PLURAL CORPORATE PERSONS: DISPLACING SUBJECTS AND (RE)FORMING IDENTITIES[1]

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"I hope we shall take warning from the example and crush in its birth the aristocracy of our monied corporations which dare already to challenge our government to a trial of strength and bid defiance to the laws of our country"[2]

Introduction

Theories of legal personality have been impoverished by a need to distinguish humanity from its effects (by distinguishing entities, by maintaining reality for the human and fiction for the non-human, or by reducing the congeries of narratives of legal personality to a collection of artefacts of 19th century individualist philosophies). In response, it is proposed that we eschew these self aggrandizing theories and engage with a different story: a story which arises out of a pluralist (and narrative) approach to subjectivity and personality.

This paper takes as its starting point both a rejection of prevailing approaches of the nature of legal (corporate) personality and an assumption that critical legal pluralism is an analytic through which this personality may be better examined. Heuristically, critical legal pluralism is not an end, but a means of disruption of hegemonic state law and its progeny: law's plurality commands this disturbance of corporate personality.

It is my contention that law is created, contested, and adjusted through the narratives of its subjects, a fundamental presupposition of critical legal pluralism, and that subjectivity is best understood through the lens of narrative. By applying the insights of critical legal pluralism to a conceptual enquiry into legal subjectivity (personality), I suggest that we may find new and different answers to some of the questions which have been plaguing us.

By turning our attention to the innumerable subjective narratives that abound, different answers are presented to questions of the attribution of rights and responsibilities to legal subjects. It is through the very nature of subjectivity, as narrative, that the myriad modes of being and becoming blossom. Adjusting our lens to focus upon the narratives of legal (corporate) persons produces an awareness of the constellation of normativities in which these subjects participate and which they concomitantly create and construct. The aim here is not to resolve these inter-normative conflicts. Rather, it is

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[1] Thanks are owed to the many readers whose comments have been greatly appreciated and, especially, to: Davina Cooper, Margaret Davies, Carl Stychin, Sally Wheeler, Chris Hilson, Martin McGann and the anonymous reviewer of the *NILQ*.

[2] T. Jefferson, "Letter to George Logan, (12 November 1816)," p.42-3, in Ford (ed.) *The Works of Thomas Jefferson*, Vol. XII (1905).

hoped that by examining the negotiation of normative boundaries that we begin to see the prism-like nature of personality; so that through our investigation of the plural corporate person, we may see the political purchase which the form allots to the "other", apparently "non"-legal subject.

To many, the claim that theories of corporate persons have something of consequence to contribute to debates about nationality and expressions of identity would seem strange. However, as mentioned above, the taxonomy of persons and subjects of law is not limited to those whom we commonly refer to as individuals. In what follows the issues of cultural belonging and identity will be examined through the lens of the corporate legal person. The possibilities that reside in this legal person for the affirmation and, indeed, creation of new narratives of nation and citizen abound, and compel an encounter with existing structures of political institutions. In what follows, I shall further explore how we might begin to think about narrative subjectivity and critical legal pluralism with specific regard to the paradigm case of the legal person: the incorporated company. Accepting that narrating, by its very action, brings forth subjectivity, it becomes incumbent upon our theoretical journey to include within its scope an exploration of the spatio-temporal dimensions of these narratives.[3] Spatially, narrating requires a site from whence the narration is said to come (often, but not necessarily, given the form of a narrator); temporally, narratives achieve significance with regard to their chronological referents in terms of both duration and instance. mode. Through an analysis of two particular examples of incorporated company, I shall distinguish various positions of these narrative subjects which transgress the boundaries of the hermetically legal as well as the moments in which and through which they transcend the traditionally singular law of the state. In a sense, these subjectivities claim their normativity outside the State, but express the plural legality within the State-created corporate person.

In terms of space, I suggest that a first mistake is to misunderstand the myriad composite sites (bodies and artefacts) upon which corporate narratives are inscribed. Anthropomorphizing the legal entity leads us astray: we see the company as a schizophrenic person and not as the multiple-sited person that it narrates.[4] We proceed from an initial linguistic

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[3] By addressing both the spatial and temporal dimensions of narratives of legal personality, I hope to address, in some way, the criticism levelled by Blomley and Bakan that "[l]aw as it is presently constituted is indeed highly spatialized. While struggling to make sense of the complexity and ambiguity of social life, legal agents – whether judges, legal theorists, administrative officers, or others – represent and evaluate space in various ways. When we start looking, we discover that such representations are abundant and varied, touching all aspects of legal and social life, such as property, crime, contractual relations, and so on. The construction of such spaces can be seen, for example, when legal actors designate boundaries between public and private spaces, make decisions concerning the autonomy of local government actors, or consider questions of personal mobility or spatial equality." Blomley and Bakan, "Spacing Out: Towards a Critical Geography of Law" (1992) 30 *Osgoode Hall L.J.* 661.

