

# Do Corporations Have Minds of Their Own?

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on Collective Intentionality and Socially Extended Minds,  
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## 1. Introduction

Few people want to say that small-scale joint intentional behavior involves a group that has a mind of its own. If we shake hands, or play chess, or take a walk together, we engage in an essentially intentional joint action. While it is correct to say that *we* intend to, e.g., play chess, it seems absurd to suppose that *we* (as opposed to each of us) are the subject of a mental state and that *we* constitute a special sort of *group agent* with its own beliefs, interests and so on. It is rather, as commonsense suggests, just a matter of each of us intending (in the right way) that we do something together—for joint intending—and then doing it (in the right way) as a result—for doing it together intentionally. See (Ludwig 2007a; Bratman 2014; Ludwig 2016; Tuomela and Miller 1988b; Tuomela 2013) for examples of this approach. However, large-scale institutions, because of their complexity, hierarchical structure, and differentiation of roles that may be successively filled by different individuals, have often been cited as a type of group that might be said genuinely to have a mind of its own. The corporation, in particular, which has a number of special features, has been singled out as a paradigm of genuine group level agent (French 1984, 1979; Biro 1981; Phillips 1992; Hess 2013, 2014; List and Pettit 2011; Pettit 2009, 2007; List and Pettit 2006; Pettit 2003; Scruton and Finnis 1989; Weaver 1998; Tollefsen 2015; Tollefsen 2002). There are a number of considerations that suggest very strongly that talk of what the corporation does in expressing its agency, and what it intends (and so on), cannot be reduced to talk about the psychological states of its members, even if we grant, as we must, that it supervenes on the activities of the various parties playing their various roles in the corporation and in its place in a larger social context. More specifically:

1. The corporation is designed for perpetual existence, and consequently its existence is not determined by the existence of those individuals that realize it at any time, as they may exist prior to the corporation coming into existence, and the corporation may outlast any given set of individuals who realize it.
2. The very same corporation may have had different managers, employees, and shareholders than it actually has.
3. The corporation may undertake projects that last longer than the lives of any of those who play a role in its realization.

4. The corporation admits a hierarchical organization which delegates responsibility *inter alia* for research, decision making, and executive functions.
5. Corporations are legally persons, i.e., are legal persons.
6. Corporations are, in consequence, treated in legal discourse specifically as entities separate from their shareholders, managers and employees.
7. They are therefore themselves, as distinct from their shareholders, directors, managers or employees, said to enter into contracts, own property, sue and be sued, exercise and violate rights, even human rights, against individuals and the state, and they can, in the law, be convicted of criminal offenses, of fraud, manslaughter, and so on.
8. In consequence, they have legal rights and responsibilities distinct from those of their employees and their shareholders.
9. Prima facie, corporations can perform actions, and stand in relations, that it does not make sense to say that any of the groups (shareholders, managers, employees, etc.) that they might be thought to be identified with can perform or stand in. The corporation may sue its creditors, but employees, managers and shareholders do not thereby do so. The corporation owns its factories and headquarters, but its employees, managers and shareholders do not.
10. They may stand in relations to the various groups that they might be identified with that cannot be plausibly construed as relations these groups stand in to themselves. For example, General Motors Corporation employs approximately 216,000 people, but the employees of General Motors Corporation do not employ 216,000 people, nor does it prima facie make sense to say that the shareholders do. Similarly, the shareholders may sue the corporation that they are shareholders in, but they are not, in doing so, suing themselves or suing its employees. The officers of the corporation manage it, but they are not in doing so managing themselves.
11. They can engage in actions which it does not make sense to speak even of groups of people engaging in, such as merging with other corporations.
12. Finally, talk about what the corporation intends, says, or believes, or its interests, is evidently not a matter of saying what all its employees, or managers, or shareholders intend, say, believe, or what their interests are, individually, or as a group.

The corporation is a particularly interesting case of a large-scale organization because it is entirely a creature of the law, and the technical legal discourse surrounding it introduces an additional layer of conceptual complexity. I will undertake in this essay to sketch a deflationary account of agency-discourse about corporations. I will identify institutional roles with a special type of status function, a status role, in which the collectively accepted function is expressed in part through its occupier's intentional expression of her agency in that role (where the occupier is part of the group whose collective acceptance underwrites her having the relevant function in social transactions). I will identify institutions as systems of status roles, and show how this is compatible with seeing the agency of institutions generally, even over time periods in which there is complete change in role occupiers, as a matter of the contributions only of individual agents. I will explain how the reduction of the institution to its members is compatible with its potentially having had a completely different membership. I will show in the case of the corporation in particular

that, once we see its origins and function, the surface features of legal discourse about corporate agency are misleading, and are compatible with a deflationary account of corporate agency. I will show in connection with this that the corporation is to be identified with its shareholders, and that where a corporation separates ownership and control, its managers and employees are proxy agents of the shareholders doing business under the corporate form. Finally, I will canvass the legitimate ways of construing ordinary talk about corporate intention, belief, and so on, in light of this, none of which support the attribution of genuine agency or intentionality to any group per se associated with the corporation.

This investigation is connected with the intersection between the extended mind hypothesis and collective intentionality in the following way. The extended mind hypothesis is that the boundaries of the mind extend beyond the body in the sense that cognitive processes that individuals engage in themselves involve events that take place in locations that extend beyond the body, and, in particular, in various things in their environment that are aids to problem solving or accomplishing cognitive tasks—e.g., using a notebook to aid memory, writing equations and steps in their solution on a sheet of paper, drawing diagrams, running a computer program whose output is used in solving a problem, accessing the internet on a smartphone to look something up, and so on. Once we have taken this step, it becomes natural to ask about the status of groups that act together to solve problems or accomplish tasks that none of them could do alone by task decomposition and application of complementary skills. In this case, the “cognitive process” extends beyond the bodies of the agents involved but at the same time involves not just material features of the environment but also cognitive processes passing through other agents. This gets us the *socially* extended mind. In these circumstances, it is natural to wonder in whose mind these cognitive processes are taking place. Do we dissolve not just the boundaries between individual minds and the world around their bodies but also between them and the minds of others, so as to create a distinct mind that supervenes on all of them? In many cases, this will not seem a very apt description of what is going on. If two mathematicians divide up the task of solving a problem, which requires each of them to supply the other with solutions to parts of their task for each to take the next step in his, while we might want to say the cognitive process involves both of them, it would seem absurd to postulate a super mind supervening on both, at least if we think this involves the pair of them as opposed to each having beliefs, desires, intentions, and so on. But when the group is large and complex enough, and has an institutional structure in which the individual agents seem incidental to its functioning, in the sense that the roles they play may be and are successively occupied by different agents, it may seem that the effect is to produce a system of cognitive processes that deserves to be called in its own right an agent, undertaking its own tasks, and solving its own problems. And it might be thought that this is already reflected in our ordinary conceptual scheme, so that we tacitly recognize this as the upshot, because it is implied by the forms of speech that we use to talk about such organizations. This might be seen as a vindication of the idea that socially extended minds give rise to collective minds. And a particularly apt sort of organization for this line of thought is the corporation, for the reasons sketched above. My aim in this paper, as noted, is to show that in fact our ordinary conceptual scheme does not lend support to the idea that corporations are agents or have minds in their own right. As I will say below (see note

4 and section 8), this is not the same as showing that no corporations are agents in their own right. It is rather to say that there is no route to that conclusion from reflections on what we are talking about in talking about corporate agency—it would be completely incidental—and it is easy to see that these considerations extend to other sorts of institutions organized for joint action.<sup>1</sup>

## 2. The Logical Form of Plural Action Sentences

I begin with a brief sketch of the logical form of plural action sentences (Ludwig 2007, 2016), which will form the basis for an account, ultimately, of the logical form of action sentences about corporations. The account projects the event analysis of singular action sentences to the plural case in light of the distributive/collective ambiguity of plural action sentences. The event analysis of [1] is given in [1A], followed by an abbreviation and a paraphrase in English (with ‘ $t^*$ ’ indexing the time of utterance).

[1] I baked a cake

[1A]  $(\exists e)(\exists f) (\exists t < t^*)(\text{agent}(f, t, I) \ \& \ \text{by}_{\psi}(f, e) \ \& \ [\text{only } y = I](\exists f')(\exists t')(\text{agent}(f', t', I) \ \& \ \text{by}_{\psi}(f', e)) \ \text{and} \ \text{baking}(e, \text{a cake}))$

=df

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<sup>1</sup> For the record, I do not think that considerations about the sorts of cognitive processes proponents of the extended mind hypothesis have in mind lend any support to the collective mind thesis. The key term in the extended mind hypothesis is ‘cognitive process’. If this means any sequence of events involved in someone solving a problem or carrying out a task, then of course cognitive processes often extend beyond the body. If that is what the extended mind hypothesis comes to, we can grant it, but it contains no surprises, except for the odd label applied to it. If being a cognitive process requires that the sequence of events constituting it are mental changes, then the sorts of examples used to support the thesis that cognitive processes extend beyond the boundaries of the body do not support the thesis. No one thinks that movements of beads on an abacus are themselves mental events, even though they may aid someone in carrying out a complex numerical calculation. And no one thinks that they become mental events because we assign representational significance to them. Of course, when we solve problems with others, there are mental events in the processes that go through the minds of others, but so far as we know, those are all events involving changes in their bodies. Describing this in the vocabulary of the extended mind hypothesis doesn’t add anything substantive to the observation that groups of agents can cooperate in solving problems. The extended mind hypothesis then can drop out of the picture, and we can just ask whether joint problem solving entails a mind over and above those of the individuals involved. The multiple agents analysis of joint action described in this essay shows that the answer is no: it just requires that there be multiple agents making their complementary contributions to the production of a solution.

