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ENGLISH  
LAW AND  
LITERATURE,  
1500-1700

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*Edited by*  
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## CHAPTER 24

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# CORPORATE PERSONS, BETWEEN LAW AND LITERATURE

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HENRY S. TURNER

They say miracles are past, and we have our philosophical persons to  
make modern and familiar things supernatural and causeless.

*(All's Well That Ends Well)*<sup>1</sup>

## ARTIFICIAL PERSONS

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Persons are either natural or artificial. The only natural persons are men. The only artificial persons are corporations. Corporations are either aggregate or sole. This, I take it, would be an orthodox beginning for a chapter on the English Law of Persons, and such it would have been at any time since the days of Sir Edward Coke.<sup>2</sup>

So began the legal historian Frederic William Maitland in 'The Corporation Sole', an essay published more than a century ago, in 1900. But Maitland's comment still stands as an epigraph for our own moment, when the rights and powers of corporations have become the subject of intense public debate and no small amount of individual consternation. Originating in Roman law, extending across the medieval period to Coke,

<sup>1</sup> William Shakespeare, *All's Well That Ends Well*, ed. Susan Snyder, Oxford Worlds Classics (Oxford: Oxford University Press, 1993/1998 rpt), 2.3.1–3.

<sup>2</sup> F. W. Maitland, 'The Corporation Sole', *The Collected Papers of Frederic William Maitland*, ed. H. A. L. Fisher, 3 vols (Cambridge: Cambridge University Press, 1911), 3.210–43, 210. The arguments that follow extend those of Henry S. Turner, *The Corporate Commonwealth: Pluralism and Political Fictions in England, 1516–1651* (Chicago: University of Chicago Press, 2016).

Hobbes, and Blackstone, and from there to the American nineteenth century and the more recent *Citizens United* and *Hobby Lobby* decisions by the US Supreme Court, the corporation has always been with us. And yet we no longer recognize how great a variety of corporate groups once existed and how widely significant they were to early modern political life. Joint-stock companies, the most controversial form of corporation today, emerged as distinctive institutions only as of the 1550s, and they existed alongside other corporations of very different types, each of which acted as a group person distinct from the members who made it up. The nature of this peculiar group identity was, then as now, the subject of subtle technical arguments and even of metaphysical speculation; it unfolded in the law courts, as we might expect, but it also found a distinctively literary expression, not least because the corporation implied formal and imaginative problems that literary writers, and especially dramatists, were especially well equipped to address.

There are good reasons to begin any biography of the corporate person where Maitland begins: with Coke. For Coke's arguments, notably in *Calvin's Case* (1608) and the case of *Sutton's Hospital* (1612), succinctly illustrate the ways in which English common law sought to define the limits and capacities of corporate entities, approaching them at once as quasi-mystical bodies with metaphysical properties and as purely artificial, legal institutions created to suit a variety of specific purposes. At the same time, the cases also point up the limits of a purely legal history of the corporation and direct us toward its distinctively literary dimension: to the ways in which the law uses mimetic and rhetorical effects to call corporate persons into existence; to notions of fiction that have long lain at the heart of legal discussions of corporate personhood; and finally to underlying philosophical questions concerning the nature of group persons, as well as to the limits of our own current approaches to thinking about corporations as examples of collective life, collective action, and collective purpose.

At issue in both *Calvin's Case* and *Sutton's Hospital* were the two major types of corporation known to Coke's period: the corporation sole, or that species of corporation that had only one member, and the corporation aggregate, or the corporation formed out of many different individuals who seek to pursue a collective project. The most important example of a corporation sole was the king, who could stand not as a mortal person but as an immortal corporation-of-one in the interest of undertaking legal actions pertaining to property and feudal obligation. Many readers will recognize the theory from the work of Ernst Kantorowicz, who drew his inspiration from the *Reports* of Edmund Plowden, the great sixteenth-century common lawyer.<sup>3</sup> Maitland, whose own detailed study of the corporation sole was influential on Kantorowicz's account, found the notion an absurdity that hardly resolved the legal problems for which it had supposedly been invented. Nevertheless, the theory featured prominently in the arguments made on both sides of *Calvin's Case*, which had been arranged to force a resolution to the question of whether, after the accession of the Scottish

<sup>3</sup> Ernst Kantorowicz, *The King's Two Bodies* (Princeton: Princeton University Press, 1957).

James VI to the English throne as James I, James's Scottish subjects were to be treated as aliens in English law. Coke himself quoted Plowden to argue that 'the King hath two capacities in him,'

one a natural body, being descended of the blood royal of the Realm; and this body is of the creation of Almighty God, and is subject to death, infirmity, and such like; the other is a politic body or capacity, so called, because it is framed by the policy of man ... and in this capacity the King is esteemed to be immortal, invisible, not subject to death, infirmity, infancy, nonage, &c.<sup>4</sup>

In Coke's view the decisive aspect of the case lay not in the king's possession of an invisible, corporate body politic 'framed by the policy of man', as he put it, but rather in the unique status of the king's 'natural person', i.e. his genealogical position within a line of succession that endowed him with distinct 'capacities' and obligations. Since the corporate body politic ultimately depends on the *natural* 'person' and its unique endowments, only the king as a mortal man can unify the two Crowns together, even as the two bodies politic of England and Scotland as a whole remain distinct.

