

# INTRODUCTION TO THE PROCEEDINGS OF THE SEMINAR ON CORPORATIONS AND INTERNATIONAL LAW

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From politics to popular culture, the corporation has become one of the most critical economic, political, and cultural institutions of the modern era. It has also been one of the most controversial. Despite the normative and often unquestioned language with which it is discussed, most questions about the origin and nature of the corporation have hardly been settled. Are corporations people, societies, or even governments? Do they have rights? If so, what are their civic, social, ethical, and political responsibilities?

If such questions are vexing within municipal and national contexts, they have been downright confounding for international legal regimes. Though born of varying forms of domestic law, many corporations have a global footprint and influence on our conceptions of sovereignty and governance, the functioning of international markets, the nature of interstate relations, wealth distribution, international development, and, at a basic level, the lives of people around the world. Yet modern international law has generally been understood to apply almost exclusively to states and to touch only lightly on corporate institutions, with profound consequences for everything from human rights to the global environment. We still lack the robust and extensive concepts and languages to comprehend their jurisdictionally ambiguous and spatially diffuse nature, as well as corporations' relationships to individuals, states, and other non-state actors

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in a world filled with various independent or semi-independent political agents besides the nation-state.

Our 2017-18 Seminar in Corporations and International Law, with generous funding from the Andrew W. Mellon Foundation and support from units across Duke's campus, brought together local faculty and students with an interdisciplinary community of scholars to wrestle with these complex issues about the past, present, and future of the global corporation. If our understanding of the modern multinational or supranational corporation has been blinkered by pervasive assumptions about the nature of the modern state and international regimes, that understanding has also often been provincialized by disciplinary boundaries, not only within the humanities but also among social sciences and professional discourses, such as law and business management. Though interest in the corporation cuts across a range of fields, those perspectives are very rarely placed into dialogue with one another. This is especially true for the relationship between business and legal scholarship, on the one hand, and historical approaches, on the other. The former two fields, so often concerned with prevailing practices concerning corporate rights and behavior—what is, rather than what ought to be—could be greatly enriched by a critical engagement with historical approaches that deal by nature with what has been. In particular, the capacity to reach back beyond the twenty-first century allows us to see beyond the confines of our own assumptions about the centrality, even exclusivity, of national frameworks in shaping corporate law and behavior. Historians, on the other hand, can often be stymied by the contemporary implications of their subjects of study. Some resist engaging those implications at all, while others might draw analogical connections between the past and present that are frequently far too linear, simplified, or detached from the kinds of day-to-day concerns that inform international and global legal and business regimes. Moreover, both these approaches—the historical and the legal—are productively interrogated by a range of other analytical lenses.

In other words, whether envisioned as a person, society, or culture, the corporation begs for broad interpretations from the humanities and interpretive social sciences, in direct dialogue with the immediate concerns of business, law, and policy making. We have had such an opportunity this year to frame and explore these issues with a diverse range of interlocutors: not just historians and legal scholars, but also geographers, anthropologists, political scientists, economists, literary theorists, and others. This investigation is also timely, given both the constant concerns raised by corporations in the contemporary world but also the growing but largely uncoordinated body of scholarship about them. Together we have enjoyed

the space to reimagine the way corporations themselves ought and should govern, and be governed, in an ever-globalizing world.

Much of the early work of the seminar— led by a core team of ourselves and three postdoctoral and graduate fellows and involving a dynamic group of over 50 student and faculty participants, broad readings in the field, and nearly a score of invited speakers and discussants, whose original contributions are represented by the seven contributions here—revolved around explorations of the nature of the corporation: how it developed out of various other forms of corporate identity, such as medieval church governance, universities, as well as urban municipalities; shifts in general incorporation in the nineteenth century and the emergence of the multinational, multidivisional corporate firm in the twentieth century. We looked at the ways in which thinking about the corporation informed early modern literary, political, and economic thought, from medieval European theories of sovereignty through Thomas Hobbes’s understanding of the state to Adam Smith.<sup>1</sup> We also traced the origins of international law, in whose development corporations were intimately involved. Modern reflections on the evolution of international law often focuses exclusively on states, but corporations were themselves part the dialogue regarding what constituted the laws of nations. Not only did corporations provide sovereigns with prestige, access to export markets, and the material resources to withstand years of warfare,<sup>2</sup> corporations themselves were also acknowledged by contemporary jurists to be able to possess the markers of sovereignty, such as declaring war and possessing governance rights over territory.<sup>3</sup>

