Hydra
Interdisciplinary Journal of Social Sciences

The Corporation - Unbounded and Unhinged

by Helene Ryding
MSc Programme Social Anthropology

Abstract

In this paper, my argument concerns the legal status of a corporation, which is the same as a physical person, and whether it should be judged in the same way as a person. Recently companies have been criticised for being too like humans, (greedy and immoral). The problem is that in these days of transnational companies, local states are not strong enough to regulate transnational corporations, or are already in collusion with them, and the US has a policy of extraterritoriality, in which corporations are bound only by local laws, not US laws. But the morality of US companies abroad is judged by US citizens on the standards which apply in the US. Referring to both the metaphor of personality, and the legal personality, the paper explores whether a corporation has a conscience. The example of the East India Company, which the Crown took over after its adventurism abroad, provides a starting point. Using a corporate ethnography and a film, the paper argues that some modern corporations can be diagnosed with a form of mental illness, acting as psychopaths in their social relations, or trapped in a double bind set up by investors and rating agencies. As with people, mentally ill corporations should be constrained. Thus companies that behave badly abroad (ie without a conscience) should be regulated by the state (or by public opinion) at home.

Hydra - Interdisciplinary Journal of Social Sciences, Volume 1, Issue 1, pp. 42-50.

The Corporation - Unbounded and Unhinged

Helene Ryding

"Did you ever expect a corporation to have a conscience, when it has no soul to be damned, and no body to be kicked?" (Robertson 2001: 216, attributed to an 18th century Lord Chancellor Edward, Baron Thurlow).

Introduction

A corporation[1] is formed by a group of people to conduct business for profit. It is a separate legal entity that has been incorporated through a legislative or registration process established through legislation. Incorporated entities have legal rights and liabilities that are distinct from its shareholders who supply the capital. Early corporations were established by charter (an *ad hoc* act granted by a monarch or passed by a parliament). The corporation as a legal person is contrasted with a physical person in legal terms, yet they possess many of the same rights and duties. Much of recent public discussion about the corporation has used personality as a metaphor, claiming corporations are greedy, devious or arrogant. In this essay, I will consider some of the largest corporations, usually US owned, which have come in for considerable public criticism over the last two decades.

People have long fought to control the power of large institutions by limiting the power of the Monarchy, the Church and (eventually) the Soviet Communist Party, so that it is not surprising that there is a move currently to bring the corporation under control. The role of the state in regulating the market depends on the moral economy in which it operates, which can be defined differently by both the state and its citizens. If we expect a corporation to be like a person with a soul, we expect it to operate morally within the appropriate moral economy of a state's citizens. As the corporation growsten, it becomes more able to challenge the state. As corporations become transnational, individual states no longer have the power to regulate them across all their activities.

I will argue that corporations that behave 'badly' abroad (i.e. immorally, or without a conscience) should be regulated by the state at home. The problem is that in times of transnational corporations, local states are not strong enough to regulate them, or are already in collusion with them. The US has a policy of extraterritoriality, in which companies are bound only by local laws, not US laws, but the moral behaviour of US companies is judged by US citizens on the standards which apply in the US.

Since the question refers to the very early corporations, I will first discuss the role of the East India Company, a British company set up by Queen Elizabeth I of England in 1600, showing that even before the rise of proper capitalism in the 18th and 19th century there were battles between the Crown (or Parliament) and the Company. The Company was eventually disciplined for causing political and diplomatic difficulties for the Crown through military adventurism, and was taken

1 The British equivalent is a company. In the essay, corporation or company is capitalised when it refers to a specific company (e.g. The East India Company, often the Company for short; or for a generic use of the legal structure).

over by the Crown after its adventurism abroad. This case study will then be compared with the position of US transnational corporations operating with the benefit of US 'invisible' imperialism (Ho 2004).