Both David Norbrook and Lorna Hutson have queried Kantorowicz's use of Plowden, arguing that the subsequent uptake of the notion of the king's two bodies by the first generation of New Historicists helped perpetuate a theory that emphasized mystified royal power and the singular person of the king, while overlooking the degree to which corporate arguments could also be used in the period to describe collective, public forms of political power—a notion of 'public weal' and 'commonweal' that was already central to sixteenth-century political thought and that would become only more prominent in the 1640s.<sup>5</sup> Here we encounter the corporation's other long-standing type: what Coke called the 'corporation aggregate of many', or that group formed in law in order to undertake an activity that is best pursued, or that might *only* be pursued, in a collective fashion. The sixteenth century was familiar with many such corporations aggregate, which ranged in size from the universal Church, extending across territories and indeed across time, to the angels in Heaven—who formed a spiritual corporation, according to Richard Hooker—to the kingdom, or the community of the realm, to Parliament, to English corporate towns, to the two universities of Oxford and Cambridge, to the new joint-stock companies devoted to trade and exploration, and down to individual parish churches, chantries, and hospitals.

The case of *Sutton's Hospital* (1612), indeed, the most important statement of English common law on corporations, concerned the foundation of a charitable hospital in the former London Charterhouse by Thomas Sutton, one of the richest

<sup>4</sup> *The Selected Writings and Speeches of Sir Edward Coke*, ed. Steve Sheppard, 3 vols (Indianapolis: Liberty Fund, 2003), 1.166–232, 189. All citations of Coke and Bacon are to this edition.

<sup>5</sup> Hutson, 'Not The King's Two Bodies: Reading the "Body Politic" in Shakespeare's *Henry IV*, Parts 1 and 2', in *Rhetoric and Law in Early Modern Europe*, ed. Victoria Kahn and Lorna Hutson (New Haven: Yale University Press, 2001), 166–98, 176; David Norbrook, 'The Emperor's New Body? Richard II, Ernst Kantorowicz, and the Politics of Shakespeare Criticism', *Textual Practice*, 10 (1996): 329–57.

citizens in England, a foundation that had been disputed by Simon Baxter, one of Sutton's heirs. Coke's report on the case provides an especially clear definition of corporate types:

a Corporation aggregate of many is invisible, immortal, & resteth only in intendment and consideration of the Law ... They may not commit treason, nor be outlawed, nor excommunicate for they have no souls, neither can they appear in person, but by Attorney ... A Corporation aggregate of many cannot do fealty, for an invisible body cannot be in person, nor can swear ... it is not subject to imbecilities, or death of the natural body, and divers other cases. (371-2)

Bacon, who argued the opposing side and lost the case, sought to establish that Sutton's grant of corporation was invalid on the grounds that he had established the corporation *before* he had founded the actual hospital; the result, he argued, was a non-entity, a 'Mathematical or Utopical Hospital' (350), as he called it, that was nothing but a 'Cypher' (349) or empty placeholder. Rather than a substantial, actually existing thing with a legitimate building, endowment, and Board of Governors (who included, as it happened, Coke himself), in Bacon's view Sutton had created only an unreal, immaterial entity that lacked a proper place—it was *merely* fictional, like the imagined community that More's work had made famous. Coke, irritated by the analogy (and by Bacon himself), responded by invoking technical arguments drawn from scholastic natural philosophy, notably Aristotle's *De generatione et corruptione*, in order to establish that corporations, too, were as real as any natural thing. But he also countered with a technical definition of the corporation as a *legal* rather than a literary fiction: the corporation 'is invisible, immortal, & resteth only in intendment and consideration of the Law.'

Coke's formula was by no means original to him or to his period. But although the corporation aggregate had a clear precedent in Roman law, Roman jurists did not in fact recognize a modern notion of corporate 'personhood': they distinguished between particular, actual existing groups and their classification into abstract types; they assigned property and rights to groups as abstractions, but they did so without assigning personality or will to these abstractions or extending to them all the rights enjoyed by natural persons.<sup>6</sup> Throughout Roman law, the term *persona* should be understood in its broadest sense as *homo* or human being, the preexisting natural person to whom legal duties or rights can be attributed or denied, rather than as an artificial legal category; slaves, for instance, were recognized as 'persons' in the sense that they were natural men like

<sup>6</sup> P. W. Duff, *Personality in Roman Private Law* (Cambridge: Cambridge University Press, 1938), esp. 1-25, 48-50, 206-36; W. W. Buckland, *A Textbook of Roman Law: From Augustus to Justinian*, 3rd edn, rev. Peter Stein (Cambridge: Cambridge University Press, 1963/first pub. 1921), 173-7; Buckland and Arnold D. McNair, *The Roman Law and Common Law*, 2nd edn, rev. F. H. Lawson (Cambridge: Cambridge University Press, 1965/first pub. 1936), 54-6.

other men, even though they had no claim to the legal rights or remedies that freemen enjoyed (not least rights over their own bodies) and were, for that reason, also classified as things, or property.

A notion of corporate personhood as distinct from the natural persons who make it up clearly appears only as of the early thirteenth century; the legal historian J. P. Canning has even argued that medieval jurists *invented* the modern concept of the legal person as a formal abstraction when they began to apply it to corporations aggregate for the first time, and thus also to compare and contrast them explicitly with natural human beings.<sup>7</sup> Innocent IV (1195–1254), to whom a modern notion of corporate personhood is usually attributed, had declared that corporations were nothing but ‘names of law and not of [natural] persons’ (*nomina sunt iuris, et non personarum*) and that they were ‘fictional’ or ‘feigned’ persons: *collegiam in causa universitatis fingatur una persona*, as Innocent put it, using the etymological root of ‘fiction’ from *fingere*, ‘to fashion’ or ‘to form’, often in a plastic sense.<sup>8</sup> For Baldus de Ubaldis (c.1327–1400), the corporation was a mental abstraction that could be compared to the relation of form to matter, since the corporate body is ‘perceived rather by the intellect than by the senses’ (*que magis intellectu quam sensus percipitur*).<sup>9</sup>

