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CORPORATE PERSONALITY.

FROM the earliest period of our judicial history, lawyers and judges have reiterated the doctrine that a corporation is an intangible legal entity, without body and without soul. In almost Athanasian terms, the orthodox doctrine of a corporation as a legal person, separate and distinct from the personality of the members who compose it, has been defined and propagated. In these latter days, a sect of heretics has arisen who, rejecting the teachings of the fathers, deny or disparage this great doctrine. But these heretics do not seek to belittle the questions at issue between themselves and the orthodox party. Far from it. They rather strive to exaggerate the importance of those questions, in order to pose as great reformers engaged in a gigantic task of emancipating the legal world from the thraldom of a mediæval superstition.

In the heated controversy thus engendered, it is difficult indeed for any American lawyer writing upon the subject of corporations to avoid declaring himself. If he endeavors to preserve silence, his failure to speak is attributed to cowardice, or to a lack of clearly defined convictions upon a fundamental question. He is not permitted to treat the whole controversy with indifference. The direct interrogatory is pressed upon him, "Under which king?" He is called upon to vouch for his legal character by formulating his creed, in much the same way that each English sovereign has heretofore been required by his coronation oath to testify his adherence to the principles of the Reformation.

But sharp as the controversy may appear to have been among us, it is mere guerilla warfare, a few desultory skirmishes, in compari-

son with the pitched battles and protracted campaigns in which Continental jurists have waged war over this doctrine. With us, the literature of the subject, on the orthodox side, consists in a *dictum* reported by Coke,[1] referred to by Blackstone,[2] and reiterated monotonously by every law student, together with a number of modern decisions which apply, or misapply, the doctrine. The opposing party can point to a few statements in text-books, often contradicted or seemingly contradicted by other passages in the same treatises, and to some modern decisions and *dicta* in which judges have somewhat ostentatiously repudiated the doctrine as a mere conceit of the schoolmen. On the Continent, on the other hand, whole volumes have been devoted to this one doctrine, and rival theories have been developed whose adherents have formed themselves into parties almost as well-defined as the Epicureans, the Stoics, or any other of the historic philosophic sects. In Germany, in France, in Italy, learned treatises occupied wholly with this doctrine of corporate personality are constantly appearing.[3]

Our complete oblivion to all this wealth of controversial learning strikingly exhibits the insularity of our English law. Are not Coke and Blackstone, sources of the common law, better than all the scholars of Europe? It may be that this patriotic confidence is justified, and that all that foreign learning furnishes no lesson from which we can derive profit; but if so, it would be reassuring to find some defender of our faith who, having imperilled his legal soul by mastering the occult learning of Continental jurists, should be able to state reasons why no Anglo-American lawyer need vex his English soul with that mass of foreign lore. Here, however, it

[1] Sutton's Hospital Case, 10 Co. 32.

[2] 1 Bl. Comm. 476, 477.

[3] A complete bibliography of the subject would be of appalling size. The following are a few of the more recent foreign treatises dealing with this subject: Binder, Das Problem des juristischen Persönlichkeit (Leipzig, 1907); Hölder, Natürliche und juristische Personen (Leipzig, 1905); Meurer, Die juristische Personen (Stuttgart, 1901); Mayer, Die juristische Person und ihre Verwertbarkeit im öffentlichen Recht (Tübingen, 1908); Schwabe, Die juristische Person und das Mitgliedshaftsrecht (Basel, 1900); Rechtssubject und Nutzbefugnis (Basel, 1901); Die Körpershaft mit und ohne Persönlichkeit (Basel, 1904); De Vareilles-Sommières, Les Personnes Morales (Paris, 1902); Michoud, La Théorie de la Personnalité Morale (two volumes. Paris, 1906 and 1909); Pic, Sociétés Commerciales, vol. 1, title II, ch. 1 (Paris, 1908); Ferrara, Le Persone Giuridiche (Naples, 1907–1910); Barillari, Sul Concetto della Persona Giuridica (Rome, 1910).

is impossible to do more than make brief mention of some of the leading theories,[4] as an introduction to an examination of the subject on principle.