A body without a soul is a person without a conscience. A moral economy determines the type of morality society applies to those operating in it. I will discuss the moral economy operating in the West in order to establish what standards for morality we expect from corporations. Using an ethnography of several large corporations and rating agencies I show that the apparent redefinition of the relationship between risk and capitalism by rating agencies is responsible for a form of schizophrenia in the corporations. Because there are rather few ethnographies of corporations, using material from the Canadian documentary film, *The Corporation* (2003), I will show that the modern transnational corporation, as a legal person, can be diagnosed in its worst examples as a psychopath. The film calls for more business regulation and consumer activism to control the corporations and proposes ways to do this, which can be seen as aligned with the moral economy of citizens.

It Was Ever Thus: The Successful Corporation Grown Arrogant Abroad

The East India Company

The East India Company was formed by Royal Charter in 1600, as a last ditch attempt for England to compete for trade in the East against the Netherlands, Spain and Portugal. It was an early form of joint stock company which allowed it to raise capital from many shareholders, without needing Crown funds. Using its monopoly of trade in the Far East and other special privileges granted by the Charter, it quickly became successful, bringing a wide range of goods back to England and re-exporting them to Europe. Its modern bureaucratic practices of record keeping and statistics allowed it to produce evidence to justify maintaining its monopoly of trade for almost a century, through several changes of monarch. The success of its trade brought customs revenues to the government, and the Company was able to advance loans to the Crown when needed for wars. But at the end of the 17th century, the Company began extending its reach by using military force to take territory in India, rather than just to protect its trade. The first attempt was a disastrous failure, since the Company's military power was similar to that of local rulers. However, later in the 18th century when large-scale military conquests by the Company began, its forces were far superior technologically, and the conquests were significant, with the Company's forces gaining more and more territory. Unfortunately, this was very expensive, and the Company was neither equipped to govern the territory nor to control its own army. So the Company was much less successful financially in this period, even through trade, and its reputation was damaged by its unscrupulous and corrupt employees. The P arliaments of the times became increasingly reluctant to renew the Charter, gradually removing all the privileges and taking back to the Crown the power to own and govern territory. The final straw was the Great Rebellion in 1857, after which the Company was quickly nationalised (Lawson 1993). The consequent history of Anglo-Indian trade is that of British colonialism, not of the East India Company.

From this early example of a transnational company we can see that its early success was dependent on its dynamic and aggressive character, but when aggression was turned onto people and not just business, and infringed on the rights of the Sovereign and Parliament, it needed to be constrained. So certainly, the Corporation has a body to be kicked.

'Invisible' Imperialism

Ho (2004) has distinguished between imperialism and colonialism. Imperialism refers to foreign domination, without the necessity of presence or possession, over transnational spaces. Colonialism refers to foreign presence in, possession of and dominations over bounded local space. Ho argues that while the US is anti-colonial, it nonetheless projects imperial power through mercenaries, gunboats, missiles, client states and multilateral institutions. He characterises this imperialism as 'invisible' since power is projected through the market and contracts, and through organisations which manage investment, rather than through property, as with colonies. This invisibility also extends via the Constitution which applies only on US territory, so that US servicemen serving abroad do not answer to local laws, and the government can act unconstitutionally abroad, against any threat by aliens. We can therefore suppose that American corporations operating abroad are not necessarily constrained by US laws and morals, and may be too big to be restrained locally by the states where they operate. However, their transnational activities are certainly not 'invisible', as widespread publicity about sweatshops abroad has shown.

The Moral Economy

For a corporation to have a soul, it must have a conscience and be able to distinguish between right and wrong. But what is right and wrong in economics? Some doubt that there is any morality in the realm of economics. Others believe that capitalism enshrines the morality of individual choice. But a growing minority, including Nobel Prize winner Amartya Sen, argue that moral principles will remain absent from neo-liberalism unless we deliberately shift the focus from measures of income growth to measures of human capabilities and different kinds of freedom. This means that anthropologists must engage with capitalist societies whether amoral or immoral, and move away from their romantic attachment to gift-based societies where reciprocity is seen as a more humane basis for society (Browne 2009:1-4).