$(\exists e)(\exists t < t^*)(\text{the-agent}_{\psi}(e, t, I) \text{ and baking}(e, \text{a cake}))$

There are events  $e$  and  $f$ , and a time  $t$  less than  $t^*$  (= now), such that I am an agent of  $f$  at  $t$  and  $f$  brings about  $e$  (in the  $\psi$  way) and only I am an agent of an event that brings about  $e$  in that way and  $e$  is a baking of a cake.

On this analysis, two event variables are introduced, one, ' $f$ ' for the agent's primitive action (what he does but not by doing anything else), and one, ' $e$ ', for the consequent event expressed by the verb (in a limiting case these are identical). [1] asserts that the agent brings about a primitive action, which brings about another event in turn. The by-relation carries a subscript that indicates a parameter set by the action verb. One can be an agent of an event by doing something that causes it, or that causes it in a particular way, or by doing something constitutes it in whole or in part (coloring a wall by painting it blue) or by doing something of which it is a constitutive part (stretching one's quadriceps by squatting). Most ordinary causal action verbs require not merely that one cause an event of the type expressed by the action verb but also that one do it without anyone else's agency playing a central mediating role. If I hire an assassin to kill someone, and he is successful, I cause the victim's death. But I do not kill him myself. To kill him I must cause his death but not primarily through the mediation of another agent (this is only a rough characterization but further refinements don't matter for present purposes). I will call this *direct causation*. Unless directly relevant to a point at issue, I will not further specify this parameter. The second embedded conjunct simply secures that no one else is an agent in the particular way I claim to be of the event. If we co-author a book, neither one of us gets to claim that he wrote the book, since that implies he did all the writing himself. The last clause expresses the consequent event type. Where no English language verb expresses the consequent event type (as 'die' does for 'kill' or the intransitive 'melt' for the transitive action verb 'melt'), I press into service the gerund to express the type of event stripped of the implication that it was brought about by an agent.

[2] differs from [1] solely in containing the first person plural pronoun in place of the first person singular. Since in [1] the subject term refers to the agent, it may seem that [2] commits us immediately to group agents. But [2] is ambiguous between a distributive and collective reading, represented in [2i] and [2ii]

- [2] We baked a cake.
- [2i] Each of us baked a cake.
- [2ii] We baked a cake together.

To get the distributive reading, imagine we are competing as individuals in a cooking contest, and someone asks us what kind of dessert we prepared. Asserting [2] in this context is read as [2i]. Suppose we are competing as teams however, and someone asks me what my team baked. Then an assertion of [2] is read as [2ii]. The analysis of the distributive reading is given in [2d] (using our abbreviation from above).

[2d] **[Each x of us]** $(\exists e)(\exists t < t^*)(\text{the-agent}_{\psi}(e, t, x) \text{ and baking}(e, \text{a cake}))$

Each of us is such that there is an event  $e$  and time  $t$  such that he was the sole agent of  $e$  at  $t$  and  $e$  was a baking of a cake.

We get the collective reading by switching the order of the two initial quantifiers and making an appropriate adjustment in the sole agency requirement (details can be found in (Ludwig 2007a, 2016)).

[2c]  $(\exists e)[\text{Each } x \text{ of us}](\exists f)(\exists t < t^*)(\text{agent}(f, t, x) \ \& \ \text{by}_\psi(f, e) \ \& \ [\text{only } y \text{ among us}](\exists f')(\exists t')(\text{agent}(f', t', y) \ \& \ \text{by}_\psi(f', e)) \ \text{and} \ \text{baking}(e, \text{a cake}))$

=df

$(\exists e)[\text{All and only } x \text{ of us}](\exists t < t^*)(\text{agent}_\psi(e, t, x) \ \& \ \text{baking}(e, \text{a cake}))$

There is an event  $e$  such that all and only  $x$  among us are such that there is a time  $t$  at which  $x$  is an agent of  $e$  (in the  $\psi$  way) and  $e$  is a baking of a cake.

This corresponds intuitively to what we think of as going on when we bake a cake. Each of us makes a direct contribution to baking the cake (you beat the eggs, I mix the flour with salt and sugar, etc.) and no one else contributes directly. No super agent is required. [2c] gives an intuitively correct, deflationary, and commonsense account of the collective reading of [2]. My claim in the following is that this deflationary picture of group agency also ultimately underlies the logic of institutional agency, and, in particular, of our understanding of corporate agency.

### 3. Shared Intention

I will make use of the notion of a shared intention and a we-intention below. We do not need a full analysis, or to decide between the various analyses in the literature for our purposes, but some basic features of shared intention and we-intentions will be relevant.

Like [2], [3] has a distributive and collective reading, represented in [3i] and [3ii].

- [3] We intend to bake a cake
- [3i] Each of us intends to bake a cake.
- [3ii] We intend to bake a cake together

On the collective reading, [3] attributes (as we will say) a shared intention to the group. The group then bakes a cake intentionally (as a group) when it carries out its shared intention successfully. Since we have found no use for group agents per se in the analysis of the collective reading of [2], we have no need to a group per se to have an intention in analyzing the collective reading of [3]. Thus, we read 'We' in [3ii] as distributive, 'Each  $x$  of us' or 'We <sub>$x$</sub> '. Since the object of a shared intention is a joint action, we read the subject term

into the agent position in the complement, and then we interpret the plural action sentence collectively as in [2c] (letting the temporal argument place be bound by a quantifier over times in the future of the event time of the main verb). Representing the collective reading by adding the adverb ‘together’ we get:

[3c] We<sub>x</sub> intend [we bake a cake together]

More needs to be read into the satisfaction conditions, however, for we could each intend we bake a cake together without intending (or wanting) the others to intend that we do as well, and that would not constitute a shared intention, but individual intentions directed at joint but unintentional action. The further details won’t matter for us. My own view (2007) is that we each intend to do something to contribute to bringing it about that we act in accord with a common plan (perhaps put together on the fly) in bringing it about that we bake a cake together. A view in the same spirit, though restricted to small-scale hyper-cooperative group behavior is (Bratman 1992, 1993, 2014). We will suppose it filled in in some appropriate way. Then when we instantiate [3c] to individual members of the group we get for each of them a participatory intention which, following the literature, I will call a *we-intention* (Tuomela and Miller 1988a).<sup>2</sup>

### 3. Constitutive Rules and Constitutive Agency

Action sentences about institutions differ in a number of important ways from plural action sentences, starting with the fact that they employ grammatically singular noun phrases. The shift in grammatical number, however, as I will argue, does not signal a shift from thinking of the members of the group as agent to the group itself, but rather a shift from thinking of a group in a way that is neutral with respect to whether it is organized for joint intentional action to thinking of it as falling under a concept that determines that it is organized for joint intentional action, where this can be analyzed on the multiple agents model.

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<sup>2</sup> What I say below should be consistent with any of the standard views on the nature of we-intentions, and I intend [3c] to be consistent with all of them. There are two main divisions in views. The first holds that what is special is in part the mode of intending. On many interpretations, Searle holds a view like this (Searle 1990), though I argue this is a mistake in (Ludwig 2007b). The second holds that what is special lies in the content. Views here break down into two subclasses. Views in the first hold that the content that distinguishes we-intentions from individual intentions cannot be stated without using irreducibly group action level concepts that are not in play in our understanding of individual action and agency. This is Tuomela’s position (Tuomela 2005, 2013; Tuomela and Miller 1988a). Views in the second hold that what is special about the content of we-intentions can be spelled out without appeal to *sui generis* group action level concepts. Bratman (Bratman 2014), Ludwig (Ludwig 2016) and (Miller 2001) are examples.

A key to understanding institutional action sentences is the fact that membership in institutions is in a certain sense socially constructed.<sup>3</sup> In order to explain what this comes to, we need to work through three key ideas. The first is the concept of a constitutive rule. The second is the concept of a status function. And the third is the concept of a status role, which is a particular sort of status function that can be attached to an agent in the constitution of which the agent cooperates. This section gives a deflationary account of constitutive rules. The next section explains status functions and roles in terms of the notion of a constitutive rule.