[4] Joel Bakan describes the corporation as a "psychopathic institution" in, Bakan, *The Corporation* (2004). For a discussion of the role of schizophrenia as a limit in the production of an identity see Guattari and Deleuze, *Capitalisme et schizophrénie* (1980), at 42 *et seq*. Deleuze and Guattari argue that the production of an identity

premise of corporality to the creation of corporate bodies upon which narratives are inscribed and dissected. Instead of heeding the wisdom that the company has "no soul to damn, no body to punish,"[5] we proceed as if it has both and that both are brought together into a unidimensional and univocal legal person.[6] But if the space of the inscription of narratives is unitary, the spaces into which subjectivity is being projected must, in their turn, break down unitary conceptions of territory, space and law. We see this latter point in the increasing recognition of the plurality of the corporate person in stakeholder debates as the space of governance is expanded to include within the legally recognizable and responsible, myriad previously ignored subjects (for example, employees, local communities, the environment).[7]

In terms of time, Blackstone stated that legal persons "enjoy a kind of legal immortality."[8] These legal persons "hereafter exist", and become "one person in law, a person that never dies: in like manner as the River Thames is still the same river, though the parts which compose it are changing every instant."[9] Although the time of the narrative is one of continued duration (along a timeline), the serendipity of narrative is due to the flux, the changing/movement and passage, of narrative's time.[10] I contend that

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(and the concomitant "lines of flight" that are entailed by such production) risks collapsing either from the overwhelming ("fascist") paranoia that represses all into an over-determined, unitary oneness or from the chaotic explosion of schizophrenia.

5 The actual quote is, Blackstone, *Commentaries on the Laws of England [:] A Facsimile of the First Edition of 1765-1769*, vol. 1 "Of the Rights of Persons" (1979) at 464-465: "a corporation can neither beat, nor be beaten, in it's body politic . . . Neither can a corporation be excommunicated; for it has no soul."

6 One example of the univocality of the legal person is evident in recent debates about corporate governance; here, the univocal nature of corporations is attributed unthinkingly as parties to the debate argue about the role that boards of directors *inter alia* should play in responsibly governing corporations. Such debates neglect or obscure the often myriad voices emanating from the corporation and is subject to a related critique by Deleuze about the exclusion by dominant powers of minority voices, Deleuze and Guattari, "Qu'est-ce qu'une littérature mineure?," pp.29-50, in *Kafka [:] pour une littérature mineure* (1975).

7 See, *e.g.* Wheeler, "Works Councils: Towards Stakeholding" (1997) 24(1) *J.Law & Soc'y* 44; Payne and Calton, "Towards a Managerial Practice of Stakeholder Engagement: Developing Multi-stakeholder Learning Dialogues" (2002) 6 (Summer) *J.Corp.Cit.* 37; and Ireland, "Corporate Governance, Stakeholding, and the Company: Towards a Less Degenerate Capitalism?" (1996) 23 *J.L. & Soc'y* 287.

8 Blackstone, *supra* n 4, at 455.

9 *ibid*., at 456.

10 But let us go back (or perhaps forward) in time, for a moment, to delve into some articulations and machinations of "time" and its relation to narrative subjectivity. Paul Ricoeur argues that there are two "types" of time in every story (time as flux and time as duration). We have the story as something that both endures and which moves and passes. To support this conclusion, Ricoeur draws on Augustine's differentiation between human time (*tempus* - the instability of the human "now" – this is the moving and passing of narrative time in Ricoeur) and divine time (*aeternitas* - the stability of the divine "now" – Ricoeur's enduring time) (P. Ricoeur, *Time and Narrative*, trans. K. McLaughlin and D. Pellauer, 3 vols. (Chicago: Univ. of Chicago Press, 1984-1988), especially vol. 3). There is a piece missing from Ricoeur's story, however. Through an analysis of, and

narratives of corporate legal subjects purport to articulate positions within and outwith time: an apparently impossible task as they stand within the subjective time of narrative. Recent examples of how the actuarial subject can be variously constructed through accounting procedures and financial period manipulations point to the corporate subject as one of duration and flux.[11] These subjects may, then, step further afield in their attempt to inject a third notion of time into the narrative they recount. Indeed, differences arise in the manner in which legal subjects contemplate their own mortality, either through death or winding up.[12]