Although the model for classical economics is based on personal self-interest combined with the invisible hand of the market, *The Wealth of Nations* (Smith 1976 [1776]) was written in the context of European political economies of the time, which were strongly interventionist. Liberation from governments thus has a different meaning from today. Moral economics can be presented in both negative and positive aspects: the right to be free of interference or the moral duty to consider others (Browne and Milgram 2009:9-11). In the transition to capitalism, land, labour, resources and machinery became commodities (Marx 1976) and with them, the need to protect one's property emerged. The moral concerns of the economy became located in the state and legislation which was designed to enforce new property rights. Browne proposes to consider the moral sphere of capitalism as internal to and smaller than the larger social sphere, as compared to reciprocity-based societies, where a breach of morality tends to breach the expectations of the whole society (Browne and Milgram 2009:17).

In capitalist societies, market economies make fewer moral demands on economic actors. Moral behaviour results from voluntary free will of individuals and firms, and so the morality of a capitalist economy cannot be automatically presumed. Nor can the moral sphere be seen as stable or rigid, but it responds to pressure from society. Thus, when public pressure to clean up pollution results in legislative proposals to regulate polluting industries, those industries will complain and attempt to leverage the moral centre of capitalism that controls the free market and reduces their ability to compete and thus surviv e. But if public pressure is great enough, the legislation will be adopted, expanding the moral sphere to accommodate a larger set of concerns than before (Browne and Milgram 2009:18).

The moral sphere has shrunk in the US since the adoption of neo-liberalism, by removing the post World War II Keynesian-influenced economy. In welfare state economies in Europe, however, the moral sphere organised by states occupies a more dominant space in society. The size of moral spheres is reduced through the leverage of global institutions such as the World Bank and IMF, which are empowered to withhold foreign aid unless a country agrees to neoliberal reforms. As for the EU, it must balance the views of its member states, including states with neo-liberalism, state dirigisme[2], welfare capitalism and crony capitalism[3]. The EU competition authorities have, however, been much tougher on abuse of dominant power, e.g. by Microsoft, than the equivalent regulator in the US, but have been less successful in making states deregulate . In the Asian Tiger economies of Singapore and South Korea, there is a strong interventionist feature in the role of the state. In the Malaysian case (Browne 2009) the state has initiated top-down incentives for businesses to act ethically according to Islamic laws of finance in a way that might not be acceptable in other countries.

There is mounting pressure on capitalist enterprises to be seen as moral economic actors, partly by a continual story of moral breaches in recent years. "Cases end up in ugly courtroom dramas where astonishing greed and corruption are exposed to a shocked public. Alongside these criminal violations of public trust stand the morally questionable tactics employed by many corporations that prey on society's vulnerability, in the interests of profit at any cost" (Browne 2009:25). As a consequence, the metaphors of personality used for the Corporation have become increasingly ugly.

Corporate Ethnographies

There is a general lack of ethnography about corporations. This partly reflects anthropology's own past interests in the exotic 'Other', whereas corporations are part of everyday Western life. In the 1980s, when anthropologists became more interested in Western societies, ethnographies of organisations were often related to the role of gender in the workplace and public sector organisations or empowerment issues (Wright 1994). Studies of work are generally related to the shop floor and workers, not management. Even recent anthropological studies of the financial sector (e.g. Zaloom 2004) do not concern large companies and their management, but rather individuals and their sense of self.

There are also difficulties of access to corporations. Any method that insists it lacks a cut-and-dried technique, any discipline that grants a central position to the voices of individuals and refuses to prejudge what they might say, will always be suspect to powerful organisations (Gellner and Hirsch 2001:p2). Ourousoff (2010:22) finds that her entry to these powerful corporations is determined by her willingness to listen to problems of senior individuals and the opportunity for the managers

2 Dirigisme is a term for a capitalist economy where the state has a strong influence on the operation of the market.

3 Crony capitalism refers to a capitalist economy where there are close relationships between owners and leaders of industry and government officials. This may lead to favouritism for government contracts (for example) which can corrupt the ideal of the government serving the people.

to find their own voice; in fact this can be seen as a form of psychotherapy. The opportunity to talk to an interested outsider, under terms of confidentiality, even with a tape recorder and the intention of publication, appears to have been gratefully received. Both Gellner and Ouroussoff stress that the refusal to use questionnaires (with the possibility of quantification) differentiates them from management consultants, and gets them through individual managers' doors. As to the lack of suitable ethnographies I will discuss only one recent corporate and consider material from a recent film.