As Canning has emphasized, the medieval jurist’s notion of the corporation as ‘fictional’ or ‘artificial’ person was a practical designation that was entirely compatible with the corporation’s actual existence and its collective action. In describing the corporate person as a ‘fiction’, the jurists emphasized its *artificial* and *conventional* quality rather than its *illusoriness*, and this is precisely the sense in which Coke, too, speaks of the corporation as a legal creature, in contrast to Bacon’s more playful (and yet serious) invocation of Utopia.<sup>10</sup> In a sense, the question between the two rivals concerned what *kind* of fiction the corporation might be: was it as insubstantial as a signifier and frivolous as a thought-experiment, or was it a practical device endowed with all the force of law—as consequential, in some cases, as the will of an absolute monarch? The case of *Sutton’s Hospital* had raised a set of philosophical questions that the law alone could not settle, which was why Coke found himself turning to Aristotle, ‘Nature’s Secretary’, as he had called him in *Calvin’s Case*. What was the nature of this personated abstraction: this *idea* created ‘by the policy of man’ that took the form of a *fictional person* but which was at the same time an *institution* and an associational *group* established for a collective purpose?

<sup>7</sup> J. P. Canning, ‘The Corporation in the Political Thought of the Italian Jurists of the Thirteenth and Fourteenth Centuries’, *HPT*, 1 (1980): 9–32, 15.

<sup>8</sup> I cite Innocent IV from Manuel J. Rodriguez, ‘Innocent IV and the Element of Fiction in Juristic Personalities’, *The Jurist*, 22 (1962): 287–318, 299 and 310, 307.

<sup>9</sup> Cited by Canning, ‘Corporation in the Thought of the Italian Jurists’, 13–14.

<sup>10</sup> Canning, ‘The Corporation in the Political Thought of the Italian Jurists’, 15–19; Rodriguez, ‘Innocent IV and the Element of Fiction’, 316–17.

## PERSONA FICTA

In order to give this question further definition and texture—in order better to understand the ontology of the corporation, to risk a pretentious phrase—we must now leave the courtroom and turn to the poets. For despite its legal limitations, the notion of the corporation sole manifestly left its impression on poets and playwrights of the sixteenth and seventeenth centuries. Edmund Spenser would seem to have the theory directly in mind in his letter addressed to Sir Walter Raleigh that prefaces *The Faerie Queene*, where an analogy with the king's two bodies furnishes him with a famous theory of allegory. Spenser writes that:

In that Faery Queene I meane glory in my generall intention, but in my particular I conceiue the most excellent and glorious person of our soueraine the Queene, and her kingdome in Faery land. And yet in some places els I do otherwise shadow her. For considering she beareth two persons, the one of a most royall Queene or Empresse, the other of a most vertuous and beautifull Lady, this latter part in some places I doe expresse in Belphoebe, fashioning her name according to your owne excellent concept of Cynthia (Phoebe and Cynthia being both names of Diana).<sup>11</sup>

Spenser has adapted a legal theory to a literary purpose, and the distinctiveness of his language of 'persons' can be gauged by comparing the quite different explanation of allegorical characterization by Torquato Tasso in his *Gerusalemme Liberata* (1575, pub. 1581), as rendered in Edward Fairfax's 1600 English translation:

*Heroicall Poetrie* (as a liuing Creature, wherein two natures are conioined) is compounded of *Imitation* and *Allegorie*: with the one she allureth vnto her the mindes and eares of Men, and maruellously delighteth them; with the other, either in vertue or knowledge, she instructeth them. And as the heroically written *Imitation* of an *Other*, is nothing else, but the patterne and image of humane action: so the *Allegorie* of an Heroicall Poem is none other than the glasse and figure of Humane Life.<sup>12</sup>

Tasso's language of interior and exterior, mind and body, passion and actions positions his theory of allegory in a mimetic tradition that is more continuous with Sir Philip Sidney's *Defense of Poesy* (c.1580) than with Spenser's 'Letter', since it emphasizes a combination of sensuous apprehension and intellectual understanding in the service of ethical instruction. Like Sidney, that is, Tasso describes an 'art' of poetic composition that draws its inspiration from an amalgam of neo-classical principles and a neo-Platonic, quasi-occult metaphysics of nature, and like Sidney he imagines his characters

<sup>11</sup> Edmund Spenser, 'Letter of the Authors ... To the Right Noble, and Valorous, Sir Walter Raleigh, Knight', *The Faerie Queene* (1590), ed. A. C. Hamilton (London: Longman, 1977).

<sup>12</sup> *Godfrey of Bulloigne, or The Recouerie of Ierusalem* (London, 1600), A2<sup>v</sup>.



as heroic figures at home in the traditions of epic and romance, modelled on 'human action' and 'human life' in ways that are familiar, albeit distantly, from Aristotle's *Poetics*. Although Spenser, too, invokes the complement between a 'general' principle and a 'particular' example that was so central to Sidney's definition of the poetic intelligence, his explanation in the 'Letter' suddenly seems relatively bare by comparison to Tasso's showy neo-classicism: a simplified sketch of allegory in the mode of political theology, coloured with a flattering reference to the Ovidian themes and mythic characterization that marked the Raleigh circle and formed such an important strand in Elizabeth's iconography.

Spenser's 'Letter' thus also invites a comparison that Tasso's does not, however, for he seems to imagine his characters not simply as mythic icons but as species of corporate persons. What could this mean? In order to explore his analogy further, it will be helpful to distinguish several principles extending across legal and literary discourses alike; adapting conventional terminology for my purposes, I shall call them *personhood*, *personation*, *personification*, and *personality*:

*Person, personhood*: the bare formal envelope to which we attribute identity, agency and capacity in law; by extension, the human being in general, although the philosophical interest and political importance of the 'person' as a legal category shows itself most saliently in the moment when it is attributed to non-human entities of various kinds (animals, plants, machines) or when it is deprived from human entities (such as slaves, or women—as in Maitland's causal usage at the opening of this essay, above);

*Personation*: the mimetic representation of human beings and anything to which a quality of 'personhood' may be attributed, especially through figuration; a 'literary' term, therefore, one that is especially typical of the stage and necessary to the projection of what we recognize as dramatic character;

*Personality*: psychological inwardness, motivation, temperament, and other associated qualities: the 'roundedness' that we associate with individual human beings but sometimes also animals and even non-animate objects. In literary terms, the notion of 'personality' pushes us beyond 'personation' and toward a concept of a recognizably lifelike fictional character, in poetry and on stage but especially in the novel;

*Personification*: the mimetic representation of an abstract idea in figural form, especially through the donation of voice and 'face' to an idea; hence personification's frequent associations with apostrophe and prosopopoeia.