I.

The Roman law gave but little consideration to what we call corporations, and the whole law of the subject consisted in a number of ambiguous and unfortunate phrases which have been the sources of much of the confusion both in English law and in the law of Continental Europe. The canon law, while it devoted more consideration to the subject, did not develop any well defined theory. In spite of the scholastic flavor of the *dicta* on the subject transmitted to us by Coke, the Canonists cannot fairly be charged with originating the confusion surrounding the subject.

Savigny in Germany, in the first half of the nineteenth century, began the scientific or metaphysical consideration of the subject. He observed the fact that property belongs in law to a corporation and not to any individual, and the question which he put to himself was, "Who or what is the real owner of this property?" With this question theoretical writers in Germany and elsewhere have ever since busied themselves. Savigny's answer was that the corporate property belonged to a fictitious being and not to any real person or entity. He took as his starting-point the proposition that ownership involves the possession of a will by the owner; and he concluded that inasmuch as a corporation does not really possess a will, it must as a property-owner be a fictitious person. At the same time, as an acute French writer has demonstrated, Savigny and his followers, paradoxical as it may seem, impute a certain reality to this fictitious person.[5] For instance, they speak of it as created by the state.

Savigny's doctrine, or some doctrine closely akin thereto, was generally accepted in France from his time until quite recently; and all students of the common law will recognize in this theory the most prominent features of the orthodox doctrine of Anglo-American law — even including its self-contradictions.

[4] See historical review in Binder, Das Problem der juristischen Persönlichkeit, 1–34; Michoud, La Théorie de la Personnalité Morale, 16–99; Ferrara, Le Persone Giuridiche, 22 *et seq.*

[5] De Vareilles-Sommières, Les Personnes Morales, ch. II.

In Germany, however, objections began to be raised to this theory almost as soon as it was definitely formulated. Accordingly, a school arose, led by Brinz, which taught that corporate property is not owned by a fictitious being created by the state but by no person at all. It is not the property of a person but of a purpose — "*Zweckvermögen.*" This theory was primarily intended to explain the ownership of property by charitable foundations. Although Brinz has found few followers, yet his theory undoubtedly contains an element of truth; for the property of every corporation, not merely charitable corporations but also business companies, is in a sense dedicated to an object. But we of the common law recognize in such dedication, not the ownership of the property by an object, but rather the elements of a somewhat peculiar trust. The purpose to which such property is dedicated amounts to a mere restriction on the otherwise more extensive right of disposition enjoyed by those who manage the property.

This "Zweckvermögen" theory, like that of Savigny, regarded the personality of corporations as fictitious; but in the meantime a rival school arose, which teaches that corporations are real persons. This personality is neither fictitious, nor artificial, nor created by the state, but both real and natural, recognized but not created by the law. When a company is formed by the union of natural persons, a new real person, a real corporate "organism," is brought into being. Of this school, which in some form or other has long been dominant in Germany, Gierke is the leading exponent. In the hands of some writers, this doctrine is carried to grotesque lengths. The corporate organism is an animal: it possesses organs like a human being. It is endowed with a will and with senses. It even possesses sex: some corporate organisms, like the church, are feminine, while others, such as the state, are masculine. One opponent of this doctrine ironically propounds the question whether a marriage with a legal person is valid.[6] Of course, in the hands of most writers, this reality theory of corporate personality is much more refined. For instance, Gierke himself has a much less anthropomorphic conception of the corporate organism. Some writers make the real corporate organism a mere colorless, lifeless "subject of rights." Some, with Zitelmann, hold that the corporate organism possesses a will, and is for that reason a real person. Others

[6] De Vareilles-Sommières, Les Personnes Morales, pp. 77–78.

assert that a corporation has no will, but that a will is not essential to personality.

Some writers, notably Ihering in Germany, M. de Vareilles-Sommières in France, and Schwabe in Switzerland, have rejected all the foregoing views. They teach that the "subject of rights" in cases of corporate ownership of property is simply the natural persons who compose the entity. They concur with the advocates of the fiction theory in maintaining that the personality of a corporation, or even its existence as an entity, is a pure fiction or metaphor; but they maintain that the fictitious personality is not "created" by the state, because it does not exist. To them, a corporation is merely an abbreviated way of writing the names of the several members.