Constitutive rules, as Searle classically put it, “do not merely regulate, they create or define new forms of behavior” (Searle 1969, p. 33). Rules for chess or football “create the very possibility of playing such games” (p. 33). Activities governed by constitutive rules “are constituted by acting in accordance with (at least a large subset of) the appropriate rules” and “constitute (and also regulate) an activity the existence of which is logically dependent on the rules” (p. 34). Constitutive rules are contrasted with regulative rules. Traffic laws and Robert’s Rules of Order are regulative rules because they govern activities that can take place independently of the rules existing or being followed.

Our question is what makes this possible. Searle never gives a reductive analysis, but it turns out to be important for understanding many forms of social agency. How can following a rule suffice to bring about or create or define a type of activity? There is only one possible answer: the type of activity is partly defined in terms of its being the result of the rule being followed intentionally. The mechanism can be seen clearly in a simple example like tic-tac-toe. The play of tic-tac-toe is defined by rules. The rules designate two players (agents) alternating contributions. Certain patterns are allowable by the rules. We can extract from this a pattern of activity involving two agents that can be instantiated

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<sup>3</sup> To anticipate, I say membership in an institution is socially constructed because it is a status function in the sense to be explained below, and it is socially constructed in the sense in which status functions in general are. Status functions are socially constructed in the sense that nothing has a status function absent there being a community that coordinates on it intentionally as playing a certain role in an essentially intentional social transaction. I am not claiming that social construction in this sense leads to new entities in the world. Becoming a member of an institution does not require a new thing to come into existence as opposed to an existing thing acquiring a new property. Being a justice on the Supreme Court is being a member of a certain institution. But it is simply a category into which an antecedently existing person falls for a period, as a bench may fall in a shadow for part of an afternoon. So social construction in the sense I have in mind does not increase the count of things in the world. But it is essentially social because it involves relations to agents standing in social relations to one another and constructed in the sense that it involves joint intentional coordination of the use of things with the relevant function for those things to have them. Institutional membership can be contrasted with natural membership, which is unconstrained. For any  $n$  objects, there is a group  $G$  with exactly those objects as members of it, regardless of whether anyone has them in mind as a group or thinks of them under a concept uniting them in a group.



independently of the two agents intentionally forming the pattern. We get the play of a game of tic-tac-toe when two agents intentionally instantiate the pattern with each having the goal of reaching a (different and incompatible) position (for each), which we call (as appropriate for each) his winning. The constitutive rules for the game are given their content by the pattern of activity. They are constitutive of the play of the game because the concept of the game is the concept of such an activity pattern brought about jointly intentionally by the agents who instantiate it. Our capacity to create constitutive rules then rests on our capacity to conceive of ourselves as engaging in intentional activity, and then aiming at not just the activity pattern, but at bringing it about jointly intentionally. (We bring something about jointly intentionally when we share an intention to do it, i.e., all have we intentions directed toward our doing it together, and then all execute our we-intentions successfully.) Constitutive rules may pertain to individual activities, such as playing solitaire, as well as joint activities, such as playing bridge, though our focus will henceforth be on constitutive rules governing joint activities.

If this account is right, then an immediate consequence is that for every regulative rule there is a type of activity relative to which it is a constitutive rule. And it is easy to see that this is indeed the case. Define a *parliamentary meeting* as one that is conducted in accordance with Robert's Rules of Order. Then Robert's Rules of Order are constitutive rules for parliamentary meetings.

A common observation is that rules in games can be broken while people are still counted as playing the game. This subdivides into two cases. First, there are regulative rules defined in the context of the game itself, with provisions for what to do when they are violated, as when a player violates the offside rule in football. The constitutive rules incorporate provisions for what those participating in the activity (including the referees) are to do in these circumstances. These sorts of rules do not raise any problems. Second, there are inadvertent or deliberate violations of rules that are part of the definition of the game. Some game concepts are strict and require the pattern be instantiated for a game to have been played (plausibly tic-tac-toe and tournament chess). Others may be ballpark concepts, where various deviations from the paradigm are counted as close enough to be classified under the term—but in this case we understand what close enough comes to in terms of a strict concept, and so the existence of the activity is still as Searle said “logically dependent on the rules.”

Someone is a constitutive agent of something when what he does in part constitutes what he is an agent of. For example, one is a constitutive agent of the audience's applause after a performance when one claps along with others. Constitutive rules give rise to the possibility of new forms of constitutive agency. For in performing an action with the intention of following a constitutive rule, one contributes, if successful, to conditions conceptually sufficient for the relevant type of event to occur. (For further discussion see, (Ludwig 2014b, 2017)).

## 4. Status Functions and Roles

Searle introduces the term 'status function' in the following passage:

The radical movement that gets us from such simple social facts as that we are sitting on a bench together or having a fistfight to such institutional facts as money, property, and marriage is the collective imposition of function on entities, which—unlike levers, benches, and cars—cannot perform the functions solely by virtue of their physical structure. ... The key element in the move from the collective imposition of function to the creation of institutional facts is the imposition of a collectively recognized *status* to which a function is attached. Since this is a special category of agentive functions, I will label these *status functions*. (Searle 1995, 41)

According to Searle, the method of imposition is collective acceptance (by the relevant group) that the object have the function in question. I borrow the term 'status function' from Searle, and I intend to use it with the same target in mind, but I will understand it a bit differently than Searle does. As I will understand it, an object has a status function when it is, in a sense to be explained, collectively accepted that it has a function, and the role of 'status' as a modifier is simply to signal that it has the function as a result of the relevant sort of collective acceptance—the status does not come first but simultaneous with the imposition of function.

What does this come to? How can collective acceptance of something be essential for its fulfilling its function? A hammer can be used to drive a nail in virtue of its physical characteristics. One can drive a nail with a hammer without intending to do so. So no one has to accept that it is a hammer in order for it to be able to drive nails. What's so special about status functions? The answer is that status functions are defined in terms of roles that objects have in collective activities defined by constitutive rules, but the rules don't specify what objects are to fill the roles. Thus, any group that wants to implement the rules has to decide on what objects are to fill the relevant roles. This amounts to the group collectively attaching to those objects the relevant functions. (Ultimately, on my account, this comes to the members of the group having appropriate conditional we-intentions to use the objects or types of objects in the relevant transactions (Ludwig 2014b, 2015).)<sup>4</sup>

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<sup>4</sup> Space constraints prohibit a full development of this theme, but here is a brief sketch. A conditional intention is a commitment to a contingency plan. If I intend to leave the party at midnight, I intend unconditionally. If I intend to leave the party at midnight if the band keeps playing Barry Manilow songs, then I have a conditional rather than an unconditional intention. My commitment is to act on a certain contingency obtaining, which is unsettled for me, either not in my control or something which I don't intend to exercise control over, but which I can without excessive cost determine to obtain in time for action, and which I am committed to ascertaining in time for action. A generalized conditional intention quantifies over conditions of a certain type. For example, I may intend to buckle up whenever I get into a car. A conditional we-intention is an intention to participate in a

Since their use for the intended functions depends on those using it coordinating on the same thing, collective acceptance is essential for it to have and to fulfill its function. A simple example is the role of a king in chess. This is defined by the rules, but the rules don't say what objects in the world are to play the roles. It is up to us to impose those functions on objects, and it is clear that we can use anything for the role as long as we can track the object through the game so that we don't lose track of what it is that is playing the role. The same goes for money, property and marriage. Though the rules in these cases are more complicated, the basic idea is the same: these are concepts of roles in collective intentional activities, but it is up to us to decide the conditions under which particular things have these roles—what to choose as a medium of exchange, what rules determine who is counted as legal owner of property, or when two people are married.

An important subcategory of status function is that of a status role. A status role is a status function that an agent has which he accepts (at least tacitly)<sup>5</sup> along with others and in which he is required to exercise his agency in relation to others—frequently in relation to their having status roles or functions themselves—in specific ways in specific circumstances. Examples are being a judge, a senator, a professor, or a spokesperson. A status role is not just a status function assigned to an agent. Someone might be used as a chess piece, but that would not ipso facto give him a status role. Similarly, in being

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certain kind of joint activity with others upon a certain condition obtaining. For example, we may each we-intend to dance with each other if the band plays our favorite song. We may also have generalized conditional we-intentions. We may we-intend to dance whenever the band plays our favorite song. Similarly, we may we-intend to solve a certain coordination problem in a certain way whenever we find ourselves facing it. So we may we-intend to implement the call back rule: whenever we are having a phone conversation and the line is dropped, the person who initiated the call calls back and the other waits for the call. We may then each we-intend that whenever we are in a call and it is dropped, the one who initiated the call calls back and the other waits for the call back. Since assigning a status function to an object is a coordination problem, to solve it we must coordinate our we-intentions on the same objects. If we want to use the same thing or type of thing in repeated social transactions of the same type, we will have generalized conditional we-intentions directed toward using those objects or types of objects whenever conditions are appropriate for engaging in that type of social transaction. As having coordinated one-off or generalized conditional we-intentions directed toward objects filling the relevant roles is sufficient for them to have the relevant functions, the minimal necessary and sufficient condition for something's having a status function is our having the appropriate we-intentions coordinated on those objects, unconditionally or conditionally. Thus, collective acceptance, understood as the condition for objects to have status functions, can be identified with a certain structure of we-intentions in the relevant community.