When a *personation* or *personality* becomes exemplary in some way—the more its psychological or historical particularity is inflated by a general principle that applies across circumstances and occasions—the more it can be said to approach *personification*.<sup>13</sup>

<sup>13</sup> I draw on Elizabeth Fowler, *Literary Character: The Human Figure in Early English Writing* (Ithaca: Cornell University Press, 2003), esp. 16–17, 24–8; Barbara Johnson, 'Anthropomorphism in Lyric and Law', *YJLH*, 10 (1998): 549–74, and her 'Apostrophe, Animation, and Abortion', in *A World of Difference* (Baltimore: Johns Hopkins University Press, 1987), 184–222; Helen Cooper, 'The Afterlife of Personification', in *Medieval Shakespeare: Pasts and Presents*, ed. Ruth Morse, Helen Cooper, and Peter

Bearing these terms in mind, we may now return to Spenser's 'Letter' to find that it is, predictably enough, more complex than it first appears. Despite declaring that the Queen 'beareth two persons', the passage describes at least four: (1) the Faery Queen; (2) the 'person' of 'our soueraine the Queene'; (3) the 'Lady'; who is sometimes also figured as (4) 'Belphobe'. The conceptual relations among these persons quickly assume several dimensions: 'our souereine the Queene' sits at the centre of an overlapping, quasi-Trinitarian complex, since she is 'the Queene' in her particular capacity but 'the Faery Queene' in her general capacity, and also 'a most virtuous and beautifull Lady' who is sometimes 'shadowed' in other names Spenser does not specify in the Letter but whom readers will recognize in other characters, both good and bad (i.e. Una and Britomart but also Lucifera).

Nor is the ontological status of each figure as clear as we might wish: the Faerie Queene, for instance, is a type of fictional person, and other characters in the poem also refer to her as Gloriana. But the Faerie Queene never actually appears in the poem that bears her name; as a minimal sketch of a *personation*, Gloriana has already begun to swell into *personification* so as to reveal the idea of Glory, an idea that here assumes the form of a fictional figure but which is itself, strictly speaking, of a different philosophical order. This phasing into personification, as it were, in turn allows the idea of Glory to attach itself to the bare person of the Queene, whom Spenser would seem to align with the historical and natural person of Elizabeth (as the term 'particular' suggests) but who also carries the aura of the general idea, both political and ethical, that has been bound to the personification. *Both* the Queen and the Lady are figures who flicker between particular fictional specification and general conceptual essence, a hybrid state that Spenser captures well through the allusion to mythical figures such as Cynthia or Diana, who possess a similar mixed human and metaphysical quality.

In describing overtly fictional and allegorical characters such as Belphebe or Gloriana as 'personations', I am using a term that Spenser himself uses in the dedication of his *Mother Hubberds Tale* (1591) to Anne Spenser (no relation), the Lady Compton, where he describes the delightful 'simplicity and meannesse' that he has 'personated' in the fable of the Fox and the Ape that Mother Hubbard tells the plague-stricken narrator.<sup>14</sup> Here 'personated' is also a native translation for the work's full title, *Prosopopoia, or Mother Hubberds Tale*, a rhetorical technique that Spenser has elevated into a minor lyric genre, using it to layer personation upon personation in the service of an extended political allegory. George Puttenham's *Art of English Poesie* similarly identifies '*prosopopeia*' with what he calls 'the Counterfeit Impersonation'; like Spenser, Puttenham associates both *prosopopoeia* and personation with fiction more generally and with allegory

Holland (Cambridge: Cambridge University Press, 2013), 98–116; and two essays by Andrew Escobedo, both of which have been especially influential on my thinking: 'Daemon Lovers: Will, Personification, and Character', *Spenser Studies*, 22 (2007): 203–25, and 'Allegorical Agency and the Sins of Angels', *ELH*, 75.4 (2008): 787–818.

<sup>14</sup> *The Yale Edition of the Shorter Poems of Edmund Spenser*, ed. William A. Oram et al. (New Haven: Yale University Press, 1989), 327–79, esp. 323–4, 334.

specifically (his example is the *Roman de la Rose*, as translated by Chaucer), especially in its capacity for ascribing human characteristics to non-human things in the service of ethical instruction.<sup>15</sup>

More commonly, however, the term 'personate' described a specifically theatrical mode of *mimesis*: 'to personate, to acte, to imitate any person, to acte or play a part in a play', as John Florio defined '*personare*' in his Italian-English dictionary.<sup>16</sup> To 'personate' is to bring characters to life, as Thomas Heywood vividly explains in his *Apology for Actors* (1611):

what English blood seeing the person of any bold English man presented and doth not hugge his fame, and hunnye at his valor, pursuing him in his enterprise with his best wishes, and as being wrapt in contemplation, offers to him in his hart all prosperous performance, as if the Personater were the man Personated, so bewitching a thing is liuely and well spirited action, that it hath power to new mold the harts of the spectators and fashion them to the shape of any noble and notable attempt. (B4<sup>r</sup>)

Shakespeare, too, makes regular use of the term 'personate' throughout his work, as when Maria declares in *Twelfth Night* that Malvolio 'shall find himself most feelingly personated' in the 'obscure epistles of love' that she has forged from Viola, which capture 'the colour of his beard, the shape of his leg, the manner of his gait, the expresse of his eye, forehead, and complexion' (2.3.149–53). Here the 'personation' is a crafted or counterfeited imitation of a specific individual, a usage that sometimes also acquires an overtly allegorical dimension, as when the sycophantic Poet of *Timon of Athens* offers a verse allegory to his would-be patron: 'One do I personate of Lord Timon's frame, / Whom Fortune with her ivory hand wafts to her; / Whose present grace to present slaves and servants / Translates his rivals' (1.1.70–3).