When we turn homeward from these foreign theories, we find that no English or American lawyer has philosophized about the question, although the orthodox doctrine in this country is similar to Savigny's and is, like his, full of self-contradictions. The orthodox American lawyer would be apt to say, "A corporation is a fictitious, artificial person, composed of natural persons, created by the state, existing only in contemplation of law, invisible, soulless, immortal." Now, such a definition is a *congeries* of self-contradictory terms. For example, a corporation cannot possibly be both an artificial person and an imaginary or fictitious person. That which is artificial is real, and not imaginary: an artificial lake is not an imaginary lake, nor is an artificial waterfall a fictitious waterfall. So a corporation cannot be at the same time "created by the state" and fictitious. If a corporation is "created," it is real, and therefore cannot be a purely fictitious body having no existence except in the legal imagination. Moreover, a corporation cannot possibly be imaginary or fictitious and also composed of natural persons. Neither in mathematics nor in philosophy nor in law can the sum of several actual, rational quantities produce an imaginary quantity. As, therefore, the orthodox doctrine contains so many mutually contradictory propositions, it behooves us to study the question on principle.

II.

What, then, is the corporate entity? Is it real or imaginary? Is it natural or artificial? Is it "created by the state," or does

it spring into existence spontaneously? Is it a person or is it not?

The difficulties of the inquiry are manifold; for the most abstruse questions of philosophy become pertinent. At the very outset, we are confronted by Pilate's question, "What is truth?" or by the cognate question, "What is reality?" For certainly we cannot well determine whether the corporate entity is real, unless we first decide what reality is. For instance, an idealist, who believes that chairs and tables have no existence save in his own mind, is very apt to impute to the ideal corporate entity the same degree of reality — neither greater nor less — which he attributes to such material objects. So, the question whether, or in what sense, a corporation is a person, naturally involves an inquiry into the nature of personality, than which no more profound or baffling question can be conceived. In such metaphysical mazes it is easy to lose one's self.

Now, in respect to the nature of a corporation, there are two basic propositions, (1) that a corporation is an entity distinct from the sum of the members that compose it, and (2) that this entity is a person. These propositions are often confused; but they are properly quite distinct from one another. For example, one who denies that a corporation is really a person, or who accepts that proposition merely as a figurative statement or fiction of law, is not at all bound by logical consistency to deny the reality of the corporation as an entity distinct from the sum of the members.[7]

III.

Let us, therefore, address ourselves first of all to the question whether, or in what sense, a corporation is an entity distinct from the sum of the members.

Now, consider for a moment any composite whole. Is a house

[7] See De Vareilles-Sommières, Les Personnes Morales, sec. 232, where the author says: "Remarquons tout d'abord que, s'il était vrai que l'association fût quelque chose d'autre que ses membres, s'il était vrai que le tout fût quelque chose de plus que les associés, il ne s'en suivrait nullement que cette chose, ce tout, fût une personne. Où est le lien entre ses deux idées: les associés forment un tout; ce tout est une personne? Il y a un abîme entre elles. . . . Pour le combler, il faudrait y jeter cette majeure avec ses preuves: un tout composé de différents individus d'un certain ordre est toujours lui-même un individu du même ordre."

merely the sum of the bricks that compose it? This question cannot well be answered in the affirmative; for you may change many of the bricks without changing the identity of the house. Or take such a common word as "bundle." Every child recognizes that the "bundle" is something distinct from the faggots, or what not, which compose it. When you have the separate faggots, you do not have the bundle; and you may change the faggots, or many of them, without destroying the identity of the bundle.