<sup>5</sup> Acceptance in the sense I have in mind doesn't need to be explicit or formal. It is rather the sort of state one is in as the result of sincere formal acceptance of a role. One can be in that state without having got into it by way of formally accepting the role. Ultimately it is a matter of having the right sorts of we-intentions or conditional we-intentions focused on oneself as playing the relevant role in the relevant social transactions. See note 4 also.

classified as an enemy combatant one is given a status function, but not a status role, since one does not accept it, and it is not part of the conception of the role that the person occupying it participates intentionally in the expression of the function.

## 5. Institutional Membership

These ideas are crucial to understanding the structure and function of institutions because institutional membership is itself a status role. Institutions are systems of inter-defined status roles designed for coordinating joint action in pursuit of collective goals over time. Membership in an institution is a matter of occupying one of the status roles in the system of roles that define the institution. In simple organizations, there is just the general role of membership, e.g., in a club with no officers, which conducts business by consensus. But more typically there is a further differentiation of roles within the institution, for example, in a club, president, secretary, and treasurer.

Because status roles are status functions, being a member of an institution is matter of satisfying collectively accepted criteria for membership. It is in this sense that membership in an institution is socially constructed. This contrasts with membership in a group picked out with a plural referring term. Any set of objects constitutes a group of things, and membership in it comes to no more than that, for any  $n$  things—my left hand, the doorknob, Barak Obama—there is the group of them. I will use ‘ $\epsilon$ ’ for the general *institutional* membership relation. For each particular institution, there is a determinant membership relation, which is simply the status that someone has to have to be counted as a member.

Typically institutional roles are transferable. Members of institutions come and go, and particular roles in institutions are successively occupied by different agents. Thus, standardly institutional membership is a time-indexed relation or status. One can meet the designated criteria at one time but not another. For example, being a member of the Supreme Court of the United States is a matter of being nominated by the President and confirmed by the Senate. One is then a member of the court, or a justice of the court, until one retires or dies.

This explains the first three features on our list in the introduction, which corporations share with organizations more generally.

First, organizations in general, including corporations, considered as types, are types of systems of status roles. The fact that they are socially constructed explains why their realizers can exist prior to and independently of occupying them. The fact that the roles are transferrable, that is, the fact that conditions for institutional membership and role occupancy are time-indexed, explains how the organization, in the sense of the relevant system of status roles, can continue to exist (continue to be realized) through changes in its realizers, and consequently can outlast, as many organizations do, all of the individuals who realize it at a time (as a continuous pattern of interconnected status roles). The transferability of roles is what gives the institution the possibility of perpetual existence,

which is just the possibility of continuous realization as a pattern of interlocking status roles, which originated in a particular historical event or process.

Second, the transferability of roles also explains how the very same organization could have had different individuals playing the various roles in it. Here there are two cases to consider: those organizations that are individuated by their founding members and those which are individuated by their relation to another institution. The first sort of case can be illustrated by a group of people (not otherwise organized) getting together to form a chess club. They are members of it essentially. No chess club originating in different members, actually or counterfactually, is the same club. But if they make provisions for enrolling new members, it can change membership over time. The sense in which it could have had different members is that its membership could have been different than it was by different patterns of enrollment. The second sort of case can be illustrated by the US Supreme Court, which is an example of an institution embedded in a larger institution. It could have had different initial members as well as different membership subsequently because its being the same institution with different initial members is secured by the definition of its role within the larger institution. In which category do corporations lie? While corporations have their life only within a larger institutional setting, namely, within a legal system, nonetheless they are individuated by their origins, and, in particular, by the act that brings them into existence in the eyes of the law, the filing of papers of incorporation. The filers are the incorporators and their identity determines the identity of the corporation across possible worlds. If another group had beaten a particular group in filing articles of incorporation in a given jurisdiction with an identical name, business address, corporate purposes, registered agent and stock information, it would be a distinct corporation.

Third, we often describe corporations, nations, dynasties, universities, and other organizations as undertaking projects that outlast the lives of any of their members. Charles Thompson, in the *New York Times* in 1920, wrote memorably of the United States that:

[It is an] experiment in democracy that has not yet succeeded or failed. It is still on trail. It succeeded magnificently in dealing with the problems it was meant to deal with; other times have brought other problems.

This experiment or endeavor goes on today. Does this require an agent commensurate to the task stretching over generations? The common sense answer is 'no', but it may remain unclear how to understand the discourse about agency involving transgenerational projects undertaken through institutions designed to let later hands take up the same work.

The key to resolving the puzzle lies in the institutional membership relation being time indexed. A relatively simple case will illustrate the principle. [4] *prima facie* ascribes to one entity, the Supreme Court, actions that take place across a time span 58 years, which saw a complete turnover of the members of the court (in the following I draw on work in (Ludwig 2014a)).

[4] The Supreme Court ruled in 1896 in *Plessy vs. Ferguson* that segregation is constitutional, but reversed its ruling in 1954 in *Brown vs. Board of Education*.

The basic idea is this. When we speak of the Supreme Court doing something at a certain time, or in a certain time interval, what we have in mind is that each of its members at that time (or in that interval) contributed to bringing it about. So intuitively [4] says that the members of the court in 1896 ruled that segregation is constitutional, but the members in 1954 reversed that ruling. This is clear in mundane claims like that in [5], which on the collective reading (patterned after [1c]) just means that each member of the court contributed to an event of their lunching together. That the same reading suffices for official acts (which constitutively require their all participating) is shown by [6].

[5] The Supreme Court went to lunch.

[6] In the morning, the Supreme Court ruled that the Constitution requires that same-sex couples be allowed to marry no matter where they live and that states may not reserve the right only for heterosexual couples, and then went to lunch.

In the first clause in [6], the event time lies in the morning, and we are thinking of there being an event, a ruling, to which each of them contributes (by participating in their decision procedure, majority voting), and in the second clause, we are thinking of a subsequent time at which each member contributed to their lunching together or each to his or her lunching separately—as either reading is available.

The case of [4] is the same except that the interval between the two events is much longer. The full dress analysis is given in [4c] where I treat ‘The Supreme Court’ as a description that picks out the group of its members atemporally (for the full argument see (Ludwig 2014a)).

[4c]  $[\exists e_1][\exists t_1 < t^* \ \& \ t_1 \text{ lies in } 1896][\exists e_2][\exists t_2 < t^* \ \& \ t_2 \text{ lies in } 1954][\text{the } X: X \text{ is a US Supreme Court}][\text{All and only } x \in X \text{ during } t_1](\text{agent}(e_1, t_1, x) \ \& \ \text{ruling}(e, \text{ that segregation is constitutional,}) \ \& \ \text{in}(e, \text{ Plessy vs. Ferguson}) \ \& \ [\text{All and only } y \in X \text{ during } t_2](\text{agent}(e_2, t_2, y) \ \& \ \text{reversal}(e_2, e_1) \ \& \ \text{in}(e_2, \text{ Brown vs. Board of Education}))$

A ruling in 1896 that segregation is constitutional in *Plessy vs. Ferguson* that all and only the 1896 members of the Supreme Court contributed to was reversed in a ruling in 1954 in *Brown vs. Board of Education* that all and only the 1954 members of the Supreme Court contributed to.

Intuitively, this gets the truth conditions just right, without any commitment to treating an institutional group as itself entering into the agency relation. This explains the third feature on our initial list without admitting any agents other than individuals. Of course, the story about how corporations express their agency is going to be more complicated, and we turn in the next section to an essential component of that story, proxy agency.

## 6. Institutions and Proxy Agency

In proxy agency, one person or group's agency appears to be expressed through another's. When I give someone a power of attorney to sign a contract closing on the sale of a home, I count as selling the home when she signs the contract. She acts as my proxy in signing the contract. When a spokesperson for a corporation announces a new policy in its behalf, the corporation counts as announcing a new policy. The spokesperson is the corporation's proxy in the announcement. How is it possible that when one person or group acts, it counts as another person or group acting? The answer is that the proxy's actions count as the person or group doing things only in virtue of the proxy being authorized by the person or group to act for him or it. Being authorized to act for the group is to be assigned a status role in a transaction with other individuals or other groups. The proxy's actions then have status functions in virtue of being expressions of her agency in carrying out her status role. Since the proxy's actions have those status functions only in virtue of her being authorized to play that role, and the authorization traces to the group, the group is both a causal and constitutive agent of what the proxy does in her official role.