Rather than existing in clear legal hierarchy, the international system was characterized by pluralistic governance where overlapping and shifting jurisdictional lines provided for a vernacular of interstate and inter-polity jurisprudence that was highly negotiable and fluid among monarchs, republics, corporations, localities, and a host of other actors, from the Pope to pirates.<sup>4</sup> As Lauren Benton’s essay in this collection shows quite clearly, ideas about law, violence, diplomacy, and conquest were worked out in the

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1. E.g., J.P. Canning, *Law, Sovereignty, and Corporation Theory*, in *THE CAMBRIDGE HISTORY OF MEDIEVAL POLITICAL THOUGHT* (J.H. Burns ed., 1988); Quentin Skinner, *A Genealogy of the Modern State*, 162 *PROC. BRIT. ACAD.* 325–70 (2008); Sankar Muthu, *Adam Smith’s Critique of International Trading Companies: Theorizing “Globalization” in the Age of Enlightenment*, 36 *POL. THEORY* 185–212 (2008); HENRY S. TURNER, *THE CORPORATE COMMONWEALTH: PLURALISM AND POLITICAL FICTIONS IN ENGLAND 1516–1651* (2016).

2. Andrew Fitzmaurice, *The Dutch Empire in Intellectual History*, 132 *BMGN—LOW COUNTRIES HIST. REV.* 97–109 (2017).

3. José-Manuel Barreto, *Cerberus: Rethinking Grotius and the Westphalian System*, in *INTERNATIONAL LAW AND EMPIRE* 149–76 (Martii Koskeniemi et al. eds., 2017).

4. Brian Z. Tamanaha, *Understanding Legal Pluralism: Past to Present, Local to Global*, 30 *SYDNEY L. REV.* 375–411 (2008).

debates, conflicts, negotiations, and subjugations that defined the process of conquest. As she also indicates, like many others who participated in this ongoing discussion, the history of international law is inseparable from the history of empire, and vice versa.<sup>5</sup>

Likewise, the history of empire was intimately connected with the history of corporations, which, in many places and times, did the business of colonial trade, expansion, and plantation, and underwrote a highly negotiable, pluralistic system of private and public rules.<sup>6</sup> Indeed, early modern empire building was rarely done by states—themselves still in the fifteenth, sixteenth and seventeenth centuries in the process of formation and expansion. As Benton shows, conquistadores worked with expansive autonomy and authority not only to conquer but to define its terms and meanings. Elsewhere the history of European expansion is the history not only of Crowns and Parliaments but pirates, privateers, missionaries, proprietors, merchant networks, and others, whose *de facto* and formal power frequently overlapped, clashed, and layered to make colonial expansion possible. Not least among those vying for place and precedence in this overseas expansion were corporations, which fluidly combined the impulses of commerce with the prerogatives of sovereignty. Corporations, like the European East India Companies, often were the first movers of territorial intrusions, chartered by monarchs and republics but possessing independent rights to govern people, places, and goods as they circulated around the early modern world.<sup>7</sup>

Even into the nineteenth and early twentieth centuries the ambiguity and fluidity of corporate and state power continued to be negotiated with formal state governance often being reactive to, rather than preceding, corporate innovations. Even as older forms of colonial corporations, like the East India Companies, gave way to modern state rule of empires, others from