To come still closer to the subject, take such a simple idea as "school" or "church." Was there ever a schoolboy who had any difficulty in understanding that his school is something distinct from the boys that constitute it? He does not need to be told that the school may preserve its identity after a new generation of boys have grown up, so that not a single pupil remains the same, and though every teacher may have changed and though the school building may have been moved to a different location. He finds nothing strange or mystical in the conception of the school as an entity. Similarly, he needs no theological instruction, still less any metaphysical disquisition about the nature of an imaginary entity, to inform him that the Church is the same church to-day as in the days of our Lord. Was there ever a pupil in a Sunday School who asked for explanation of the doctrine of "One Catholic and Apostolic Church" on the ground that every time there is a change in membership there must be a new church? On the contrary, much instruction would be required to make a healthy boy believe that the school or the Church is a short-hand expression for the several members of the school or of the Church, so that every time a new boy joins the school or a new member joins the Church, there is a new school or a new Church.

Any group of men, at any rate any group whose membership is changing, is necessarily an entity separate and distinct from the constituent members.[8] The naturalness and indeed inevitableness of the conception of a corporation as an entity was pointed out by Mr. Morawetz:

[8] This may be demonstrated mathematically. Suppose a corporation composed of two members, a and b. Let c = the corporate entity. Now, if the corporate entity is merely the equivalent of the sum of the members, then $c = a + b$. Now, suppose b to assign his shares to d, then $c = a + d$. But this cannot be unless b is the same as d, which is absurd. Therefore, c, the corporate entity, is not equivalent to the sum of the members.

"The conception of a number of individuals as a corporate or collective entity occurs in the earliest stages of human development, and is essential to many of the most ordinary processes of thought. Thus, the existence of tribes, village communities, families, clans, and nations implies a conception of these several bodies of individuals as entities having corporate rights and attributes. An ordinary copartnership or firm is constantly treated as a united or corporate body in the actual transaction of business, though it is not recognized in that light in the procedure of the courts of law. So, in numberless other instances, associations which are not legally incorporated are considered as personified entities, acting as a unit and in one name; for example, political parties, societies, committees, courts." [9]

All that the law can do is to recognize, or refuse to recognize, the existence of this entity. The law can no more create such an entity than it can create a house out of a collection of loose bricks. If the bricks are put together so as to form a house, the law can refuse to recognize the existence of that house — can act as if it did not exist; but the law has nothing whatever to do with putting the bricks together in such a way that, if the law is not to shut its eyes to facts, it must recognize that a house exists and not merely a number of bricks.

Hence, it follows that in recognizing the existence of a corporation as an entity, the law is merely recognizing an objective fact, while in refusing to recognize fully the existence of a partnership or voluntary association as an entity the law is shutting its eyes to facts. Therefore, what needs explanation in the common law is not the doctrine that a corporation is an entity, but the doctrine that a partnership or other voluntary association is *not* an entity. It is all but impossible for those unlearned in the law to think of a partnership otherwise than as an entity. It is hard to convince a sensible business man that when a senior partner gives his son on attaining majority a small interest in the firm, an entirely new firm is thereby created. The ordinary layman has the conception of the firm as an entity; and confusion and litigation arise because the Anglo-American law will not recognize, or will not fully recognize, that simple conception.

Hence, the oft repeated statement of lawyers and judges that a corporation exists *only* in contemplation or intendment of law [10] is

[9] Morawetz, Private Corporations, 2 ed., § 1.

[10] Dartmouth College *v.* Woodward, 4 Wheat. (U. S.) 518, 636; Sutton's Hospital Case, 10 Co. 32.

untrue. A corporation exists as an objectively real entity, which any well-developed child or normal man must perceive: the law merely recognizes and gives legal effect to the existence of this entity. To confound legal recognition of existing facts with creation of facts is an error, — none the less serious because the law sometimes, ostrich-like, closes its eyes to facts and assumes that they have no existence. For instance, the common law refused to recognize the paternity of an illegitimate child and declared him to be *filius nullius;* but it did not follow that the parentage of children born in wedlock existed *only* in contemplation of law. In that case, the law recognized facts; in the other it refused to do so. Similarly, although the law stubbornly blinks at the facts when it will not acknowledge the existence of a partnership or voluntary association as an entity, it does not follow that a corporation as an entity exists *only* in intendment of law. Because Nelson at Copenhagen would not see the signal to retreat, it did not follow that everything that he did see — the enemy's vessels and his own — existed *only* in his own mind.