Concomitant with an inquiry into the spatial and temporal positioning of the legal person, we need to ask where and when these subjects belong? How corporeal is the corporation when stretched across territorial limits to span the globe? What is the character of the temporal existence of the legal person if it is not indeed mortal? The present article addresses the spatial positioning, concentrating upon corporate narratives of nationality, citizenship and belonging.[13]

Displacing Identities and Lacking Recognition?

Through the vehicle of the incorporated company, the State imposes its own form of cultural and personal identity, one that is often mistaken for a mere economic emanation of political expediency.[14] Notwithstanding its various ideological facets, it is generally accepted that this legal branding of personality is reserved for associations with economic purposes, thus cleaving the political from the economic with purposive justifications.[15] Indeed, in communication with their State-creator, corporations appear as merely those aspects of their identity that concern their instantiation as economic progeny of the State. A wealth of commentary has challenged this schism either by demonstrating how corporations have over-stepped their economic boundaries to invade political spheres, to both adverse and beneficial ends,[16] or arguing that they have a social responsibility that forces them across these borders.[17]

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extrapolation from, Middle Age Averroist debates about the Aristotelian doctrine of the "eternity of the world," I suggest that the creation of the corporate legal person is an attempt to introduce what I call an "angelic time" into subjectivity: a time with movement and a type of mortal infiniteness, because even the corporate subject is finite.

[11] See Miller and O'Leary, "Accounting and the Construction of the Governable Person" (1987) 12(3) *Accounting Org. & Soc. J.* 235 for an explanation about how accounting techniques contribute to the construction of well-governed corporations.

[12] Wheeler, "The Corporate Way of Death" (1996) 7(2) *Law & Crit.* 217.

[13] Taking the discussion to the temporal realm and exploring further the secular and divine modes of the corporate legal person to reveal the multilayered temporal mode which the corporate person projects is incumbent, but it is a discussion which goes further beyond the already broad scope of this paper.

[14] Gamble and Kelly, "The Politics of the Company," in Parkinson, Gamble*, et al.* (eds.), *The Political Economy of the Company* (2000).

[15] Micklethwait and Wooldridge The Company: A Short History of a Revolutionary Idea (2003).

[16] See, *e.g.* Klein, *No Logo: No Space, No Choice, No Jobs, Taking Aim at the Brand Bullies* (2000); Glasbeek, "Why Corporate Deviance Is Not Treated as Corporate

These more recent critiques of legal persons re-present the problematic inherent in the political use of the corporate form. As a type of economic association established and reinforced by the State, the corporation possesses a form which tends to conceal its own political identity from its creator. This is not to say that the corporation is not imbued with its own political identity; indeed, many examples exist of political groups taking advantage of the advantages afforded by the corporate form.

I would be remiss if I didn't draw to attention the ways in which the corporate form can be used to promote political ends. We have, indeed, seen for a long time now the overt use of corporations by so-called "political action" or "social movement" organizations (SMOs). One group which has gone even further (but, by no means the only one) is Greenpeace (the originally Canadian environmental and animal rights activist group from British Columbia born out of the Quaker tradition of bearing witness and a commitment to making "a green peace").[18] Now an international concern, Greenpeace has adapted its structure to one of a group of companies and, thus, mimics that of large multinational corporations: Greenpeace International (GI) is one company incorporated in the Netherlands and having its head office in Amsterdam.[19] The remit of this corporation is one which concentrates on fundraising and membership, rather than direct activism.[20] Its sister-companies across the world (for example, Greenpeace Canada, Foreningen Greenpeace Norden, Greenpeace (UK) Ltd.) are separately incorporated entities in the countries/regions in which they are

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Crime: The Need to Make 'Profits' a Dirty Word" (1984) 22 *Osgoode Hall L.J.* 393; Bakan, *The Corporation* (2004); Tomkins, "Happy Birthday Globalisation" (May 6 2003) *Financial Times* 14; and, Greenwood, "Review of *Corporate Power in Civil Society, an Application of Societal Constitutionalism* by David Sciulli" (2001) 11(5) *L. & Pol. B.Rev.* 249.