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5. For a useful summary, see Martti Koskenniemi, *Expanding Histories of International Law*, 56 AM. J. LEGAL HIST. 104–22 (2016), and Martti Koskenniemi, *A History of International Law Histories*, in THE OXFORD HANDBOOK OF THE HISTORY OF INTERNATIONAL LAW (Bardo Fassbender, Anne Peters, Simone Peter & Daniel Högger eds., 2012). For examples, see ANTONY ANGHIE, IMPERIALISM, SOVEREIGNTY, AND THE MAKING OF INTERNATIONAL LAW (2004); EDWARD KEENE, BEYOND THE ANARCHICAL SOCIETY: GROTIUS, COLONIALISM AND ORDER IN WORLD POLITICS (2002); and of course, among others of her work, LAUREN BENTON, A SEARCH FOR SOVEREIGNTY: LAW AND GEOGRAPHY IN EUROPEAN EMPIRES 1400–1900 (2009).

6. LAUREN BENTON & LISA FORD, RAGE FOR ORDER: THE BRITISH EMPIRE AND THE ORIGINS OF INTERNATIONAL LAW, 1800–1850 (2016); STEVEN PRESS, ROGUE EMPIRES: CONTRACTS AND CONMEN IN EUROPE’S SCRAMBLE FOR AFRICA (2017).

7. Philip J. Stern, “Bundles of Hyphens”: Corporations as Legal Communities in the Early Modern British Empire, in LEGAL PLURALISM AND EMPIRES (Lauren Benton & Richard J. Ross eds., 2013).

British Borneo to the Belgian Congo, arose to take their place.<sup>8</sup> King Leopold's International African Association, Andrew Fitzmaurice's shows in his essay, did not just happen through force of will but required complex legal acrobatics and a reimagining—or, perhaps, resuscitation—of principles of international law that could justify and authorize his efforts. Moreover, Fitzmaurice reminds us that it is not just the law, but the lawyer, who plays a role in bridging the gap between corporations and international law; it was Travers Twiss, more than Leopold himself, who produced arguments that would facilitate corporate involvement in the so-called “Scramble for Africa,” but those ideas arose, as Fitzmaurice argued, from a variety of sources, from clever re-readings of Ovid's *Metamorphoses* to Twiss's familiarity with marriage law and indeed his own peculiar and scandalous marital circumstances themselves.<sup>9</sup>

As many of our interlocutors this year showed, corporations can and do exert and assert jurisdictional and governmental authority, often confusing any supposedly firm lines we might think we draw between sovereignty and property.<sup>10</sup> These concerns seem to be particularly vibrant when looking at the ways in which extractive industries, such as mining, make various forms of claims to rights and governance over both the land and people encompassed by their transnational operations.<sup>11</sup> The expansion of oil and gas concerns in Utah during the George W. Bush administration, Josh Barkan's article shows, reveals the confusions and consequences of the cession of “public land for corporate-led resource extraction and development,” and the powerful but ambiguous intersections of neoliberal policymaking, capitalism, and state authority.<sup>12</sup> Going back a century and half a world away, Steven Press reveals similar concerns about the fuzzy boundaries between public and private that arose in the tensions in German debates over diamond mining and colonial expansion in early twentieth-century southwest Africa, where various diamond corporations, including but hardly exclusively De Beers, “grew so great, and . . . so extensive, that a

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8. PRESS, *supra* note 6; PHILIP J. STERN, *THE COMPANY-STATE: CORPORATE SOVEREIGNTY AND THE EARLY MODERN FOUNDATIONS OF THE BRITISH EMPIRE IN INDIA* (2011).

9. Andrew Fitzmaurice, *The Expansion of International Franchise in the Late Nineteenth Century*, 28 DUKE J. COMP. & INT'L L. 449 (2018).