Elsewhere Shakespeare emphasizes the emblematic capacity of the 'personation', often to spectacular metatheatrical effect. In *A Midsummer Night's Dream*, when Quince proposes that 'one must come in with a bush of thorns and a lantern and say he comes to disfigure, or to present, the person of Moonshine' (3.1.54–6), Shakespeare has rejoined the act of emblematic personation to the 'person' thereby represented, only now this 'person' is a *personification* in the mode of *prosopopoeia*, an inhuman thing or idea given concrete form by means of the actor's art. The usage recalls the conventions of the medieval mysteries, presented by the guild ancestors of the rude mechanicals, in which characters and ideas might be represented by the *personnage*: a non-human figure made of various media—automata, statues, paintings, or tapestries—that was understood to be at once real and fictional, animate and inanimate, actor and character at the same time.<sup>17</sup>

<sup>15</sup> George Puttenham, *The Art of English Poesy*, ed. Frank Whigham and Wayne A. Rebhorn (Ithaca: Cornell University Press, 2007), 324.

<sup>16</sup> *Queen Anna's New World of Words* (1611), 371.

<sup>17</sup> Laura Weigert, 'Stages', in *Early Modern Theatricality*, ed. Henry S. Turner (Oxford: Oxford University Press, 2013), 24–46, esp. 38–42.

Even as Coke and Bacon were debating the technical definitions of corporations, in other words, literary writers were beginning to seize on the imaginative potential of personated abstractions and use them for diverse purposes. Spenser's *Faerie Queene* could reinforce a mystical ideology that associated political power tightly with the royal presence and the royal character, but it also began to trouble that ideology by acknowledging its blatant artifice; soon, of course, the poem leaves the orthodoxies of political legitimacy or ethical instruction behind to wander into a far more speculative territory populated by uneasy figures and scenes of astonishing intellectual complexity or affective intensity. For Spenser, too, as for Tasso or Puttenham, the language of 'persons' had also become a way of forging a distinctively literary critical idiom and thus of elevating the philosophical seriousness of poetry, carving out a discursive space for the art of the poet in a culture that often viewed it with skepticism or hostility and that still preferred its truths in scriptural form. Spenser has taken possession of the monarch's immortal body and thrown it forward into a radical poetic project: using fiction to invent a series of absolute ideas that are *metaphysical* but at the same time no longer fully *theological*, and to give these ideas artificial life in human form.

For Shakespeare, meanwhile, a corporate imaginary furnished a powerful way of exploring the capacities of theatre: the artifice of its representation, the satiric space it opened onto all manner of questions, its potential for unorthodox philosophical speculation and penetrating political commentary. For the early modern world was changing, and many of Shakespeare's tragedies take as their point of departure the political and ethical crises that ensue when corporate groups that had once provided a basis for a common constitutional order begin to disintegrate, whether under the pressures of succession disputes, civil war, sheer personal ambition, or larger tectonic tensions between republican and monarchical ideals of governance. *Coriolanus*, to take one of several examples, offers no closure to the political 'gap of both' that Coriolanus opens in his impassioned speech to the Senate: it imagines no mythic, Hobbesian contract, no Leviathan-like sovereign who could replace the king and forge a new corporate commonwealth. Urged by Volumnia to become an *actor* before the people—'frame / Thyself, forsooth, hereafter theirs, so far / As thou hast power and person' (3.2.84–6)—Coriolanus falters. 'Like a dull actor now', he confesses at the end of the play, 'I have forgot my part, and I am out / Even to a full disgrace' (5.3.40–2). Theatre holds up the mirror not to nature but to itself, only to discover that it has become inadequate to the task of filling the vacuum in political concepts that its own mimetic procedures have revealed.

## THEATRICAL PERSONS

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Maitland is not entirely correct, therefore, to say that 'the only artificial persons are corporations'. Hobbes's transformative insight was to find a way to join a notion of personhood derived from the theatre to a theory of corporations both aggregate and sole,

and thereby to generate Leviathan, the person of the 'Commonwealth, or State'.<sup>18</sup> The sovereign's relationship to the State is 'representational' for Hobbes not only because the monarch acts as the delegate of the people but because he *personates*—the term is Hobbes's—an abstract and fictional entity that is distinct from people and sovereign alike and who unifies them into a body that they were not before. 'Whosoever beareth the person of the people, or is one of that assembly that bears it', Hobbes argues, 'beareth also his own natural person' (2.19.4); soon he states that the sovereign has 'two capacities, one natural and another politic (as a monarch hath the person not only of the commonwealth, but also of a man)' (2.23.2).<sup>19</sup>

For Hobbes the representational relationship is no longer mystical or metaphysical but technical and performative, in the strong philosophical sense as well as in a specifically theatrical way. For *persona* originally designated the role or artificial mask worn by the stage actor, as Hobbes observes: 'So that a *person* is the same that an *actor* is, both on the stage and in common conversation; and to *personate* is to *act*, or *represent*, himself or another; and he that acteth another is said to bear his person, or act in his name' (Lev. 1.16.3). In *De homine* (c.1630–1640, pub. 1658, 1668), Hobbes explicitly calls this act of impersonation 'fictional', devoting a chapter to what he now calls '*De homine fictitio, sive De persona*' and where he allows greater prominence to the play between *persona* as 'human being' and *persona* as 'character'.<sup>20</sup> Hobbes has substituted a purely formal and pragmatic concept for a long-standing theological idea of *persona* as a translation of the Greek *hypostasis* or 'substance', a translation that he objects to in the strongest possible terms because of the dubious metaphysics of essences that it implies.<sup>21</sup> 'In the kingdom of God there may be three persons independent, without breach of unity in God that reigneth', Hobbes concedes, 'but where men reign, that be subject to diversity of opinions, it cannot be so' (2.29.16).