'Wall Street at War'

In this recent book (Ouroussoff 2010), the author describes her multi-sited fieldwork in two sets of surprisingly opposed sets of organisations: top corporations and credit rating agencies, both essential components of capitalism. The fieldwork began in corporations in 1999, moving to rating agencies, ending in 2005, before the start of the current financial crisis. Surprisingly , she does not cover the third component in the triangle: investors. She argues that rating agencies act as gatekeepers for corporations in terms of access to investment funds, and that this intermediation by agencies monitoring the execution of corporations' corporate plans significantly affects the company's operation. This monitoring is aimed to reassure shareholders that corporations are actually carrying out their published corporate strategies and that investors will receive a predictable return on their investment. This is claimed by the credit analysts to be acting in a moral way to discipline companies according to their understanding of the rules of capitalism.

However, Ouroussoff has found that the objectives of corporations and those of the rating agencies are formulated on quite different understandings of how capital works in capitalism. Corporations assume that risk is necessary (and even good) to bring reward. Their success is based on their ability to innovate and to overcome the risks involved. But rating agencies view risk as bad, so it should be minimised to ensure a reliable return to investors. One of the main explanations of the 2008 financial crisis was that risk was being underpriced, so that attempting to control risk in a better way should be a good thing (Ourousoff 2010:10-11). However, rating agencies operate with complex mathematical models, which they claim are able to calculate *real* uncertainties, rather than just model them. There has been widespread publicity given recently to the lack of rationality in real life decisions, through the work of behavioural economists like Kahneman (2012). Taleb (2008) rejects a general ability to predict the future from past market dynamics, especially with regard to rare (and possibly unknown) events, and proposes strategies to minimise risk without relying on complex mathematical models containing dubious assumptions. According to Ouroussef, "the problem is that the analysts literally do not know what they are doing. Too young to have knowledge of the real world – the stereotypical analyst is in their early to mid-twenties – snow-blinded by their numerate ability and with a faith in human capacity to differentiate between chance and human failure that is naïve beyond comprehension, their demands, if met, would play havoc with capital's productive structures" (2010:23-4).

One could redirect them to Donald Rumsfeld in his remark about 'unknown unknowns' to the press in 2002:

> "[T]here are known knowns; there are things we know that we know. There are known unknowns; … there are things that we now know we don't know. But there are also unknown unknowns – … things we do not know we don't know."

Because of blind faith in their models and belief in the universality of the rationalist principle, "[a] nalysts (themselves) are completely unable to perceive how their rationalist moral economy works or even that it exists" (Ouroussoff 2010:p75). This is a completely different view of risk from that which has underpinned 200 years of capitalism, where "unpredictable contingency is held to be a condition of profit, and investors' assessment of risk, however comprehensive: an estimate of the chance of something happening is held to be speculative. [As a consequence,] the concept of 'capital' has become completely political" (Ourousoff 2010:4-5). The corporations' managers are forced to go along with the credit analysts' view of risk and produce data that is acceptable to the rating agencies, otherwise they will lose their good rating and investment capital will be harder to obtain. At the same time, they have to produce a parallel set of data to run the business. "We used to lie 20% of the time. Now it's 80%" (Ourossoff 2010: 24).

This set of emotionally distressing and conflicting instructions ('make a profit' and 'reduce the risk') from which it is impossible for corporations to escape and which are mutually incompatible, is the classic case of the 'double bind', first described by anthropologist Bateson (1972). It is an example of a putative cause of schizophrenia caused by the family or societal environment, rather than by brain chemistry. The analysts themselves could be classified as 'blind fools'.