We need not waste words in discussing the nature of the existence of this corporate entity. Its existence is precisely as real as the existence of any other composite unit. As Kyd, a writer who deserves a greater reputation than he enjoys, clearly stated, "A corporation is as visible a body as an army; for though the commission or authority be not seen by every one, yet the body, united by that authority, is seen by all but the blind." [11] If a corporation is fictitious, the only reality being the individuals who compose it, then by the same token a river is fictitious, the only reality being the individual atoms of oxygen and hydrogen. The only difference is that one of the essential elements of an army, or of a river, consists in juxtaposition in space of the members, or of the molecules of water, whereas the bond of union in the case of a corporation is less material. But this difference is not at all fundamental; and the existence of a corporation is quite as real as the existence of the Church, of the Republican Party, or of any other aggregation of men for good or evil. Whether this existence be ideal or material, it is certainly real.

In these days, it has become rather fashionable to inveigh against the doctrine that a corporation is an entity, as a mere technicality

[11] 1 Kyd, Corporations, 16.

and a relic of the Middle Ages; but nothing could be further from the truth. A corporation is an entity — not imaginary or fictitious, but real, not artificial but natural. Its existence is as real as that of an army or of the Church. This is the element of truth in the reality theory of corporate personality which, originating in Germany, has commanded wide acceptance not only in that country but also in France and Italy.

IV.

Having thus established that a corporation is a real and natural entity, recognized but not created by the law, we next encounter the question whether this entity is a person. The answer to this question is, of course, vitally affected by our definition of "person." If we use the word in the signification which it conveys to the ordinary English-speaking layman, undoubtedly the corporate entity is not, in truth and reality, a person. For the corporate entity is not a human being; it is not even a rational creature capable of feeling and willing. But the word may be used in some very different sense. "When *I* use a word," said Lewis Carroll's Humpty Dumpty, "it means just what I choose it to mean — neither more nor less"; and when Alice objected, "The question is whether you *can* make words mean so many different things," Humpty Dumpty replied, "The question is which is to be master — that 's all." Many a German scholar has resolved, like Humpty Dumpty, that words shall not master *him*, and having thus impressed upon the word "person" his own meaning he demonstrates with absolute finality that the corporate entity is really a "person" — in *his* sense of the word.

Certain it is, however, that if the word is thus used in a special, non-popular sense, the proposition that a corporation is a person becomes a mere source of confusion. If by "person" the law means, not a rational, living creature similar to a man but a mere "subject of rights," — and this is the teaching of the more moderate members of Gierke's school [12] — then, in the name of clearness let us adopt some less ambiguous designation for this "subject of rights."

[12] See, Michoud, La Théorie de la Personnalité Morale, 7: "Pour la science de droit, la notion de personne est et doit rester une notion purement juridique. Le mot signifie simplement un sujet de droit, un être capable d'avoir des droits subjectifs lui appartenant en propre, — rien de plus, rien de moins."

But if we do not lose ourselves in metaphysical discussions of the nature of juristic personality but take common sense as our guide, we shall apprehend clearly that when a jurist first said, "A corporation is a person," he was using a metaphor to express the truth that a corporation bears some analogy or resemblance to a person, and is to be treated in law in certain respects as if it were a person, or a rational being capable of feeling and volition.

That the *dictum*, "A corporation is a person" really means what we have just stated and not that a corporation is a "subject of rights" can easily be demonstrated. For true it is that there are or may be subjects of rights which are not beings capable of feeling and volition, but they are not persons in any proper sense of the word. For instance, laws for the prevention of cruelty to animals recognize the lower animals as possessing a somewhat vague right to exemption from needless suffering. The law might go further: it might, for instance, recognize a trust for the maintenance and support of the testator's dogs or horses, and might permit of the enforcement of this right of those animals by a judicial proceeding in their names by *prochein ami*, in precisely the same way that the right of an infant *cestui que trust* would be enforceable; but the horses and dogs would not on that account be persons. Anything that is capable of enjoyment or feeling can be a subject of rights — a "*Geniesser*" as Bekker would say. Indeed, we may go further; for even a purely imaginary being may have legal rights. For example, our law recognizes and enforces trusts for the benefit of unborn children. So, a heathen code might recognize a right of Jupiter or Apollo to enjoy the sweet savour of a hecatomb or a burnt offering, and might enforce this right by judicial proceedings instituted in the name or on behalf of the divinities in question; and yet those deities, although "subjects of rights," would not be real persons.