But if Hobbes found a source for his new political theory of the State by conjoining the corporation aggregate to a theory of representation as theatrical impersonation, the imagination of playwrights, too, had been captured by the fact that the theatre companies were themselves among the most successful examples of the new joint-stock companies that were familiar to Hobbes (a shareholding member of both the Virginia

<sup>18</sup> Thomas Hobbes, *Leviathan*, ed. Edwin Curley (Indianapolis: Hackett Publishing Company, Inc., 1994), 'The Introduction', 3.

<sup>19</sup> On Hobbes's use of *persona*, see Paul Dumouchel, '"Persona": Reason and Representation in Hobbes's Political Philosophy', *SubStance*, 25.2 (1996): 68–80; David Runciman, *Pluralism and the Personality of the State* (Cambridge: Cambridge University Press, 1997), esp. 6–33 and 223–65; Runciman, 'Debate: What Kind of Person is Hobbes's State? A Reply to Skinner', *Journal of Political Philosophy*, 8 (2000): 268–78, responding to Quentin Skinner, 'From the State of Princes to the Person of the State', *Visions of Politics*, 3 vols (Cambridge: Cambridge University Press, 2002), 2.268–413, esp. 387–94 and 309–404.

<sup>20</sup> *De homine* 2.15.1, *Thomae Hobbes Malmesburiensis Opera Philosophica*, ed. Sir William Molesworth, 5 vols (London: John Bohn, 1839–1845), 2.130–2.

<sup>21</sup> Lev. 1.16.12; 2.29.16; 3.41.9; 3.42.3. On the theatrical origins of the term *persona* and its theological fortunes, see John Parker, 'Persona', in *Cultural Reformations: Medieval and Renaissance in Literary History*, ed. Brian Cummings and James Simpson (Oxford: Oxford University Press, 2010), 591–608.

and Bermuda Companies) and that have become so dominant in our own political culture. We could find a no more sophisticated or amusing study of theatre as a corporate commercial enterprise than Ben Jonson's *The Alchemist* (1610), which not only exposes alchemy, medicine, Puritanism, commonwealth industrial projects, and Hebrew scholarship as pretenders to moral authority but does so by explicitly playing on the corporatist language and organizational structure of the play companies themselves. Face, Subtle, and Doll compose a 'venture tripartite' in which the work is 'begun out of equality' and the members hold 'all things in common,' an ironic echo of the Ciceronian phrase that Erasmus and More had made famous (1.1.134–5).<sup>22</sup> But despite Doll's exhortation to mend division, Face and Subtle squabble constantly over authority and the profits they imagine. Scenically the play is organized not around individual characters but rather a series of shifting group-formations of two, three, four or more persons; the art of Subtle, Face, and Doll lies in managing these many different part-forms, allocating roles to one another and to others and rushing to coordinate them into a seamless illusion. The art of the play company is the same, since, as Tiffany Stern and Simon Palfrey have demonstrated, what we today encounter as a fully realized 'play' was, theatrically considered, a much less stable assemblage of part-scripts and cues, each shuffled around and often revised independently of the others.<sup>23</sup>

The challenge for Jonson was to compose a 'poem,' as he often called it, out of this assemblage of bodies, props, words, and ideas, a 'work' that could endure beyond the actors who first performed it and thus become a new kind of literary critical object. Much like Spenser, Tasso, or Puttenham, in other words, Jonson seeks a coherent *theory* of drama, and one suspects that he embraced the overtly emblematic and allegorical form of the masque so enthusiastically in part because of the theoretical opportunity it afforded him.<sup>24</sup> The prefatory comment to *The Masque of Queens* (1609), for instance, combines Horatian precepts with a quasi-Platonic critical idiom, anchoring dramatic form around an act of royal personation and informing Jonson's reader that '*it was ... my first and special regard, to see that the nobility of the Invention should be answerable to the dignity of their Persons.*'<sup>25</sup> The earlier *Hymenaei* (1606) had cast the exigencies of royal performance in the more pretentious mode of metaphysical speculation, in terms reminiscent of Tasso's allegory: 'It is a noble and just advantage that the things subjected to understanding have of those which are objected to sense,' Jonson opines, 'So short-lived are the bodies of all things in comparison of their souls.'<sup>26</sup>

But Jonson's metaphysics tends to deflate fairly quickly once it leaves the printed page, and the irrefutable circumstantiality of stage performance continued both to aggravate his spleen and to inspire his considerable powers of invention. Perhaps because

<sup>22</sup> CWBj, 3.570.

<sup>23</sup> Simon Palfrey and Tiffany Stern, *Shakespeare In Parts* (Oxford: Oxford University Press, 2007).

<sup>24</sup> See Henry S. Turner, *The English Renaissance Stage: Geometry, Poetics, and the Practical Spatial Arts, 1580–1630* (Oxford: Oxford University Press, 2006), esp. 244–61.

<sup>25</sup> CWBj, 3.305.