[17] See, *e.g.* Wheeler, *Corporations and the Third Way* (2002); Wheeler, "An Alternative Voice In and Around Corporate Governance" (2002) 25(2) *U.N.S.W.L.J.* 556; Aaronson and Reeves, *Corporate Responsibility in the Global Village: The Role of Public Policy* (2002); Parkinson. "Corporate Governance" (1999) *IALS Company Law Seminar Series 1999-2000*; Cheffins, "Corporate Governance in the United Kingdom: Lessons for Canada" (1997) 28 *C.B.L.J.* 69; and Payne and Calton, *supra* n.6, at 37.

[18] For a detailed history of the organization from its beginnings as a "crew of bickering environmental activists" to its present instantiation as "a global monolith," see Hunter, *The Greenpeace to Amchitka: An Environmental Odyssey* (2004).

[19] An excellent account of the fears that this shift has inspired amongst Greenpeace's Vancouver progenitors can be found in Weyler, *Greenpeace: How a Group of Ecologists, Journalists, and Visionaries Changed the World* (2004). Weyler tells a tale of how some veterans of the original Greenpeace campaigns chip away at the international monolith whose annual budget now stands at $243 million.

[20] Greenpeace International does do work of an indirect nature through negotiations and engaging in general lobbying efforts, especially in Europe, with governments and corporations to further the organization's goals of exposing global environmental problems and campaigning for a "green and peaceful future" (see, for example, recent deals with major food retailers to halt the deforestation for the expansion of soya farming in the Amazon). But the international corporation does not work on direct action campaigns, leaving these to its worldwide offices.

operative.[21] A license agreement between Greenpeace International and the individual companies (often called "national offices," even though many traverse national and state boundaries) binds the latter to guarantees that essential principles are jointly observed, (for example, the principles of non-violence, public utility, strict independence of state, party political and economic interests and orientation towards global protection of the environment).[22] It is these regional companies (the "national offices") which undertake direct action campaigning and which, as a result, have their assets targeted, inter alia, in civil action suits. The reason for this structuring by Greenpeace was purely pragmatic and merely reflected the very successful use of the benefits of corporate personality it had observed amongst many of it adversaries.[23] By setting up group company structures Greenpeace has been able, for example, to stave off many of the deleterious effects of asset seizure, especially following court judgements against them in jurisdictions that are decidedly unsympathetic to Greenpeace (for example, Norway's treatment of Greenpeace Nordic in civil action suits has been to impound the latter's vessels and seize all property thereon, whereas Greenpeace UK has been subject to much less harsh penalties in the United Kingdom).[24] These differences lead to different campaigning strategies and sometimes strained relations as between the different companies when collaborative work is required.[25] But these difficulties are accepted as inherent in a corporate structure of the organization which staves off many greater harms from its political opponents.

One might object here that after the myriad attempts above to direct attention to the political stories of corporate persons and away from the merely economic ones, we have fallen back upon the economic (of course, the objectives of Greenpeace are political but the justifications behind its

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[21] In accordance with company law in the Netherlands (where Stichting Greenpeace Council – Greenpeace International is incorporated), Greenpeace International compiles and presents combined financial statements for all their "national offices", but as independent companies/corporations in their respective regions, each organization is independently audited and accounted for within their region as required by regional state regulations on accounting practices.

[22] Günther, "Greenpeace und das Recht," 62-83 at 74, in Greenpeace (Hrsg.) (ed.), *Greenpeace-Buch: Reflexionen und Aktionen* (1996).

[23] A further benefit to this constellation of organizations is the ability of Greenpeace (International and "local") to appeal to those highly-valued qualities of transparency (in terms of the auditing and publication of its accounts) and democracy (in terms of the style of control of the executive bodies of the various companies). See, for example: *ibid*.

[24] For a different gloss on the way in which political activist organizations use the corporate form, I would draw the reader's attention to the use in Canada of two different corporate bodies representing Greenpeace: Greenpeace Canada and Greenpeace Quebec. The strong political discourse for the province of Quebec being a "distinct society" from the rest of Canada (for reasons of language and cultural distinctness *inter alia*) was recognized by Greenpeace as requiring a corporate commitment to the politics of the country and stills finds separate offices with separate political agendas for these two organizations within the same country.