The Film The Corporation

This film is a two-hour long Canadian documentary produced in 2003 by Mark Achbar, Jennifer Abbott and Joel Bakan based on the book *The Corporation: The Pathological Pursuit of Profit and Power* by Joel Bakan. The film features many of the US's biggest corporations and their role in neo-liberalism and globalisation. While the film is undoubtedly polemical, the *Economist* (2004) reviewed it as: "a surprisingly rational and coherent attack on capitalism's most important institution."

The film provides case studies of named firms' activities in a range of industries and locations and shows that American corporations cause harm to the public, both at home and abroad where the corporations operate. The biggest 'crime' is that the corporation does not take responsibility for its problems and makes other people pay for the harmful effects it causes. As the film states: "let someone else pay for the US military protection of our oil fields abroad; let someone else build the roads we need for transport." In economic terms, the corporation is a powerful externalising machine. In anthropological terms, this is the familiar boundary problem between the firm, the market and the state. Examples of the harm the film documents are: harm to workers (sweatshops, child labour); harm to human health (dangerous products, lying about adverse data); harm to animals (factory farming, artificial hormones); and harm to the biosphere ($CO2$ emissions, pollution). Fines and penalties for breaching legislation are seen as 'just the cost of doing business' and not as a deterrent. Extracting concessions from despotic rulers to make business even more profitable are also 'just normal business'.

The film provides a list of standard medical symptoms of the personality disorder 'psychopathy' and claims to have provided evidence of all of them. Examples of the symptoms are: callous unconcern for feelings of others; reckless disregard for the safety of others; incapacity to experience guilt; failure to conform to social norms with respect to lawful behaviour. In conclusion it pronounces a diagnosis that the (modern, biggest, US) corporations are psychopaths.

Body and soul

The Body of a Corporation: Conceived in sSn, but Immortal

We could consider that the body of the corporation is born with the original sin of capitalism, since the legal person has an obligation to make a financial return to its shareholders. Corporations increasingly seek to control perceptions of how they are seen by the public and their consumers, through advertising, branding, and control of information about them. Their public face is manipulated, and this is often the cynical aim of corporate social responsibility. Many firms now have 'mission statements' which remind their workers of their corporate values, e.g. Google's 'do no evil', but generally these are seen as window dressing. It is noticeable that when a corporation fails, it becomes immediately identified with its leaders, the visible faces of the corporation. During successful times, very few corporations are identified with their leaders, but by their brands and logos. Steve Jobs was a rare 'personal face' of a successful company .

As a legal person the corporation enjoys immortality, since its life is not limited by the human life span of its shareholders. According to research by Professor R. Foster (Yale University), quoted by Gittleson (2012), the average lifespan of a company listed in the S&P 500 index of leading US companies has decreased by more than 50 years in the last century, from 67 years in the 1920s to just 15 years today. Foster estimates that by 2020, more than three-quarters of the S&P 500 will be companies that we have not heard of yet. According to the film *The Corporation* this is clearly another way of externalising the costs of remedying today's harm onto future generations, a form of taxation without representation.

The mind of a corporation: mentally ill but at large in the community?

There are two different diagnoses for the corporation in two different behavioural environments, one vis-à-vis the public and one vis-à-vis the investor and rating agencies. Both can be valid. What is disturbing is that both involve lying: the first claimed out of the necessity for survival, and the second deliberately intending to deceive. The film makes the point that the individuals managing firms may be quite nice private persons (though some shown are not), but it argues that corporations make good people act badly. To understand this, perhaps we need the fourth component of the quartet: the 'unknown known' which Zizek attributes to the Freudian unconscious, "'the unknown knowns' – the disavowed beliefs, suppositions and obscene practices we pretend not to know about, even though they form the background of our public values" (Zizek 2004).

Repression of events and harmful actions into the unconscious can cause mental illness. But can confronting the offenders with their misdeeds make them change their ways, or is it necessary to constrain them further?