10. See ANDREW FITZMAURICE, *SOVEREIGNTY, PROPERTY AND EMPIRE, 1500–2000* (2014).

11. MARINA WELKER, *ENACTING THE CORPORATION: AN AMERICAN MINING FIRM IN POST-AUTHORITARIAN INDONESIA* (2014).

12. Joshua Barkan, *Law, Territory, and Sovereignty: Some Issues Raised by the Corporate Control of Land*, 28 DUKE J. COMP. & INT'L L. 463 (2018).

given state's recognized supremacy in international and domestic eyes could prove irrelevant to negotiations."<sup>13</sup>

This was not the first, nor the last, time our seminar discussions turned to diamonds, as we discovered not only their extraction but also their trade served as a powerful example of the extent of "stateless commerce" in the twenty-first century, as well as ways in which the modern state or multinational capitalism has not fully or universally overcome the ethnic, community, and trust-based networks of the medieval world with which it has supposedly done away.<sup>14</sup> Moreover, it raises a further question that became fundamental to our explorations: how does thinking about corporations help us reimagine the very nature, and exclusivity, of the state? As Natasha Wheatley shows in her contribution, in the chaos and collapse of the Habsburg Empire in East Central Europe, ideas about how to protect minorities tested and produced new ideas about corporate and legal personality of ethnic groups as corporate persons. Though the second half of the twentieth century has persuaded us the individual is at the intersection of human rights and international law, Wheatley uncovers an alternative set of ideas in which the "groupness" of rights, and the collective legal subjectivity of those groups, was another solution to the problem of protection.<sup>15</sup>

Wheatley's paper calls to mind a wide range of ways in which our discussions turned to paths not taken and the recovery of approaches to the problems of corporations from different times and places that might offer, by way of thought experiment, alternative solutions to our current dilemmas. Repeated encounters with the so-called English "pluralists"—Harold Laski, Frederic Maitland, and others inspired by the work of the mid-nineteenth century German jurist Otto von Gierke—reminded us that early twentieth-century political and legal thought did not only produce ideas about the singularity of state sovereignty in an international system; it also offers us a second possibility, one which suggests the legal personality of corporations arises not from a legal fiction but from a real, organic product of the social capacities of human group-life: "It is clear enough," Laski suggests, "that unless we treat the personality of our group persons as real and apply the fact of that reality throughout the whole realm of law, what we call justice will, in truth, be no more than a chaotic and illogical muddle."<sup>16</sup>

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13. Steven Press, *Sovereignty and Diamonds in Southern Africa, 1908–1920*, 28 DUKE J. COMP. & INT'L L. 473, 480 (2018).

14. Barak Richman, *STATELESS COMMERCE: THE DIAMOND NETWORK AND THE PERSISTENCE OF RELATIONAL EXCHANGE* (2017).

15. Natasha Wheatley, *Making Nations into Legal Persons Between Imperial and International Law: Scenes from a Central European History of Group Rights*, 28 DUKE J. COMP. & INT'L L. 481 (2018).

16. Harold J. Laski, *The Personality of Associations*, 29 HARV. L. REV. 404, 426 (1916).

The history of corporations in establishing the outlines of the international order, whether through empire or state building, helps open new questions about the foundations as well as the nature of our assumptions about the location of public authority and governance, as well as the responsibility and liability of corporations on the international stage.<sup>17</sup> Corporations did not step into this pre-existing system and figure out how to best act under exogenously given rules; corporations in part created this system and have shaped and reshaped it (under some constraints). Although American courts have recently focused on whether corporations are subjects of international law (*e.g.*, *Kiobel*,<sup>18</sup> *Jesner v. Arab Bank*<sup>19</sup>), the better question may be where the state-corporate line begins and ends in the history of the international order—though increasingly we realize the answers are necessarily more heuristic and tentative than dispositive.

Into the modern era, corporations and states still coordinate and contest the outlines of the international order. Corporations were the drivers of development in international law, establishing the commercial relationships that characterize colonialism and often creating the crises that demanded the development of new legal institutions. Corporations were of course politically influential with states, but they also did, and do, drive states' foreign policies—or often constructed their very own foreign policies, as Steve Coll shows in his fabulous book about ExxonMobil, that can be often at odds with their supposedly “home” governments.<sup>20</sup> As a result, the limits of an exclusive state system of global order, and the very understanding about whether corporations could or should themselves become members of the society of nations, was open for debate.<sup>21</sup>

Another major question of the seminar has been the extent to which international law imposes a meaningful constraint on multinational corporations or whether the structure of the system primarily empowers corporations. One key area of focus in this regard has been international

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17. *E.g.*, Janet MacLean, *The Transnational Corporation in History: Lessons for Today?* 79 IND. L. J. 363 (2004); Erika George, *Incorporating Rights: Empire, Global Enterprise and Global Justice*, 10 U. ST. THOMAS L. J. 917 (2013); Beth Stephens, *The Amorality of Profit: Transnational Corporations and Human Rights*, 20 BERKELEY J. INT'L L. 45 (2002).

