

## Postscript: Corporate Person Potentialities

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Gwen Gordon's interests were varied, but her focus was clear: she was committed to "the work of applying anthropologically informed cultural theory and research methods to help fill out the rights and duties of corporate persons" (Gordon 2016a, 359). This postscript contextualizes the essay that Gwen wrote for this special issue, which was still in progress at the time of her passing, by situating it among four of her published works on corporate identity and corporate personhood. While these pieces do not constitute the entirety of Gwen's scholarly corpus, they are unquestionably its core.<sup>1</sup> To engage with all of them at once is to see the patterns and the transformations in Gwen's thinking and to be left with a set of analytic and ethnographic tools that—I am not alone in hoping—will live on in new hands.

"History and the Anthropology of Firms," a 2014 essay co-authored with her Wharton colleague Eric Orts, was published one year after Gwen joined the Department of Legal Studies and Business Ethics (Gordon and Orts 2014). Although the essay is short—a total of eight pages—it sounds a call to action that would resurface in varied forms throughout Gwen's works. "Anthropology," Gwen and Eric write, "has lacked . . . both a depth and a diversity of approaches to the question of corporate and other business forms" (45). Instead, "[t]he analysis of the innards of the business firm" has remained "nursery rhyme simple" because "business institutions (and the people acting within them) have tended to become a flat subject for too many anthropologists" (44–45).

After articulating this rather blighting critique, "History and the Anthropology of Firms" goes on, as did most of Gwen's subsequent works, to envision a path forward. Anthropological theory and methods could, by examining "the quotidian practices of seemingly seamless, timeless entities . . . work toward their demystification, their disaggregation—and their historicization" (Gordon and Orts 2014, 45). The potential insights to be gained from this demystification are considerable: a "descriptive analysis of how social and ethical commitments become drawn and redrawn" and a greater appreciation of "the shifting stability of business enterprise" that avoids both "a monolithic smoothness" and "an unrealistic supposition of contingency and malleability" (45–47). Many of the themes first articulated in "History and the Anthropology of Firms" would find their way into Gwen's subsequent publications.

For instance, "Culture in Corporate Law," a 2016 publication in the *Seattle University Law Review*, contains an amplified call for anthropological attention to corporate form (Gordon 2016a). Corporate law scholars have viewed culture as "interesting but peripheral" to their concerns, Gwen argues, and, consequently, they have been peddling an "outmoded, static" understanding of the concept (359–62). Importantly, this is about more than disciplinary one-upmanship: there are "real-world

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1. Other writings include Gordon and Zaring 2017; Gordon, *forthcoming (a)*.

consequences” to “the notion that a culture, a religion, or a political stance might be a solid, homogenous thing held by these particulate, heterogenous organizations” (362; emphasis in original). Not coincidentally, “Culture in Corporate Law” marks Gwen’s first sustained engagement with the major corporate personhood cases of the 2010s: *Citizens United* and *Hobby Lobby*.<sup>2</sup> It also marks her introduction of the “contingent corporation,” a term she coins to describe the almost “magical contagion” by which corporations derive “socially oriented characteristics” from their associated individuals (Gordon 2016a, 358).

A second 2016 article, “Who Speaks the Culture of the Corporation?,” dives further into the relationship between corporations and the individuals associated with them (Gordon 2016b). Returning to *Hobby Lobby*, Gwen argues that the case “lends credence to an imagining of the corporate person neither as a mere aggregate of the persons involved in the undertaking nor as separate entity from its shareholders, but as an entity whose personal characteristics arise directly from them”—an in-between position best thought of as the “contingent corporation” (14). The contingent nature of the corporation is precisely what justifies the extension of rights and benefits from the natural person to the corporate person—but, once again, simplistic understandings of culture often get in the way. As Gwen points out, “[t]he assumptions underpinning conceptions that more closely held corporations are able to ‘have’ singular ‘culture,’ race, or political opinions thus appear to be related to an idea of numerically smaller groups as more homogenous in terms of values and more stable in terms of preferences”—an idea that any anthropologist worth her salt would be only too willing to disprove (14).

In a 2018 article published in the *Columbia Journal of Environmental Law*, Gwen takes her increasingly sharpened analysis of corporate personhood to a new arena. Beginning with the observation that “[l]egal personhood is not a binary,” she goes on to declare that “[t]he real issue here is what, given the legal personhood of corporations or the environment, that means for how much that legal, practical, rhetorical entity . . . should be allowed to claim the rights of other shades of personhood” (Gordon 2018, 50; emphasis in original). Over the course of a global tour—“Environmental Personhood” takes the reader to Bolivia, Ecuador, India, and New Zealand—Gwen demonstrates how nothing about personhood—let alone about nature’s personhood—is natural. This insight also suggests a path forward: “Legal personhood may come to be as protective for environmental interests as it has been for corporate interests; it can become so by referencing the latter’s protean, politically fluid nature” (53).

There are, unsurprisingly, refinements and transformations over the course of these publications. Whereas “Culture in Corporate Law” tends to use terminology like “conflation” to describe the shifting and amorphous boundaries between human persons and corporate persons (see, for example, Gordon 2016a, 356), “Environmental Personhood” describes corporate personhood as “an exemplar of a dialectic of law and society” (Gordon 2018, 91). The implications of the “contingent corporation”—a concept that Gwen first articulated in “Culture in Corporate Law”—are most succinctly

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<sup>2</sup> *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310 (2010); *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014).

stated in “Who Speaks the Culture of the Corporation”: “[T]he individual . . . ought not be imagined to disappear, to be subsumed within the corporate totality” (Gordon 2016b, 28). And the highly detailed portrait of Maori incorporations that Gwen presents in “Culture in Corporate Law” is efficiently sketched in just five sentences within her essay for this symposium (Gordon, forthcoming (b)). But these are the entirely predictable, entirely desirable peregrinations of academic exploration.

Throughout these works, Gwen’s scholarship is also consistently—and therefore recognizably—her own. Her prose is characterized by humor (“What’s so great about personhood, anyway?”), warmth (“My anthropologist’s heart wonders”), and enviably deft turns of phrase (“salutary elasticity,” “docile corporate creatures”).<sup>3</sup> All of her works, not even excepting her article on environmental personhood, unmistakably convey her commitment to anthropology as discipline and to corporate law (and, specifically, to corporate legal personhood) as subject matter. Gwen signaled these commitments over and over again via her engagement with prominent contemporary developments (*Citizens United*, *Hobby Lobby*), her extensions of corporate personhood debates to other areas of scholarship (environmental law), and even via her article titles (“Culture in Corporate Law” echoes classics in the field like Berle 1958 and Easterbrook and Fischel 1983). Likewise, not a single publication fails to press anthropological tools, whether theoretical or empirical, into the service of that most anthropological of goals: destabilizing assumptions about what must, and what only may, be part of the human condition—although, in truth, leading law review editors to cite check Latour is itself a worthy triumph for anthropology.

Gwen’s written scholarship, like all her scholarly engagement, was refreshingly, bracingly, encouragingly honest. We are fortunate and grateful to have it with us still.

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3. Gordon 2016a, 358; 2016b, 5; Gordon 2018, 65, 71.