[25] Furthermore, recent Greenpeace campaigns have become embroiled in internal political fighting often seen as a conflict between "those activists on the ground" and "the corporate bureaucrats."

corporate restructuring were economic). It is perhaps easier to pass comment upon how the multi-national-style structuring of Greenpeace helps it to protect itself against its "enemies", than it is simply to justify this structure as helping Greenpeace to project a global image for its political activities, projecting a narrative of a unitary global action group which, as it happens, is legally structured to provide local interpretations of this worldwide narrative.

But the claim made is not that the corporation is not imbued with its own political identity. However, when approached from a question of the addressivity of these corporations by the State, it becomes apparent that their self-styled political objectives do not form the basis of the relation between the State and these persons. Thus, in communication with their State-creator, corporations appear as merely those aspects of their identity that concern their instantiation as economic progeny of the State.[26] My objective is not only to demonstrate the slippages between discourses but also to reflect upon the under-utilized possibilities of narratives of corporate personality as being enabling, and forming one aspect of a constitutive and positive restructuring of the typical story of state-dominated power relations. Thus, instead of focusing on the addressivity by the State of these subjects, my interest as a critical legal pluralist begins with the ways in which legal subjects narrate "new" corporate persons and address, disturb and disrupt state law, with a discourse outside of this latter.

The aim of what follows is to recount a double-process of deconstruction, through both internal and external forces, of the legal person. This narrative, woven as it is through the fabric of political identity and personality, explores the complexities of the contestation between the notions of belonging or citizenship, and the State and its institutions.

Displacing Subjects or (Re)forming Identities

I begin this story by reflecting on the way in which aboriginal nations have used limited liability corporations, structural forms adopted originally to facilitate the disbursement of monies from state governments to communities ("development corporations"), as an expression of a strong national identity, and I evaluate the success and failures of some of these same nations in their subsequent negotiations with the State. Going beyond a mere use of the corporate form for political ends, corporation and nation become contemporaneous and codeterminant, giving rise to questions about how

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[26] For a discussion of how, for example, the terms of the economic discourse preclude the entry of political questions, see, Teubner. "Introduction to Autopoietic Law," pp.1-11, in Teubner (ed.), *Autopoietic Law: A New Approach to Law and Society* (1987); or in the language of systems theory: "long term structural linkages of sub-system specific structures and legal norms are set up. . . The important effect of structural linkage is that it restrains both—the legal process and the social process—in their possibilities of influence," Teubner, "Societal Constitutionalism: Alternatives to State-Centred Constitutional Theory?," p.3, in Joerges, Sand, *et al.* (eds.), *Transnational Governance and Constitutionalism* (2004).

legal personality is being re-written in these novel relations with the State-creator.[27]

To begin, the questions addressed here may appear banal from the point of view that they have no direct impact on the welfare of individual indigenous persons, nor indeed on any person who finds herself on the battlefield of rights, so-called "human." Or, in other words, it does not seem readily apparent why public lawyers and specialists in the (socio-legal) affairs of aboriginal or indigenous people should turn their eye to these aspects of private (corporate) law, but it is indeed my claim in what follows that they should.

Monolithic State Law Effaces "Its" Subjects

Without too much repetition of what was stated, we have seen for some time now the expansion and increasing presence of corporations (multi-nationals and others) on the political landscape. We hear in constant refrain today cries of concern that the State is ceding its powers to these immense structures of limited liability companies. Indeed, some authors have gone so far as to conclude that the presence and actions of the former have impoverished and weakened the State to such a degree as to have adversely effected both national State and UN abilities to deal with the myriad human rights abuses rampant across the world. Law finds itself constructed, created, manipulated and revised in these corporate hands with in-corporate form.[28]

Contorting Deleuze's insight, I suggest that we have "organs without bodies" on the political landscape and these constructions, creations and manipulations are produced by appeals to this discourse of corporate personality, which most have occasion to rely upon on a daily basis as an anthropomorphized association which stands distinct and far above the individual. Indeed, the stories recounted most commonly about the use of the corporate form for indigenous or aboriginal groups as some sort of political representation used to achieve recognition of their community, identity or to provide possibilities for legal land claims tend to pessimistically conclude that any use by such groups of the State legal apparatus of corporate legal personality will either have no effect other than an adverse one upon their objective of recognition (either of their identity as nations, or "other," or even of their legal rights); or, further, will undermine the very originality and

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[27] As a counterpoint, I would suggest that a recent project establishing a new European business vehicle: the *Societas Europaea* is similarly reformative, within the contours of a European "State." This new European corporation, as a new European person, puts into question the very nature of the ties between nation and person when personality is re-written with a supranational quality and forces interrogation of the relevance of these new legal persons to an agenda of European citizenship. An exploration of this project within the contours of critical legal pluralism is an obvious next step.