Conclusion

In this essay I have considered how the corporation can be considered to have a body and a soul, both by the use of metaphor, and in the sense in which it is a legal 'person' responsible to society through some sort of soul or conscience.

From the example of the East India Company we can see that a corporation can achieve success by being innovative, vigorous, even adventurous, but when this becomes aggression and turns against local people, without any sense of restraint, it needs to be controlled. When a corporation becomes arrogant and usurps the place of other institutions in society, it can be more than just kicked, it can be killed, but only by its founding state. In the days of the internet with all the publicity it can bring, the corporation is not 'out of sight, out of mind' or 'invisible' when it does harm in another country.

If the corporation has a body, then its body has been conceived with the 'original sin' of capitalism and though it has a theoretical immortality, in practice it is dying younger and younger, consumed by its own vanity. Some corporations can clearly be diagnosed with a form of mental illness, acting as psychopaths in their social relations, or trapped in a double bind set up by investors and rating agencies. Therefore it is unreasonable to expect its moral conscience to be effective, and citizens and states must move to exert more control over corporations. As for credit agencies, they consider themselves guardians, while others consider them blind fools.

The moral economy defines how society expects a corporation to behave. But who has the power to control transnational corporations and whose moral economy should be considered? How do moralities become transnational and shared, in a world of many different moralities? And which organisation has the right to represent the moral conscience in the global economy? Without the answer to this, 'all is vanity' indeed.

Bibliography

BATESON, G. (1972) *Steps to an ecology of mind collected essays in anthropology, psychiatry, evolution, and epistemology.* Aylesbury: Intertext.

BROWNE, K.E. & MILGRAM, B.L. (eds) (2009) *Economics and Morality: anthropological approaches*. Altamira Press UK.

CARRIER, J.G. (1997) M*eanings of the Market: The Free Market in Western Culture*. Oxford: Berg.

GELLNER, D.N. & HIRSCH, E. (2001) *Inside organizations: anthropologists at work*. Oxford: Berg.

GITTLESON, K, (2012) *Can a company live for ever?* Available from: http://www.bbc.co.uk/news/business-16611040. [Accessed 19/01/2012].

HO, E. (2004) Empire through Diasporic Eyes: A View from the Other Boat. *Comparative Studies in Society and History*, 46(2), 210-246.

KAHNEMAN, D. (2012) *Thinking, fast and slow*. London: Penguin.

LAWSON, P. (1993) *The East India Company: A History*. Longman Group Ltd.

MARX, K. (1976) *Capital: A Critique of Political Economy*: *Vol.1*, translated by B. Fowkes Harmondsworth, Penguin.

OUROUSSOFF, A. (2012) *Wall Street at War: The Secret Struggle for the Global Economy*. Polity Press.

ROBERTSON, A.F. (2012) *Greed: Gut Feelings, Growth and History*. Polity Press.

RUMSFELD, D. (2002) *Transcript of press conference*. Available from: http://www.defense.gov/transcripts/transcript.aspx?transcriptid=2636

SHAPIRO, S.P. (1987) The Social Control of Impersonal Trust. *American Journal of Sociology*, 93(3), 623-658.

TALEB, N.T. (2008) *The black swan : the impact of the highly improbable*. London : Penguin.

'The Corporation' (2003) by Mark ACHBAR, Jennifer ABBOTT, and Joel BAKAN, based on the book *The Corporation: The Pathological Pursuit of Profit and Power* by Joel Bakan.

'The lunatic you work for -- If the corporation were a person, would that person be a psychopath?' *The Economist*. Available from: http://www.economist.com/node/2647328?story_id=2647328. [Accessed 06/05/2004].

WRIGHT, S. (ed) (1994) *Anthropology of organisations*. Routledge London.

ZALOOM, C. (2004) The productive life of risk. *Cultural Anthropology*, 19(3), 365-391.

ZIZEK, S (2004) *What Rumsfeld Doesn't Know That He Knows About Abu Ghraib In These Times*. Available from: http://www.lacan.com/zizekrumsfeld.htm.[Accessed 21/05/2004].