Take the case of the spokesperson as an example. Focus on a simple case, e.g., a chess club appointing a spokesperson to handle group communications about a charity event that it is organizing. The group is small enough that it makes consensus decisions about policies and plans. The group as a whole appoints the spokesperson and decides on the content of what the spokesperson is to convey. The club holds a press conference at which the spokesperson speaks for it. First, the spokesperson reads from a prepared message, and then responds to questions. The audience understands that the spokesperson has been authorized to speak for the club. So they know that the spokesperson is not speaking in her own voice but is performing in her official role. They are a party to the conventions for how to treat what the spokesperson says given her authorization. Thus, her words count as the group's announcing its plans and policies. That is, they have the status function of being the group's announcement of its plans and policies. Because the spokesperson's words have that status function only in virtue of her and her message being authorized by the group, the group is itself an agent, in the distributive sense, of course, of the group announcement. In the case of the chess club, given the decision procedure, what group does through the spokesperson straightforwardly involves the agency of every member of the group. (Throughout this discussion when I speak of the group being an agent of something, I mean in the sense of the multiple agents analysis of action sentences, and similarly for the group intending, I mean they all have appropriate we-intentions. Some complications will be discussed below.)

Given that a group announcement can come off only if it is done through an authorized agent (or procedure), it is clear that the concept of a group announcement is distinct from the concept of an individual announcement. It is a socially constructed event type. Thus, group speech acts must in general be distinguished in kind from individual speech acts. This is what we should expect if, as I have argued, the basic analysis of group action sentences does not require group agents per se. To distinguish the notions, I will underline 'announcement' when using it for group announcement, and so in general for group speech acts. Sincerity in group speech acts correspondingly is different from sincerity in individual speech acts. For a group to be sincere in its announcement, they must be committed to act in accordance with what it announces and not be intending to deceive

their audience. This doesn't mean, however, that all its members, or even any of its members, must believe what it announces. There will be a state of the group corresponding to sincere commitment to what a group announces that can be called, if we like, group belief but this too is, at least, an extended sense of 'belief' specifically tied to the sense in which a group can announce something (which I similarly underline to so indicate). We will return to this below in the section on corporate attitudes.

In the first stage of the press conference as described above, the spokesperson reads from a script prepared by the group. The spokesperson here functions as the mouthpiece for the group. The group then announces the prepared message and does so intentionally. In the second stage, the spokesperson answers questions. Here the spokesperson is authorized to answer questions in accordance with policy, and the group intentionally answers questions through the spokesperson, but the particular things that the spokesperson says, though the group is an agent of them as well are not, under those descriptions, intended by the group, since members did not have we-intentions with that level of specificity, it being impossible to anticipate questions or lay out ahead of time specific answers. The group makes use of the skills of the spokesperson. Thus a proxy agent may perform acts that are scripted but also act autonomously with the authority of the group, with various degrees of freedom as specified in the authorization. In the former case what the proxy does counts as the group's doing something intentional under descriptions given by the script, in the latter case only under more general descriptions.

The case of the chess club was chosen for its simplicity to illustrate the basic structure of group agency expressed through a proxy. Once we have the device in view, we can see that proxy agents can be authorized to authorize further proxy agents, and that an organization can be described in terms of a system of status roles in which some roles are from the outset those of proxy agents, including proxy agents with the power to appoint additional proxy agents. When an organization is on-going and its membership changes as individuals leave and join, individuals in joining tacitly accept the system of roles and so participate in their realization. The contributions of individuals to the constitutive agency of the group being expressed through its proxy agents becomes more diffuse. But though diminished, each member of the group still contributes constitutively to the maintenance of the system and to how it expresses its agency through its proxies.

## 7. What is Corporate Agency?

What are corporations? A corporation is formed when articles of incorporation are filed. Thus, a legal act brings, as we say, a corporation into existence. But this is misleading. For a corporation is a particular legal form that clothes the activities of individuals. This is clearest in the case of jurisdictions that allow a single person to incorporate. When a single person incorporates, she is the single shareholder in the corporation. The corporation is given an independent name for the purposes of contract law. But it is clear in the case of the single person corporation that the filing of papers of incorporation does not bring into existence anything new but brings into existence rather a new status for the individual incorporating. This extends to a group that incorporates. Incorporating does not bring into existence any new entity. The purpose of a corporation is to facilitate management of



assets set aside for that purpose. The initial owners of the corporation are its first shareholders. Their investment in the company constitutes the assets it is to manage.

In one person or small corporations, the shareholders (or owners) may play the roles of managers and employees. Modern large-scale corporations typically have a two-tier management system with a board of directors, appointed or elected by shareholders, on the one hand, and officers who constitute the highest level of day-to-day management of the corporation, on the other. The board's responsibility is to manage the business, appoint and monitor the performance of officers, review and approve significant corporate actions, operating plans and budgets, and so on. The officers work for the board and the board works for the shareholders, and so the officers, and those they employ in turn, work for the shareholders. Members of the board, officers, managers, and employees may be shareholders, but this is incidental to their status as board members, etc. The board and officers, management and employees are in these roles *proxy agents* for the shareholders. The shareholders are, strictly speaking, the corporation.

In large for-profit corporations, the shareholders may know and care little about the actual operation of the corporation beyond whether it is delivering a return on their investment. The corporation functions like a vast machine that has been set in motion. Its shareholders' relation to it is like that of an individual to someone to whom he has given a general power of attorney to handle his financial and business affairs. When everything is going well the shareholders need not concern themselves with its operation. Nonetheless, its operators (board, officers, management and employees) are proxy agents of the shareholders, who still constitute the corporation and in whose name it is operated. When the corporation acts, the shareholders act, through their proxies. They are agents of what the corporation does through the authorization relation that they stand in to the board of directors, and through their power to authorize officers, and theirs in turn to appoint management, and so on. The operators of the corporation are as a group a proxy agent for the shareholders. An immediate consequence is that, for such large-scale corporations, when we look *through* the corporate veil, what the corporation as such does, that is, the shareholders, it typically does not do intentionally under the descriptions under which the board or management or employees do them, but only under a much more general description such as maximize return on shareholder investment.

This explains the nature of the hierarchical organization of the corporation, and how action pursuant to delegation of responsibility expresses the agency of those shareholders who ultimately constitute it, which is item 4 on our initial list. The relation of the shareholders to the operators of the corporation is in many ways analogous to the relation between an individual and someone to whom she gives a general power of attorney to handle her financial affairs. The responsibility is largely shifted to the grantor's legal agent holding the power of attorney. The agent then operates autonomously in making decisions on behalf of the grantor. But those decisions to buy and sell and invest assets counts as the grantor's buying, selling and investing. And the grantor is an agent of these actions (though we must be careful about under what descriptions they are intentional of the grantor) through having authorized her agent to act on her behalf.

## 8. Corporations as Legal Persons

The conclusion that the corporation is its shareholders who act through proxy agents may seem to be undermined by the legal status of the corporation as distinct from its shareholders, board, officers, management and employees. It is the corporation, not its shareholders, board, officers, managers or employees, which is said to enter into contracts, to own the corporate assets, to be able to sue and to be sued (even by its shareholders), to employ others, and so on. The corporation is said to be a “legal person” distinct from any of the individuals associated with it. This distinction, however, has a technical role in legal discourse, and we must understand what it comes to and its purpose in order to see the relation of legal discourse about the corporation to our theoretical standpoint.

The separate “legal personality” of the corporation is connected with its specific business purposes. The corporation is a legal device that aims to facilitate a business enterprise by allowing the pooling of shareholder assets for use in it while reducing the risk of investment for the shareholders and the risk for others in doing business with the shareholders with respect to the pooled resources. These goals are realized through entity shielding and associated procedural rules (Kraakman et al. 2009).

Entity shielding involves both protections for creditors and for shareholders. It involves three main elements. The first consists in priority rules governing treatment of creditors. Creditors who contract with the corporation have priority over creditors of shareholders individually with respect to corporate assets. This facilitates the business enterprise undertaken through the corporate form by assuring those who do business with it that their claims against it will not be trumped by claims on individual shareholders by creditors not doing business with the corporation. The second element provides liquidation protection though (i) prohibiting individual shareholders from withdrawing their investment from the corporation at will—as opposed to transferring ownership in the share to another—and (ii) prohibiting creditors from foreclosing on the shareholder’s portion of the corporate assets—they can take possession of and sell the shares, but they can’t withdraw the capital those shares represent from the asset pool. This provides assurance both to shareholders generally and to those who contract with them that the enterprise will be protected against capricious shareholders and against creditors of the individual shareholders. A third standard element of corporate law is the limited liability of the shareholders. In limited liability corporations, while the shareholders participate in the profit of the firm, they are not held personally liable for the corporation’s debts beyond the amount of their investment. This encourages investment and easy transference of shares because it makes clear the limit of the liabilities (which as a whole can be enormous for large corporations) pertaining to individual shareholders that come with ownership of shares.

Giving the corporation a separate legal identity, or legal personality, is a technical means by which these goals are promoted. By treating the corporation as nominally a separate entity in contract law, which owns its own assets, and is the nominal contractor for the use of those assets for business purposes, (i) the creditors of the corporation are given priority in

claims against the corporation, (ii) the corporation's assets are shielded from individual shareholder creditors, (iii) the corporation is provided liquidation protection, and (iv) the personal assets of shareholders are shielded from corporate creditors.