[28] See, *e.g.* Deva, "Acting Extraterritorially to Tame Multinational Corporations for Human Rights Violations: Who Should 'Bell the Cat'? (2004) 5 *Melbourne J. Int. Law* 37.

difference of these groups by subsuming them within the purview of the incompatible, logocentric liberal state narrative.[29]

Reflecting upon the lack of success of one such project, Peter Fitzpatrick decries how

> "[n]othing more readily reveals the native as the projection of an irresolution in occidental identity itself than the hysterical and aggressive response of the colonist to the impertinent *évolué* who successfully takes on civilized abilities, denies deep or intractable difference, and thus exposes the fragility of imperial rule at its seemingly confident core. What the response to the *évolué* reveals is that the imperial project was, however, decidedly less about a bringing into the fold of civilization and definitively more about a creation and containment as different."[30]

To make his argument that the colonial situation provides "a terminal fracturing of law in its two integral dimensions" of responsiveness and determinacy,[31] Fitzpatrick narrates the story of the Tuki ni Buka, a development corporation set up by the people in part of the area of Papua New Guinea most generally known as Bougainville. The corporation was just one in a series which followed the apparent successful example of a company set up by the Tolai people of East New Britain and called the New Guinea Development Corporation. These development corporations were "usually initiated by established or aspiring leaders and they involved the participation of the members of some large 'traditional' grouping" and Fitzpatrick's role was that of a government consultant sent, first, to evaluate the use of these development corporations and, second, to facilitate the

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[29] Very little has been written about the specific incidence of the use of corporate forms by aboriginal or indigenous groups for either political representation, but the incidence of these corporations is proliferating as various legal regulations and treaties require that negotiating bodies be incorporated into state law. Examples of legislation which is reserved for aboriginal or indigenous group incorporators (in Australia) include the *Pitjantjatjara Land Rights Act 1983 (SA)*, the *Aboriginal Land Rights Act 1983 (NSW)*, and the *Aboriginal Councils and Associations Act 1976* (Cth). In Canada, various treaties and agreements have required First Nations and Inuit bands to incorporate so-called development corporations, for example: *The James Bay and Northern Quebec Agreement 1975*, *The North-eastern Quebec Agreement 1978*, *Nunavut Land Claims Agreement Act (1993, c. 29),* and *Cree-Naskapi (of Quebec) Act (1984, c. 18)*. For a detailed analysis of the use of the corporate form under the *Aboriginal Councils and Associations Act 1976* (Cth). by aboriginal groups in Australia in order to make land claims, see: Mantziaris and Martin, *Native Title Corporations : A Legal and Anthropological Analysis* (2000); Mantziaris, "The Dual View Theory of the Corporation and the Aboriginal Corporation" (2000) 27(2) *F.L. Rev.* 283; and, Mantziaris and Martin, *Guide to the Design of Native Title Corporations* (1999); see also *contra*, Fingleton, "Back of Beyond: The Review of the *Aboriginal Councils and Associations Act 1976* in Perspective" (1997) *I.L.B.* 35.

[30] Fitzpatrick, "Magnified Features: The Underdevelopment of Law and Legitimation," pp.157-76 at 162, in Pardo (ed.), *Morals of Legitimacy: Between Agency and System* (2001).