The truth is that the essence of juristic personality does not lie in the possession of rights but in subjection to liabilities. Those beings are "persons" in law to whom the law both can and does address its commands. Now, obviously, legal commands can be addressed to none but rational beings capable of feeling and volition. To all else, the law's commands, if addressed at all, must remain unintelligible and mere *brutum fulmen*. It needs no Canute to teach us that the sovereign's commands when addressed to the waves of the sea, or for that matter to aught but rational beings, are futile.

The essential prerogative of man does not lie in rights, but in duties. Every system of law, from the Decalogue down, is founded upon thou-shalt-not's, addressed to beings capable of understanding the command, of feeling the penalty, and of exercising a will to act accordingly. It cannot be otherwise. No fiction can supply these essential elements of juristic personality: no law can create them. The only way the law can protect or enforce legal rights is by imposing punishment upon those who violate them — an idle proceeding unless the violator is a moral being capable of being deterred by the threat of punishment.

It will be objected that this conception of personality would exclude idiots and infants. So it would; but what of it? In our ignorance of the nature of the mind or soul, we do not know where the mind of an idiot or an infant is situated, or whether it exists at all; but certain it is that for all legal purposes the mind of an idiot or an infant of tender years is as if it did not exist. We speak of idiots as persons because they have the form of persons; but we recognize that the substance is not there. If society consisted exclusively of idiots or babes, there could be no law. They are persons only in form and *in posse*.

It will also be objected that the conception of legal personality stated above is too broad in that it would admit the legal personality of slaves. Now, we must concede that the law *might* refuse to recognize the personality of some classes of rational beings who are really capable of feeling and volition, just as we have seen that the law sometimes refuses to recognize the existence of facts, — for example, in the denial of the paternity of illegitimate children. The law *might* refuse to recognize certain classes of rational men as subject to legal duties; but few if any systems of law have been so silly. The law finds difficulty enough in securing obedience to its commands without unnecessarily hampering itself by refusing to address them to some beings who by nature are capable of understanding and obeying them. For example, although the law of the Southern States declared with emphasis that slaves were not persons, and deprived them of many of the rights usually enjoyed by persons, nevertheless it left them subject to legal duties. For instance, if a slave committed murder, he could be hanged. When the law declared that a slave was not a person, it meant merely that he was to be treated for some purposes as if he were not a person.

As a corporate entity is not a rational being, is not capable of understanding the law's commands, and has no will [13] which can be affected by threats of legal punishment, it follows — if demonstration be needed of a self-evident fact — that a corporation is not a real person, if the word "person" be used in its ordinary sense. In addressing commands to a corporation, the law can speak only to the human beings who compose it or who manage and control its destinies. In form, punishment for violation of those commands may be inflicted on the corporate entity, but in so doing the law is using the corporate entity as a mere means of reaching the human beings who act for the corporation. Whether this method of reaching those human beings is the best or most effective need not now be considered. The point here is that in denouncing its penalties upon corporations, the law is using the corporate entity as a mere sight to direct its shots towards the human beings who are behind the entity. This is the truth epigrammatically expressed in American politics by the phrase, "Guilt is personal."