18. *Kiobel v. Royal Dutch Petroleum Co.*, 621 F.3d 111 (2d Cir. 2010), *aff'd on other grounds*, 133 S. Ct. 1659 (2013) (“*Kiobel II*”).

19. *In re Arab Bank, PLC Alien Tort Statute Litig.*, 808 F.3d 144 (2d Cir. 2015), *cert. granted*, 85 USLW 3463 (U.S. Apr. 3, 2017) (No. 16–499).

20. STEVE COLL, *PRIVATE EMPIRE: EXXONMOBIL AND AMERICAN POWER* (2013); Ben Coates, *Securing Hegemony Through Law: Venezuela, the U.S. Asphalt Trust, and the Uses of International Law, 1904–1909*, 102 J. AM. HIST. 380 (2015).

21. *E.g.*, Fleur Johns, *Theorizing the Corporation in International Law*, in THE OXFORD HANDBOOK ON THE THEORY OF INTERNATIONAL LAW 635 (Anne Orford & Florian Hoffman eds., 2016); José Alvarez, *Are Corporations ‘Subjects’ of International Law?* 9 SANTA CLARA J. INT'L L. 1 (2011).

investment law, which provides a forum and substantive law to adjudicate frictions between state power and corporate rights.<sup>22</sup> Bilateral investment treaties give corporations the right to standing to contest government's public policies in arbitral fora and to challenge national laws as unfair or inequitable to foreign investment. One notable area that multinational corporations have used investment treaties to question (and arguably chill) government regulation is anti-smoking legislation.<sup>23</sup> Sergio Puig's contribution here discusses how these dynamics have unfolded in the tobacco industry with some states bring cases on behalf of (and funded by) multinational tobacco companies and others contesting these advances, in defending against investment litigation and by carving industry exceptions in new investment treaties (such as the investment chapter of the Trans-Pacific Partnership). Indeed, as Puig highlights, large multinational corporations may have greater expertise in understanding international law, particularly as compared to developing states, and use this expertise as a means of resisting and reshaping global regulatory development.

Puig's article also picks up on another theme of the seminar: that of the familial relationships between corporate bodies. One of the characteristics of modern multinational corporations is the parent-subsidiary structure, where a controlling corporation – the parent – controls a host of subsidiary corporations directly or indirectly. Each of these subsidiaries are formally separate legal entities allowing the corporate parent to carry out global commercial operations while not officially being present in most national jurisdictions. This family relationship is critical to international investment law because it is the source of the vast majority of investment claims. The subsidiary structure of the corporation allows corporate parents to be at once the controlling entity of its foreign assets and a separate legal person who is the foreign investor for the purposes of international law. This corporate structure not only permits investor suits on behalf of subsidiaries but also permits significant treaty shopping possibilities, as multinational corporations can choose between bilateral investment agreements (based on the nationality of holding companies) for the best possible terms.

While international investment law is an example of how international law empowers corporations to contest the sovereignty of state policy-making, other strains of international law seek to impose obligations on

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22. E.g., Alvarez, *supra* note 21; Gus Van Harten, *The Public-Private Distinction in the International Arbitration of Individual Claims Against the State*, 56 INT'L & COMP. L.Q. 371 (2007); Stephen D. Cohen, "Multinational Corporations versus the Nation-State: Has Sovereignty Been Outsourced?" in MULTINATIONAL CORPORATIONS AND FOREIGN DIRECT INVESTMENT: AVOIDING SIMPLICITY, EMBRACING COMPLEXITY 233–251 (2007).