<sup>26</sup> CWBj, 2.667.

the group formed by the occasion of public performance was so temporary and also so fickle, Jonson found himself continually entangled in a contest over the terms by which his art might be judged. In the Induction to *Bartholomew Fair* (1614), a Book-holder and a Scrivener enter to present the audience with an indenture that makes explicit the commercial relationship that now governs the theatrical transaction. The author, they report, agrees to furnish the audience with a 'new sufficient play called *Barthol'mew Fair*' (Induction, 60–1), and the audience must agree in turn to remain in their places for two and half hours, to limit their judgements to the amount of money they have paid to gain entrance, and to remain consistent in that judgement: what they approve today, they must also approve tomorrow and the day after that. 'You were e'en as good to go to Virginia', the Stage-Keeper confides to the audience before the play, 'for any thing there is of Smithfield' (Induction, 8–9).<sup>27</sup> The critique is clear enough: the Stage-Keeper is undermining Jonson's claim to authentic representation. But why 'Virginia'? Jonson compares the entire system to the 'lottery', and only two years earlier, the Virginia Company had held a large public lottery to raise funds; membership in the company was itself, of course, publically available through the purchase of shares.<sup>28</sup> The audience will become investors in the play for an evening; their money will buy them the right to judge for themselves (although they must also promise to applaud *before* the play has even begun).

But *Bartholomew Fair* also suggests some uncomfortable truths about the brave new commercial world that it imagines. It isn't entirely clear what Horatian lesson we are to draw from a play in which Adam Overdo, the judge who should bring a measure of order to the Fair, speaks so pompously that he makes the corporate principles of 'Commonwealth' and 'Public Good' into empty tics of discourse, a language that resembles nothing so much as the ranting of the Puritan, Zeal-of-the-Land Busy. The play is extremely funny, but in the end Jonson leaves us with a political fiction that has become all-too-familiar: one in which the market is as unstructured as possible, the law is only as meaningful as the latest fist that appropriates it, and fundamentalism and justice speak the same empty, bloviating language.

This aspect of *Bartholomew Fair* raises a further point about Jonson's drama that is important to observe: we may describe the financial and decision-making structure of the theatrical company in corporatist terms; we may describe the process of theatrical mimesis in corporatist terms; we may even describe the metaphysics that underlies Jonson's own emerging theory of drama-as-poem as a species of 'corporatist' thinking. But despite Jonson's interest in various forms of character grouping, a major mode of Jonsonian composition, his characters tend not to be strongly affiliated with corporate institutions. There is a kind of incipient liberalism in Jonson's social imagination, although this is a liberalism not of free rational individuals but of walking, speaking caricatures and stereotypes: they are personated social abstractions, brought to life

<sup>27</sup> CWBJ, 4.276–82. See Luke Wilson, *Theaters of Intention: Drama and the Law in Early Modern England* (Stanford: Stanford University Press, 2000), 106–13.

<sup>28</sup> George Unwin, *The Gilds and Companies of London* (London: Methuen, 1908), 303–4.



through a bundle of theatrical gestures, signatures, and characteristic dispositions. If Jonson's art of *personation* sometimes shows a tendency toward *personification*, as in *Volpone* or *The Alchemist* or *Bartholomew Fair*, where the names of characters obviously are meant to signify the organizing idea that motivates their presentation, they are not personifications in the usual sense. As social creatures, their origin is pragmatic and even quasi-algorithmic: they conform to a set of rules about behaviour and taste that emerge over the course of any given play with an almost sociological clarity. They are best viewed as *types* that have been first constellated, and then animated, by a satirical motive: a set of normative ideas about the social world and the human character within it that is typical of Jonson's plays and is what makes them feel like such consistent expressions of his own temperament. It is a technique of characterization that for Catherine Gallagher results in a modern notion of 'fictionality' only as of the eighteenth-century novel, although it is already vividly on display in Jonson's art of dramatic composition.<sup>29</sup>

## CORPORATE PERSONS TODAY

If theatrical characters are *personated persons*, therefore, a stage effect that sometimes approaches full *personality*, and if literary persons of all kinds often have a tincture of *personification* about them, then what kind of person is the corporation? What can a history of the corporation undertaken from a vantage point *between* law and literature tell us about our own discontent in the face of these gigantic artificial beings?

As a *legal* person, first of all, the corporation is at one level an entirely pragmatic entity: this was the argument of John Dewey, in an essay on corporate personality that objected to the importation into legal discourse of metaphysical categories that, strictly speaking, had nothing to do with law.<sup>30</sup> As Coke himself had argued, corporations exist only 'in the intendment of the law', which is to say that they have been created to fulfil certain functions that the law specifies; the 'personality' of the corporation assumes the shape of a tautology, since it is nothing more (and nothing less) than the outline described by the legal rules that govern its behaviour and that specify its rights, duties, and freedoms. In his own sociological way, Jonson's technique of characterization resembles this pragmatic definition of the corporate person fairly closely, and we have seen how interested Jonson was in legal institutions and legal instruments, albeit as objects of playful satire.

But Jonson's theatrical self-consciousness adds an additional layer of insight to this formal pragmatism: a character such as Face in *The Alchemist* has become nothing less than a *personification of personification*, an emblem of the mimetic process by which the

<sup>29</sup> Catherine Gallagher, 'The Rise of Fictionality', in *The Novel*, Vol. 1: *History, Geography, and Culture*, ed. Franco Moretti (Princeton: Princeton University Press, 2006), 336–63.

<sup>30</sup> John Dewey, 'The Historic Background of Corporate Legal Personality', *YLLJ*, 35 (1926): 655–73.



actor gives life and voice to an artificial person that lives immanently within or upon his natural body and assumes features that are identical to it. If Face is a personification, he is a peculiar personification—of *himself*; if he is 'allegorical', he is an allegory for theatre, for the ongoing composition of identity by means of artifices of all kinds that are displayed publicly, in the presence of others, for others to consume. The fact that the theatre companies were themselves joint-stock ventures was, as we have seen, not lost on Jonson, and we may thus also see in Face a grinning *prosopon* for the acting company and its repertory of roles and parts and the characters they bring to life, as voice is added to voice, gesture to gesture, body to body. For the actor always possesses at least two bodies, though they appear only as one: this is precisely the effect that makes Face's turn as Jeremy the Butler, and vice versa, so entertaining.