So too, even in respect to rights attributed to the corporate entity, the object of the law is to carry those rights to the human beings who, collectively, compose the corporation and constitute, according to a foreign expression, its *substratum*. For although, as we have seen, the law *might* recognize other beings than men as possessors of rights, yet in fact neither our law, nor any existing system of law, does do so, except to a very limited extent. The law, as already mentioned, does recognize, and punish the infraction of, certain very imperfect rights possessed by the lower animals, and it does recognize and enforce rights of unborn children. But in the broad and large sense, the Declaration of Independence states an undeniable fact when it asserts that governments are instituted *among men* — not among animals or angels, but men — and that it is men whose inalienable rights to life, liberty and the pursuit of happiness the laws attempt to secure. Corporations are created, or allowed to be formed, by the state merely for the purpose of benefiting human beings.[14]

[13] Note, however, that Zitelmann maintains that a corporation possesses an "einheitlichen Willen," or "Verbandswillen." Binder, Das Problem der juristischen Persönlichkeit, 22–23, criticising Zitelmann's theory on the ground that this will is of a very different character from the will of a person in the ethical sense. See also passage from Macaulay to be quoted in the continuation of this article.

[14] Ihering makes this proposition the basis of his conclusion that the real subject of rights is not the corporation but the individual members. "Niemand wird darüber im

For the rights of ideal entities, as such, the state has no concern. In the last analysis, it is men and not legal entities whose rights and liabilities the courts must decide. The corporate entity, or personification, which we call a corporation is regarded as having rights and liabilities for the sake of convenience; but it is men of flesh and blood, of like passions with ourselves, who must in one form or another and in varying degrees enjoy the rights and bear the burdens attributed by the law to the corporate entity.

Therefore, the proposition "A corporation is a person" is either a mere metaphor or is a fiction of law. This is the element of truth in the "fiction theory" of the corporate entity which both in England and on the Continent may be regarded as the orthodox doctrine.

But although corporate personality is a fiction, the entity which is personified is no fiction. The union of the members is no fiction. The acting as if they were one person is no mere metaphor. In a word, although corporate personality is a fiction, yet it is a fiction founded upon fact. It is as natural to personify a body of men united in a form like that of the ordinary company as it is to personify a ship. To argue that because the personality of a corporation is a product of the imagination, therefore the corporation itself, as anything different from the separate members, is a fiction would be as reasonable as to argue that because a ship is not really a female, and is personified only by way of metaphor, therefore it has no real existence except as a number of boards and nails.

To appreciate the difference between an imaginary personality, such as that of a corporation, which is a natural and spontaneous expression in figurative language of actual facts, and a purely fictitious person, whose existence is no mere personification of a real but impersonal entity, it is only necessary to refer to some purely fictitious personalities. For there are, or have been, fictitious personalities existing *only* in contemplation of law; but they are very different from corporations. The fictions in ejectment present the best example. John Doe, the common lessee, and Richard Roe, the

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Zweifel sein, dass die einzelnen Mitglieder es sind, denen die Rechte, mit denen die juristische Person ausgestaltet ist, zugute kommen, und dass diese Wirkung nicht eine zufällige ist, sondern dass sie den Zweck des ganzen Verhältnisses bildet, dass also die einzelnen Mitglieder die wahren Destinatäre der juristischen Person sind." Ihering, Geist des römischen Rechts, III, 356, quoted by Binder, Das Problem der juristischen Persönlichkeit, 25.

casual ejector, exist only in contemplation of law. They are pure legal fictions. They represent no natural idea. They are no mere personification by the law of real entities, but are forthright creations of the legal imagination. They cannot, like corporations, bridge rivers, pierce mountains, unite cities, cross seas, control commerce, and accomplish all manner of other visible and tangible results. Yet, so misleading are the standard definitions of a corporation that they are more justly applicable to such truly fictitious persons as John Doe and Richard Roe than to the very real things which we call corporations. For instance, Chief Justice Marshall's famous definition of a corporation,[15] with the substitution of the masculine gender for the neuter gender and of the word "law" for "charter," accurately defines John Doe or Richard Roe. The common lessee, the definition would then read, is "an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, he possesses only those properties which the law of his creation confers upon him, either expressly or as incidental to his very existence. Those are such as are supposed to be best calculated to effect the object for which he is created." Are we therefore to conclude that the only difference between John Doe and a corporation is one of sex? No conception of the corporate entity which would define it in terms appropriate to the casual ejector or the common lessee can be correct.

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[*To be continued.*]

[15] Dartmouth College *v.* Woodward, 4 Wheat. (U. S.) 518, 636.