23. Sergio Puig, *The Internationalization of Tobacco Tactics*, 28 DUKE J. COMP. & INT'L L. 495 (2018).



multinational corporations. One of the primary drivers in this regard has been the push to extend the scope of human rights law beyond states to multinational corporations. The extent to which human rights law can be made or should be made binding on multinational corporations is a source of consistent and continued debate.<sup>24</sup> John Ruggie's Guiding Principles on Business and Human Rights, which was unanimously adopted by the United Nations Human Rights Council (UNHRC), attempted to achieve a middle ground by positing an obligation for corporations to respect human rights while basing the primary obligation to respect, protect, and fulfill human rights with states.<sup>25</sup>

Some human rights advocates have been critical of the Ruggie principles as not imposing direct obligations on corporations or advancing only top-down models of human rights.<sup>26</sup> Ruggie himself views the principles as "the end of the beginning" of addressing business and human rights challenges.<sup>27</sup> Where this conversation will go and the extent to which international law provides coordination between national corporate regulations is still an open question. The UNHRC recently convened negotiations for new business and human rights agreement that could impose direct substantive obligations on corporations, although as of yet, there is no clear sense what will be included in that treaty or whether it will garner any political support.<sup>28</sup>

In part to address the governance gaps between states – and the governance gaps created by states' very different human rights goals – numerous private groups have sought to increase public accountability of corporations under various ranking and reporting systems. These private groups generally work to involve multinational corporations in voluntary reporting systems that track human rights concerns. For instance,

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24. See generally Chris Jochnick, *Shifting Power on Business and Human Rights: States, Corporations and Civil Society in Global Governance*, in BUSINESS AND HUMAN RIGHTS: BEYOND THE END OF THE BEGINNING 129 (César Rodríguez-Garavito ed., 2017).

25. John Ruggie, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, U.N. Doc. A/HRC/17/31 (Mar. 21, 2011).

26. See Surya Deva, *Business and Human Rights: Time to Move Beyond the "Present?"*, in BUSINESS AND HUMAN RIGHTS: BEYOND THE END OF THE BEGINNING 62 (César Rodríguez-Garavito ed., 2017); Chris Albin-Lackey, *Without Rules: A Failed Approach to Corporate Accountability*, HUM. RTS. WATCH (Jan. 31, 2013), [https://www.hrw.org/sites/default/files/related\\_material/business.pdf](https://www.hrw.org/sites/default/files/related_material/business.pdf).

27. John G. Ruggie, Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, Presentation of Report to United Nations Human Rights Council (May 30, 2011), [http://www.ohchr.org/Documents/Issues/TransCorporations/HRC%202011\\_Remarks\\_Final\\_JR.pdf](http://www.ohchr.org/Documents/Issues/TransCorporations/HRC%202011_Remarks_Final_JR.pdf).

28. Nicole R. Tuttle, *Human Rights Council Resolutions 26/9 and 26/22: Towards Corporate Accountability?*, 19 ASIL INSIGHTS (2015), <https://www.asil.org/insights/volume/19/issue/20/human-rights-council-resolutions-269-and-2622-towards-corporate>.

corporations can harm free speech rights if internet providers share user data with governments who seek to arrest users for expressing political opinions. In her contribution to this issue, Erika George analyzes the role of multi-stakeholder initiatives in promoting respect for human rights by encouraging greater transparency for internet providers' policies towards user privacy through rankings.<sup>29</sup> Beyond rankings, these initiatives attempt to build a conversation between businesses and advocacy groups that injects advocacy concerns into corporate policymaking. These projects have the potential to fill in some governance concerns in the international system, but they raise their own questions regarding what stakeholder interests are, what compromises the initiatives make, and how much the projects can influence corporate policy through consumer choice or shaming.