Procedural rules are required for the corporation to function in accordance with its legal personality. They determine who has the authority to enter the firm into contracts (typically the board in a two tier management system), and how contracts may be enforced on firms, how they may be sued, as firms, and so on. The procedural rules connect talk of the corporation as if it were the agent at the nexus of contracts with the individual agents who work the levers behind the corporate facade.

To treat the corporation as a person for the purposes of contract law is to engage in what has been called a legal fiction (Fuller 1967; Smith 2007).<sup>6</sup> In a legal fiction, a form of speech that in its ordinary sense would be false in a certain application is taken for the purposes of the law to be true. The point is not to try to legislate reality but to give the relevant forms of discourse a new meaning that serves a certain legal purpose, namely, the transfer of a body of law from its original home to a new application by the expedient of calling something by a name used in that original body of law which in the ordinary sense does not apply to it. An example is provided by procedures involving adoption. When an Order of Adoption is entered, the child's biological parents become legal strangers to the child, that is, they are not recognized in the law as related to the child; the adoptive parents are (in some jurisdictions) issued a new birth certificate reflecting this. The change in parentage and new birth certificate listing the adoptive parents as birth parents are legal fictions. The point is to give the adoptive parents all the legal rights and duties that normally pertain to birth parents. The effect of such transferences is to modify the law, and to give terms like 'parent' and 'corporation' and the legal discourse in which they are employed new contextual definitions, extending their reach in certain, limited ways. Because it is a legal device and the sense given to the terms is a technical legal sense, the precise import has to be recovered from the legal procedures that attach to the relevant discourse.

This shows that when we say, in the technical discourse of the law, that it is the corporation that entered into a contract and not its shareholders, and do not find any other group which could be substituted to make this true, it is not a counterexample to the thesis that a corporation is its shareholders and that it is they who act, through their proxies, when the corporation acts. For the surface form of speech in legal discourse is a way of describing indirectly a network of contracts in which the shareholders enter with provisions for entity shielding and limited liability. They adopt the corporate form for this purpose, and do business under a form of speech that nominally is about a distinct entity, but this is a mere

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<sup>6</sup> There is, in my opinion, a fair amount of confusion mixed in with insight in the legal discussions of legal fiction. From the philosopher's standpoint, as I say below, the introduction of a new legal fiction is not an act of story telling but an revision of meaning of a domain of legal discourse which now includes the new "fiction." A better terminology would be 'legal pretense' since we in effect pretend that one kind of entity is another for practical purposes.

façon de parler, a convenience of language. This view is aptly expressed in the following passage from a classical legal treatise (Hohfeld 1923):

Strangely enough, it has not always been perceived with perfect clearness that transacting business under the forms, methods, and procedures pertaining to so-called corporations is simply another mode by which individuals or natural persons can enjoy their property and engage in business. Just as several individuals may transact business collectively as partners, so they may as members of a corporation—the corporation being nothing more than an association of such individuals (p. 197) ... When, therefore, in accordance with the customary terminology, we speak of the corporation, as such, as contracting in the corporate name, as acquiring, holding and transferring property, and as suing and being sued, and when we speak of stockholders as mere claimants against the corporation, holding stock, which is a species of personal property,—and so on indefinitely—we are merely employing a short and convenient mode of describing the complex and peculiar process by which the benefits and burdens of the corporate members are worked out. (pp. 199-200)

We can see that the corporate form does not *per se* change the nature of the entity that is engaged in business by considering an association of individuals who start a company as a general partnership without limited liability, which is not recognized as a separate legal entity. It is they who enter into contracts as a group, and so on. But they may later incorporate if it seems advantageous, and in doing so they merely adopt a different legal form for doing business—they have changed labels. If later they revert to a general partnership, it is the same group of individuals doing business. We say the corporation is dissolved, but this is a matter merely of the individuals no longer conducting business in the corporate form. This point is especially clear in the sole proprietor corporation. The distinct legal forms in which the name of the corporation can appear in this case tempts no one to think there is *ipso facto* a new agent on the scene.<sup>7</sup>

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<sup>7</sup> This is not a demonstration that it is conceptually impossible for a multiple shareholder corporation, or its operators, to be an agent in their own right distinct from the individuals playing their roles in the corporate structure. For example, if functionalism is the correct theory of the mind, it is in principle possible for a system realized in individual agents playing their roles in a corporation to instantiate the functional organization of an agent, and so to be an agent. The point is rather that this does not follow from the legal fiction that a corporation is a person or the forms of speech that we employ in talking about corporate action, and it is not required for those forms of speech to be literally true. When we talk about corporate action we are not talking about any agents other than the shareholders and their proxies. It would be an accident relative to its purposes and forms if it turned out that such a system was an agent, and there would be no guarantee that its purposes and actions corresponded to what we say the corporation does and intends and so on. See also the next section and note 8.

Corporations are entirely creatures of the law. It is this together with the legal fiction that they are persons for the purposes of contract law that adds an extra layer of complexity onto our understanding of the agency of corporations over our understanding of the agency organizations in general (though this point extends beyond corporations to many other legal entities). It is the rules of legal discourse that govern how we talk about them. Consequently, the surface form of discourse about the agency of corporations must be interpreted in the light of its legal purposes and associated procedure rules. Because it is a technical discourse, it cannot be given an ordinary language gloss. That it is a technical discourse explains many of the most striking, and commonly misleading, features of talk about corporations. That corporations are legal persons for the purposes of contract law (#5 on our original list), explains

- why they are treated nominally as distinct from their shareholders and operators (#6),
- why they are said to enter into contracts, own property, sue and be sued, exercise rights, even human rights, against individuals and the state, can be responsible for human rights violations, convicted of criminal offences, etc. (#7),
- why they have legal rights and responsibilities distinct from those of their employees and shareholders (#8),
- why it seems that they can perform actions and stand in relations that it does not make sense to say that any of the groups they might be thought to be identified with can perform or stand in, (#9), e.g., owning their own headquarters,
- why they can ostensibly stand in relations to the groups with which they might be identified that those groups seem not to be able to stand in to themselves, (#10), e.g., employing 216,000 people,
- why they can enter into actions that individuals cannot perform even in principle, such as merging with another corporation—though this last is also covered by noting that in general individuals can contribute to bringing about an effect that is defined in terms of its having multiple agents (meeting, e.g.), which does not itself require a group agent to be on the scene (#11).

Interpreted properly, the technical discourse about corporate agency is about what the shareholders of the corporation do acting under a certain business form, which, in the case of most large-scale modern corporations, they do through a hierarchy of proxy agents.

## 8. Corporate Attitudes

We turn now to the question of how to interpret discourse about corporate attitudes. For us to intend to lift a bench is for each of us to we-intend that we do it. For us to believe that we will do so is for each of us to believe that we will. If we identify the corporation with its shareholders, in the sense in which we intend to lift the bench and believe we will, in a great many cases it will be false to say that the corporation so conceived intends to do what it is doing (except under the most general description of its purpose) or believes that it will do anything very specific. But we still talk about corporate intentions, plans, beliefs, decisions, and so on. Here are some examples from news articles and press releases:

At a time when gas prices remain cheap and America's love affair with SUVs has reignited, General Motors has **decided** to phase out the Verano compact sedan in the U.S. market.

The Teekay Corporation today announced that its Board of Directors has approved the adoption of a new dividend policy under which the Company **intends** to distribute to its shareholders a majority of the cash flows it receives from ownership in its publicly-traded subsidiaries. (2014)

The Corporation **intends** to comply as much as possible with the guidelines adopted by the Canadian Securities Administrators and with the standards of other regulatory bodies.

The Middleby Corporation **believes** in the importance of social responsibility in its business practices.

Apache Corporation **believes** it can best further the interests of its shareholders and stakeholders by being non-partisan.

Carnival Corporation **hopes** that a virtual reality version of a cruise will be enough to make newcomers try the real thing.

The Corporation for Public Broadcasting **wants** a \$40 million budget increase, but **fears** it may have trouble getting congressional approval due to National Public Radio's near-bankruptcy three months ago.

Texas-based Calpine Corporation **wants** to build 80 to 100 wind turbines in the northern quadrant of Henry County.

There are three central questions to address.

- (1) Should we take these attributions literally in the sense of ascribing attitudes to corporations (or their operators) of the same sort as we ascribe to individuals with the same words?
- (2) If not, then how should we understand it?
- (3) How is this related to the theoretical standpoint sketched above?

I take these up in turn.

(1) Should we take these attributions literally in the sense of ascribing attitudes to corporations (or their operators) of the same sort as we ascribe to individuals with the same words?

