form, but must be enacted at every turn in a capitalist system that is structured such that ordinary consumers, shareholders, and workers may be simultaneously perpetrators and victims of environmental and social violence.

The law allows for more complex distributions of responsibility among multiple actors (individual business participants and business enterprises) in the wake of disasters (e.g., BP's Deepwater Horizon spill), while at the same time placing limits on which actors can plausibly be subject to which laws, and what punishment can follow for corporations classically seen as having no soul to damn or body to kick.¹²⁰ In her critical study of tort law, Jain argues that by narrowing and isolating the identities of the injured and injuring party, and assigning the latter blame for injury, we lose sight of the ideas, materials, relations, and practices that structure injury as a normal (rather than exceptional) feature of capitalism.¹²¹ At the same time, the law is not fixed. Although the law may be designed to support rather than undermine the capitalist system, progressive business and legal theorists have pointed out that judges differ over and often work to preserve indeterminacy with respect to the theory of the firm, and that legal fictions are malleable and may be subject to reform if they are not serving society's interests.¹²²

120. For a discussion of this famous quote, attributed to Edward Thurlow (1731–1806), and the legal ramifications that soullessness and bodilessness holds for the problem of making corporations liable, see John C. Coffee, Jr., “*No Soul to Damn: No Body to Kick*”: *An Unscandalized Inquiry into the Problem of Corporate Punishment*, 79 MICH. L. REV. 386 (1981); C.M.V. Clarkson, *Kicking Corporate Bodies and Damning Their Souls*, 59 MOD. L. REV. 557 (1996).

121. See SARAH S. LOCHLANN JAIN, *INJURY: THE POLITICS OF PRODUCT DESIGN AND SAFETY LAW IN THE UNITED STATES* (2006).

122. DAVIS, *supra* note 23, at 67; ORTS, *supra* note 20, at 7, 31; Millon, *supra* note 72, at 251; see also Andrew S. Gold, *Theories of the Firm and Judicial Uncertainty*, 35 SEATTLE U. L. REV. 1087 (2012).

Drawing on Hans Vaihinger's notion of "as if," Riles notes that corporate personhood is one example of a legal fiction: knowledge that is consciously false and therefore irrefutable.¹²³ For Vaihinger, the "as if" was "at its core always and only a means to an end," a subjunctive truth to which Riles ascribes an instrumental nature, a purposeful quality or directionality.¹²⁴ For anthropologist Marilyn Strathern, relational models of personhood are also fictions, useful for thinking with and for reflecting on the fiction of the liberal subject rather than faithful representations of how Melanesians construe their fellow beings. The question for the anthropological study of corporations then is how our models (relational personhood, *Homo economicus*, or beyond) serve our analysis.

123. Annelise Riles, *Is the Law Hopeful?* (Cornell Law Faculty Working Papers, Paper No. 68, 2010), available at http://scholarship.law.cornell.edu/clsops_papers/68; HANS VAIHINGER, *THE PHILOSOPHY OF 'AS IF': A SYSTEM OF THE THEORETICAL, PRACTICAL AND RELIGIOUS FICTIONS OF MANKIND* (C. K. Ogden trans., 2008) (1924).

124. Riles, *supra* note 123, at 8.