Rather than viewing corporations as economic black boxes that have effects on human rights or state power, the seminar has also sought to examine the internal workings of the corporation, examining its modes of discourse, internal logics, and justifications for operation. This frequently raised questions not only of law, economics, or history but also of culture: how corporations define their own existences and how their economic aims overlap and support their social aims, especially when they intersect with questions of ethnic, religious, or racial identity.<sup>30</sup> Taking seriously the idea that corporations are separate legal entities capable of holding social views, political opinions, and religious beliefs, corporations build identities that impact their relationship to managers, shareholders, and stakeholders. The social aims of the corporation's projects thus produce thorny questions, whether concerning the rights of corporations and their owners to exemptions from state law owing to particular religious beliefs (*e.g. Burwell v. Hobby Lobby*<sup>31</sup>) or to protect indigenous rights to land and autonomy within a postcolonial state system, as in the Maori-owned corporation in New Zealand.

Of course, at the core of all of this is the enduring question as to whether corporations are themselves persons, and if they are, what kind of persons they are—and what kinds of rights they possess. These are familiar and controversial issues, identified in U.S. history and politics, most frequently in the recent, oft-cited *Citizens United v. FEC*<sup>32</sup> case, but the debates

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29. Erika George, *Corporate Social Responsibility and Social Media Corporations: Incorporating Human Rights Through Rankings, Self-Regulation and Shareholder Resolutions*, 28 DUKE J. COMP. & INT'L L. 521 (2018).

30. See generally Gwendolyn Gordon, *Culture in Corporate Law or: A Black Corporation, a Christian Corporation, and a Maori Corporation Walk into a Bar*, 39 SEATTLE U. L. REV. 353 (2016).

31. *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014).

32. 558 U.S. 310 (2010).

themselves go back millennia, from Pope Innocent IV's thirteenth-century theories on the *persona ficta* through the foundational *Dartmouth College v. Woodward*<sup>33</sup> to the infamous headnote in *Santa Clara County v. Southern Pacific Railroad*<sup>34</sup> that opened the door for corporations to make equal protection claims on the basis of the Fourteenth Amendment.<sup>35</sup> In international law, however, these questions take on entirely different dimensions. If corporations are persons, can they, or ought they be able to, make claims to protection under the very same human rights laws and practices designed to protect natural persons from the very excesses of bodies like corporations?<sup>36</sup> On the other hand, if they are collective persons—like states—do they have responsibilities to protect that go beyond any immediate mandate to responsibilities to profit?<sup>37</sup>

If nothing else, our discussions revealed this is just a start, and the essays that follow are only a small but thought-provoking sample of the sorts of issues produced by investigating the relationship between corporations and international law from multidisciplinary perspectives. Among other things, our discussions have prompted even further meditations on the ambiguities of corporate subsidiarization, the role of the corporation in shaping the international order, and the corporation's own capacity to produce ideas and cultures that define its role in the global commonwealth that will be the foundations for future research. What is the best way to govern corporations in the global arena? State law? Bilateral and multilateral treaty regimes? Voluntary codes of conduct and multistakeholder initiatives? More robust systems of international arbitration or even international civil courts to sit alongside criminal ones?<sup>38</sup> Or, perhaps we need a far more radical transformation of the very fabric of our postwar international order, informed by more fluid understandings of public and private, in which corporations, as much as states, are stakeholders and shareholders in bodies that do the work of international governance. As our participants' contributions that follow in this volume show, there is no one simple answer to these dilemmas but raising the questions alone is a critical enterprise for understanding the complexities of corporate rights and responsibilities in the twenty-first century world.

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33. 17 U.S. 518 (1819).

34. 118 U.S. 394 (1886).

35. Philip Stern, *Corporations in History*, in *THE CORPORATION: A CRITICAL, MULTIDISCIPLINARY HANDBOOK* (Grietje Baars & André Spicer eds., 2017).

36. See generally Turkuler Isiksel, *The Rights of Man and the Rights of the Man-Made: Corporations and Human Rights*, 38 *HUM. RTS. Q.* 294 (2016).

37. See, e.g., Deva, *supra* note 26, at 67–68.

38. See generally Maya Steinitz, *The Case for an International Court of Civil Justice*, 67 *STAN. L. REV. ONLINE* 75 (2014).