Question (1) is about the *ordinary import* of claims like those listed. It is not about whether in the ordinary sense in which we say individuals intend, believe, hope, etc., it is true or in

principle possible for groups to intend, believe, hope, etc. First, these ordinary claims may have that import but be false, in which case we would have an error theory about attributions of genuine psychological attitudes to corporations. Second, these claims may not have that import and yet it may be true that, or in principle possible for, some corporations literally to intend, believe, etc., in the sense in which individuals do because, for example, functionalism is the correct theory of mind and they have the right sort of functional organization.<sup>8</sup>

Our question is: What do we intend to convey when we say that a corporation wants, decides or intends to do something, or that it believes, or hopes, or fears that something is so? Clearly, we do not intend these claims to be understood distributively (the simple summative account of Quinton (Quinton 1975)), that is, to be attributing to each shareholder (or operator) the relevant psychological attitude. First, in many cases it will be obviously false. Second, we don't say that corporations believe everything which all their shareholders (or operators) happen to believe, intend, want, hope, fear, and so on. If they all believe the sky is blue, we don't ipso facto affirm that the corporation does. If they all intend to vote for Donald Trump, we don't say that the corporation intends to vote for Donald Trump. If they all want to save the whales, it doesn't follow that the corporation does. And so on. Third, just because two corporations have, say, the same shareholders and operators, we do not infer that whatever the one intends, believes, wants, etc. (in whatever sense is appropriate for that), the other ipso facto does as well, as implied by the distributive account (Gilbert 1987, 189; 1989, 273).

It is equally implausible that in these cases we are attributing to corporations as such (the shareholders taken collectively) attitudes in the same sense as we do to individuals, or even to their operators (taken collectively). In many cases, the shareholders even as a group cannot in any ordinary sense be said to believe, intend, want, etc., in general what the corporation is said to, for in many large scale corporations both as a group and individually they will be little concerned with what the corporation is up to beyond its providing a return on investment, and have individually and as a group no executive function beyond voting for board members.

This leaves two options. First, it might be the corporation qua legal person, as distinct from the shareholders and operators, that is said literally to believe, intend, hope and so on. However, since the legal personality of the corporation is merely a device of the law for organizing the nexus of contracts that the shareholders stand in to others, there is literally

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<sup>8</sup> No one has in fact made a good case for corporations or any other organizations having a mind on the basis of functionalism. No one has produced an adequate functionalist theory, even putting aside objections to functionalism in principle. Therefore, no one is in a position to argue that any actual organization meets sufficient conditions specified in functionalist terms for having a mind. What arguments there are consist largely in hand-waving and affirming the consequent, e.g., (List and Pettit 2011), or begging the question under the guise of application of a parity principle, e.g., (Theiner, Allen, and Goldstone 2010)—see (Ludwig 2015a) for a response.

no entity there to be the subject of such attributions. Furthermore, the corporation as legal person is, in the sense given above, a fiction in the law, which is to say, what forms of speech apply to it are given by the law and what they stand in for is likewise given by the law. But there are no provisions in the law for attributions of attitudes to legal persons. No legal sense is attached to it. It may be that such attributions are confused literal ascriptions to the corporation conceived of as some kind of autonomous creation of the law, but we should first see whether we can find some unconfused purpose for ascriptions of attitudes to corporations before accepting this.

Second, it might be the operators (board, officers, managers, employees) as a group who are literally said to believe, intend, hope and so on. But while there is more to be said for this than in the case of the shareholders, it still does not make sense to suggest that it is all the operators as a group who intend, believe, etc., e.g., all of GM's some 212,000 employees, however peripheral to the enterprise, together with its board and officers. Many of them are like the shareholders in not knowing much about what the corporation is up to beyond their own roles and in having little executive function. It is particularly implausible, both in the case of the shareholders and operators, considered as groups as opposed to individuals, to think that they are being said to have the affect appropriate for hope or fear in the ordinary sense.

An alternative approach is Margaret Gilbert's account of a group belief that  $p$  as a matter of all members of the group jointly committing "*together to constitute, as far as is possible, a single body that believes*" that  $p$  (Gilbert 2006, 137). This fails for corporations and similar organizations because it requires all the members (however we think of this) to be aware of what they are committing to, but this won't typically be so. However, Gilbert is aware of this problem, and also allows non-basic cases of joint commitment to a goal. In a non-basic case, there is a basic joint commitment "to espousing whatever goal is specified by the operations of a specified mechanism" (141). This then would allow for deference to a decision making agent or subgroup in a larger group to determine group attitudes without each member of the group knowing the content of the attitudes. I take up a suggestion similar in certain ways to this below. The requirement that there be a basic joint commitment to espousing goals specified by the operations of a specified mechanism, however, seems too strong. First, it is implausible that *all* shareholders and operators of corporations know what the decision making mechanisms are, and so the original problem resurfaces. Second, the conditions for the formation of a basic joint commitment involve (i) behavior expressing readiness to be jointly committed on the part of all and (ii) common knowledge of the relevant expressive behavior (138-9). However, it is not clear in the case of large corporations that all of those in the various groups that might be thought to be the corporation have relevant expressive behavior with respect to commitment to the mechanisms for decisions (or even the relevant commitments), and, in any case, it is implausible that there is common knowledge among them of this even if it is so, both because in the case of large organizations most members are unaware of who most of the rest are, and, in any case, they are not in an epistemic position to know whether all the others have relevant expressive behavior.



Nonetheless, we can see that what we aim to get at is, not what all members of a corporation believe, etc., but rather something about the decisions and dispositions of those with whom decision-making authority for the corporation rests, and their consequences. But this now takes us to our second question.

(2) If not, then how should we understand it?

What is the function of attributions of attitudes to corporations? As an entry point, start with the corporations' public announcements, which include what its spokespersons say in its behalf but also its statement of purpose in its articles of incorporation, legally filed documents, and publically posted policies, e.g., on its website. These express the official positions of the corporation. They are one of the fundamental bases for attributions of attitudes to corporations. They play a role in its transactions with other groups and with individuals. They are the result of a process appropriate for the particular corporation in which one or some individuals are invested with the authority to make decisions about the matters in question. In virtue of that, they decide for the organization how it will act, and formally commit the organization to acting in that way. Internally directives are given in accordance with the public announcements if the decision makers are sincere and competent. This is a matter of setting parameters for the functions of the interlocking status roles of those who are operators of the corporation. The corporation then acts on or in conformity with the relevant statements, through some subset of its employees charged with executing the relevant policy or directive or constraining their official activities to be in conformity with it. Relative to this description of what goes on under the hood, the point of using 'believes', 'intends', 'wants', etc., to characterize the corporation is to capture something about the functional organization of its operators on the assumption that the decision makers are sincere. To say 'Corporation *X* believes that *p*' is to treat the proposition that *p* as one in accordance with the truth of which the corporation will act given its official goals and what else it accepts (in the same sense) as true—performance errors aside. To say 'Corporation *X* intends to *A*' is to treat the proposition that corporation *X* *As* as one that the corporation is officially committed to bringing about. To say 'Corporation *X* wants to *A*' is to treat the proposition that corporation *X* *As* as expressing a goal of the corporation without so far treating the corporation as having an official commitment to pursuing it. The cash value of this is that those in relevant decision making positions, having determined a pro tem goal, have determined further deliberation is appropriate before making a commitment to pursue it. (Tuomela advocates a view of group belief that also focuses on commitments of certain members of a group in positions of authority (Tuomela 1992; Tuomela 2007, 134-9).) They are committed, then, to directing effort into gathering additional information and assessing the relative merits of options deemed worth pursuing that can't be simultaneously pursued. The corporation may be described in some cases as having a conditional intention to do something, to accept a buyout if the per share price is high enough (Ludwig 2015b), or to have what Luca Ferrero has described as a pro tempore intention (Ferrero 2015), an intention to pursue one of two or more in a limited range of options rather than others, though which one is to be pursued is a matter of further deliberation.

Since these uses of 'believe', 'intend', 'want', etc., are not intended to be used with the same significance as in their application to individuals, I will underline them when they are used with the sort of intent just sketched.<sup>9</sup>

What should our attitude be toward this form of discourse, given its function? There are two main options. We can treat it as figurative or in some other way non-literal, a mere manner of speaking or pretense, or as literal but employing the familiar terms in an extended sense.

If we treat it as non-literal, we may in many cases treat it as a case of metonymy, substituting in the whole for the part, speaking of the corporation as if it intended or believed or wanted when we really have in mind relevant decision makers. In very many cases, it seems that it would be literally true to say of relevant decision makers that they believe what the corporation is said to believe or that they want the corporation to do, or intend the corporation to do what it is said to want or to intend to do. In addition, that the decision makers believe, want, and intend as they do is the ground for saying that the corporation believes, wants and intends to do what it is said to.

However, that corporate decision-making bodies often employ aggregating procedures in determining policy, for example, by majority vote, shows that the situation is more complicated than this. Suppose that a board votes in favor of a merger. Since the members of the board all accept the decision procedure, and so conditionally we-intend that the board, and corporation, proceed in accordance with the majority vote, after the vote they share an intention that the corporation do what they voted to do. But it is not true that they must all want or believe that it is the best policy, though the corporation may be said to want to do it and to believe that it is the best policy. Furthermore, the discursive dilemma (Pettit 2003; List and Pettit 2011), as it is called, shows that a premise based decision procedure together with a decision rule may produce a decision that none of those making it individually endorse or believe to be correct. Board members Red, White, Blue constitute a committee that determines whether to approve a merger. The rule is that the merger is approved if it is low risk, profitable, and synergistic, and each is judged independently by a majority vote. Red votes it low risk and profitable but not synergistic, White that it is profitable and synergistic but not low risk, and Blue that it is low risk and synergistic but not profitable. The committee recommends a merger, and the corporation believes, as we say, that it is a good idea, but none of the committee members who execute the procedure do. If there is a sense in which the board as such believes the policy is best and wants to implement it, it is not the ordinary sense.