Or—to extend Jonson's theatrical insights to our own struggles with corporate persons—we may say that the corporation *never* has a body of its own. It must always borrow the bodies of its members who agree to personate it: the corporation 'is' nothing more (and nothing less) than this act of performance. As Face disappears, like the smoke of the play's final explosion, into a purely formal principle of mimetic personation, he shows the corporate person to be similarly empty, a formal shell that can in principle become animated by *any* purpose and by any member. The corporation lives through the personations that *we* undertake, as we begin to move and speak on its behalf. Casting our eye now back to Spenser's 'Letter', we realize that the notion of corporate personhood turns out to be a closer cousin to allegory than we might expect, for the legal person presents us with the structure of *allegory without content*, a purely formal structure for action that waits to be animated by the particular bodies, substances, and circumstances that will endow it with identity, rather than appearing as to us already conceptually full. This formal emptiness is precisely what distinguishes corporations from their members, even as it attaches a distinct personhood to them, much the way an allegorical idea attaches to or is immanent within a character or figure or thing.

Like most persons, the corporate person thus assumes its ontological profile from the convergence of several opposing, even contradictory, impulses, none of which can be attributed *only* to law, which proves in the end to be sufficient but not a necessary condition for corporateness. At a root level, for-profit commercial corporations wish always to act *without* meaning: they seek merely to act and to do, as freely as possible, unencumbered by claims to significance, by ethical justifications, or by declared purposes. Left to themselves, they would offer no explanations and no excuses; they would refuse discourse entirely in favour of pure action and the force of universal transformation and pure accumulation. In this sense, their legal utterances are a minimal concession to a discourse in which symbolic expression already approaches degree zero. Since this dream of pure action proves impossible, however, we find that the commercial corporation must instead embrace its opposite: the dream of becoming *all* discourse, *all* allegory, a space of complete signification that saturates meaning completely and fills every signifier such that it becomes an emblem of the corporation's own making. By creating a monopoly over signification, the corporation attempts to fulfil its original motive, a

space of pure action camouflaged beneath a preemptive system of values in which any decision, any plan, any transaction has been assigned a meaning in advance and thus may proceed beyond question. It is a mode of action without deliberation, in which the collective will—the corporation's mark of its own personhood—immediately and coincidentally expresses itself.<sup>31</sup>

In a further pivot of the axis of communication, however, the corporation soon finds that this dream is best achieved by ensuring that its symbolism remains optimally *open to everyone*. For corporate *personality* finally depends on more than pragmatic legal categories, more than the speech and acts of personation by its members or spokespersons. It derives from the total system of signification and value-designation implied in the signs that the corporate person places into public circulation: in its official documents and positions, in its advertisements and iconography. It invents idiogrammatic logos that become as meaningful as possible to as many people as possible only by specifying no content of their own; among many modern candidates for such an icon, the Nike swoosh is without question one of the most successful. This condition explains why so much corporate advertising employs images of phenomenological intensity. A climb, a mountain top, 'speed', a child's smile, an inviting, shimmering surface: these perceptual 'moments' are at once beyond meaning—they are affectively liberating simulacra of immediate experience, into which the viewer is invited to overflow—and create the effect of an ultimate meaning: it is your own life as a natural person that is offered back to you, in the mode of fantasy. Hence the corporation finds its life in a perpetual movement between bare *person*, enacted *personation*, simulated *personality*, and iconographically saturated *personification*. Put differently, the corporation is a *person* that seeks to become a *personification* of a *personality*: your own.

We find, indeed, that the corporation has become a figure of a very particular type: it is a personification for the *very idea of being itself*. The mere legal existence of the corporation is an affirmative assertion of an answer to a prior ontological question, namely *that the corporation is* and what minimal signs of life it may have. *This* is the problem that has preoccupied jurists continuously from the end of the thirteenth century to the beginning of the twenty-first; it is the problem that engaged Hobbes and resulted in his sweeping restatement of political theory; it is the question that motivates Spenser, and Shakespeare, and Jonson, in their own ways. Finally, what the corporation and the dramatic character have in common is less their status as 'persons' than an even larger problem of which the notion of the 'person' is simply one species: the metaphysical problem of defining 'ideas' in general and their ontological status, of what the relationship might be between ideal entities and material or concrete bodies that bear them, of how an idea might possess a kind of power, both of an ideological or rhetorical quality but also as a *physical* power—as strange as this proposition may sound to us, it was not strange to a culture that believed in the reality of metaphysical entities, and it lies at the root of our own fears about corporate persons today.

<sup>31</sup> Compare Escobedo on the 'volitional discharge' of personifications, 'Allegorical Agency', 804–6, 806.

What would it mean for an idea to become real and to begin to act? What is the *value* of a personated idea, of an idea that assumes a face and begins to think and speak for itself? Early modern writers confronted these questions under the sign of personification, or *prosopopoeia*, or allegory, or theatre. Today we no longer think much about personification, that quaintest of rhetorical figures; *all we have* are corporations, themselves narrowed into pseudo-persons who prey on our consumer habits rather than acting as the moral persons they once were, when they still served as a meaningful way to organize collective life around shared ideas, principles, purposes. Today, anyone bold enough to invoke 'Justice' or any other moral abstraction can only appear, like Adam Overdo in *Bartholomew Fair*, to be naive, or hypocritical, or obviously ideological, or irritatingly vague. In fact it is the commercial corporation that most commonly invokes these ideas and determines their circulation and meaning for us. We turn, unhappily, to legal debates over corporate personhood: as a vehicle for a more substantive public language for thinking collectively about the shared metaphysical ideas that should rightfully govern both our collective and our individual action, perhaps the time has come to take personification seriously once more.

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