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<sup>9</sup> When I say that they are not intended to be used with the same significance, I am not saying anything about what that significance comes to. So, for example, I am not saying that there is an inflationary sense of 'belief', 'desire', etc., that applies to individuals, whatever that might come to. Nor am I denying it, for that matter. I am just saying that we don't have in mind the same thing. It is important to keep in mind that all talk of the corporation acting in the previous paragraph is to be understood in terms of the deflationary account in previous sections of the paper.

We could still take what we say to be a kind of pretense to get across something a bit more complicated about what is going on than that the decision makers themselves all believe something or want or intend the corporation to pursue or do something. We would be saying something about the implications of the decisions reached (often by aggregating procedures) for the corporation's future behaviors as reflected in its policies and announcements.

On the literal reading, we must treat talk of corporate beliefs, intentions, and wants, and so on, as an extension of the ordinary terminology in much the same way that we treated speech act terminology in application to institutions as an extension of the terminology used in connection with individual speech acts. A corporate announcement is not the same thing as an individual announcement. It employs an agent with a status role that enables her to perform an utterance act in a certain context that then has a status function in the corporation's interactions with individuals and other groups. It is a socially constructed notion. However, the idea of corporate intention, belief, desire and so on is not. This is because talk of corporate intention, belief, desire and so on is not identifying status functions assigned to corporations. It is instead keeping track of the implications of status functions the corporation assigns to various things whose function is to express commitment to various courses of action. It keeps track of (a) explicit corporate commitments (corporation intentions), (b) constraints on appropriate corporate action given its commitments (corporate belief, reflected e.g., in official findings of fact), and (c) corporate action potential (corporate desire, hope, fear), tendencies which may or may not be expressed in action upon further deliberation and discovery. (For belief, this is similar to, though not quite the same as, Cohen's account of group acceptance: "To accept that *p*, is [for the group] to have or adopt a policy of deeming, positing, or postulating that *p*" (Cohen 1989, 4). Acceptance doesn't imply commitment to act in accordance with what is accepted, but it may be defeasible evidence of belief.)

Nonetheless, if it is literal but it is not invested with the same significance that it has in the case of attributions to individuals, then it is an appropriation of a vocabulary from one domain to another together with a systematically different way of interpreting it. Psychological attitude verbs then become polysemous between an organizational sense, as we might put it, and its primary sense in application to agents. They fill a semantic gap in the language. They function like dead metaphors, expressions that are drawn from another use to bring attention to things we don't yet have words to readily describe, and are then pressed into service to express literally what they initially only drew attention to. This can be illustrated with the analogical extension of anatomical terms to non-living things: we talk about the legs of a table, the arms and backs of chairs, the foot and the head of the bed, the mouth of the river, the eye of the needle, the shoulder of the road, and so on. In much the same way we appropriate terms like 'colony' and 'social' in connection with describing the organization and activities of eusocial insects, bees, ants and termites, with their *queens*, *drones*, *soldiers* and *workers*—without supposing that they are social in the same sense that we are, or that the terminology for castes has the same significance it does in application to human societies.

Which of these approaches is correct? I am inclined to think we engage in a kind of pretense when we talk about corporate attitudes where we clearly have in mind to capture something about their formal commitments or action potential. We are casual about it. It is not clear we have the same thing in mind at different scales of organized groups. There do not seem to be precise rules. And we are willing to cash it out when confusion threatens. But the right response, really, is that it doesn't matter that much from the theoretical perspective because what we are getting at remains the same whether we take it to be a kind of pretense or an analogical shift of terminology from one domain to another.

(3) How is this related to the theoretical standpoint sketched above?

Our starting point was the question whether corporations have minds of their own, in the sense in which we do, with particular attention to the question whether genuine corporate agents are required for the truth of corporate agency discourse. The general question has not been answered, because, as noted above, this depends on general questions in the philosophy of mind about what it is to have psychological states and connected empirical questions about corporations. But we have addressed the question whether genuine corporate agents are required for the truth of corporate agency discourse. When we see what the corporation is by its nature, namely, its shareholders, sort out the function of the legal fiction that the corporation is a person, that is to say, the corporation's status as a legal person, and the effect of this on the form of discourse about corporations, and uncover the mechanisms of the expression of corporation agency, we find behind the curtains only individual agents. There is no need, then, for a super agent, no need for a corporate agent as such, to make sense of ordinary agency-discourse about corporations. There is therefore no need for a super-subject of psychological attitudes distinct from the various role players in a corporation, its shareholders, directors, management and employees, hovering over them all, with its own mind, doing its own thing. This leaves room for the analogical appropriation of the vocabulary of psychological attitudes to keep track of the commitments and action potential of corporations, but since, as we have seen, this is not intended to be invested with the same significance as its use in application to agents, it no more shows corporations with beliefs, hopes and fears have minds of their own (as opposed, if you like, to minds of their own), than the fact that rivers have mouths, tables have legs, and needles have eyes, shows that they can eat, walk, and see. But it is important then to keep track of which vocabulary we are using when talking about what a corporation intends/intends, for example, and whether a corporation did something intentionally/intentionally. For if we use 'intend' in the sense in which we attributed shared or joint intentions to groups of agents, we will get one answer, and if we use it in the analogical sense, we may get another. Thus, most of what GM does it does not do intentionally because GM is a consortium of stockholders who do not pay attention to or direct the actions of its proxies. But nonetheless GM may do intentionally various things it does not do intentionally, such as introduce a new luxury SUV for the European market. It is no doubt partly this dual use vocabulary that has contributed to some of the confusion about how to think about the agency of corporations in relation to the various individual agents who work its levers and those they represent.

## 9. Conclusion

Corporations are not as such agents in their own right. They do not in their nature have minds of their own. Corporate agency is the vector sum of the agency, expressed in different ways, of its shareholders, its board, its officers, its managers and employees generally, as well as their proxies in turn. Though vastly more complicated than small-scale collective action, it is not ultimately different in form. Crucial to seeing how this works is to see the possibility of proxy agency, whereby, through the authorization relation, one person or group acts officially in behalf of another in social transactions, by a convention that subsumes the community in which they take place. The appearance that corporations are agents in their own right, over and above the individual agents who realize them at any time, is generated by a number of factors. Corporations are designed for perpetual existence, that is, they are designed so that their organizational forms can persist through changes in the occupiers of the network of status roles through which its activities are sustained. This gives rise to the appearance that corporations must be agents over and above the individuals who realize them at various times. But in fact, at each time, what we say the corporation does is done by those individuals who pull the levers behind the scenes. What persists is a pattern of status roles (which can evolve over time), but this is merely a matter of successive individuals in those roles being brought under the same designation. Corporations are a bit like ocean waves or weather patterns in this respect. That the pattern could have been instantiated by different individual agents no more shows that the corporation is a separate entity than that the CEO could have been someone else shows that the CEO is distinct from the person who actually holds the office. That corporations are designated legal persons adds another layer of complexity to our discourse about their agency, and gives rise to the appearance that the corporation is distinct from its shareholders and operators because it is the corporation that is said to be the nexus of contracts, as distinct from shareholders and others concerned with its operation. But as we have seen, this is merely a technical device of the law to facilitate a business enterprise by providing liquidation protection, and by giving assurances to those it does business with that their claims have priority and to its shareholders that their liabilities are limited to their investment. It effects a change in the meaning of discourse in contract law, and its import lies in the procedural rules that connect talk about the corporation with those individuals whose actions underwrite the relevant forms of legal discourse. The case of the single person corporation reveals most clearly the nature of the device and dispels the illusion that the separate legal identity of the corporation, as expressed in the failure of interchangeability of its name with the name of its incorporators in contract law, constitutes the existence of a separate agent. It is rather, as Hohfeld put it, “a short and convenient mode of describing the complex and peculiar process by which the benefits and burdens of the corporate members are worked out.” Finally, the common use of propositional attitude verbs in application to the corporation where they are not applicable to the shareholders or operators individually or as a group may suggest corporations have minds, or that we take them to. But this has been shown to be a kind of analogical appropriation of propositional attitude psychology from one domain to another, like the use of anatomical terms in relation to furniture and other artifacts, or the use of social terms in connection with the eusocial insects. It performs the function of keeping

track of the corporation's official commitments and the state of play among its decision makers with regard to potential commitments. But it goes no distance toward showing in the ordinary sense that corporations, considered as the shareholders, or their operators, have minds, when considered as a group, as opposed to as individuals. One might as well infer from a hive having a queen bee that it is a constitutional monarchy.

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