[31] *ibid.,* at 164.

creation of one particular company: the Tuki ni Buka.[32] In the same way as the colonial situation necessitated the extension of law "into new found worlds" and the violent establishment of "a determined order," so too were the people of Buka island brought into law's order through their subjection to law, more specifically, through the subjection of their organizational structure and community being to the legalities of corporate formation.[33] The dominance and violence is not, at first, readily apparent. Indeed the State appears initially to be responding (and responsible) to these new corporations:

> "The State provided various forms of 'assistance' and loan capital and the law was administered somewhat more sensitively and supportively. The orientation of the law was turned more towards the recognition of 'traditional' ways, not only by providing for the incorporation of some groups organized on a 'customary' basis but also by enshrining respect for 'traditional' ways in the new national Constitution."[34]

But the support and assistance are, at best, short-lived and, at worst, disingenuous strategies of Law and her progeny. As the corporate formation of the Tuki progressed, legal opposition become more pronounced albeit in a more discreet form.

> "[A]lthough officialdom had perforce to be compliant to a degree, it was not as compliant as the story of the formation of the *Tuki* would so far suggest. Opposition of an outright kind would provoke adverse political reaction and so it took more unspectacular forms which just as effectively brought the *Tuki* within the determinate demands of the law."[35]

Through the intricacies of corporate law the limits of law's responsiveness were revealed: the Registrar of Companies disallowed the use of the term "tuki" in the corporate name because of its latent sexual symbolism, Buka terms for the offices and functions of people in the Tuki were to be translated into English, and instead of maintaining a structure which reflected Buka emphasis on trust and responsibility in and of corporate leaders, the Registrar imposed the more common model of "barely accountable, modern, directorial power" which, ultimately became the Tuki's downfall.

Indeed, the responsive vision of the State's endeavour to facilitate development corporations for the people of Buka island fits seamlessly into the project of the "analytical distribution proper to power" which Michel Foucault documents so painstakingly.[36] There are several superficial similarities between the techniques of incorporation and the techniques of power as described by Foucault: the meticulous recording of all events/meetings/correspondence, the monopoly on information by an elite few, the vulnerable visibility of the subject and the unrevealing invisibility of

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32 *ibid*.
33 *ibid.*, at 160.
34 *ibid.*, at 163.
35 *ibid.*, at 163-64.
36 Foucault, *Surveiller et punir : naissance de la prison* (1976), at 196.

the legal experts, and the sense in which the reality of the subject is reshaped by the recorder of that reality into a truth accepted by its unknown audience. Upon reflection these seem to imply that the incorporation of legal personalities has the potential to become a powerful means of producing realities unwanted by, and foreign to, the very subjects of incorporation.[37]

Hence, Fitzpatrick's indictment is fierce. Law as state law fails both itself and as a mechanism of political resistance

> "This deathly disregard of the other marks one extremity of legal determination. It could, in one way, be seen as the apotheosis of legality, its perfected achievement. Here is law, supposedly, in its full determinative force. It has no responsive regard for its subjects, or objects, who are, to borrow Maine's and Bagehot's definitive descriptions, 'caught . . . in distinct spots', 'stationary societies' forever 'stopped' in their development. Lacking a responsive dimension, lacking any vibrant connection to what is beyond its immediate determinations, the laws of imperialism inexorably fail."[38]

Indeed, the inability of state law to recognize the aboriginal "other" is a claim that finds many supporters amongst contemporary theorists.[39] Peter Goodrich provides yet another example in his analysis of a land claim by the Haida Indians in the Queen Charlotte Islands and argues that the court in that instance was bound not to recognize the Haida claims, shrouded as the claimants were in their full ceremonial dresses and masks, unaccompanied by lawyers, and armoured with tellurian mythologies, traditional poems and heroic songs that, for them, demonstrated beyond any doubt their ancestral claim to the land.[40] Goodrich contends that the court had no choice but to refuse to accept a mythology that seemed to clash with its own, logocentric system. Any comparison between the logocentrism of state law and the aboriginal mythologies and images, Goodrich suggests, would raise

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[37] *ibid.*, at 194.

[38] Fitzpatrick, *supra* n.27, at 162.

[39] Examples of similar claims are found in: Torres and Milun, "Translating Yonnondio by Precedent and Evidence: The Mashpee Indian Case" (1990) *Duke L.J.* 625; Padgett, "The Lost Indians of the Lost Colony: A Critical Legal Study of the Lumbee Indians of North Carolina" (1997) 21 *Am. Indian L.Rev.* 391; Campisi, *The Mashpee Indians: Tribe on Trial* (1991); and, Geertz, *Local Knowledge: Further Essays in Interpretive Anthropology* (1983). In the case of *Delgamuukw* v *R. in right of British Columbia* (1991) 40 D.L.R. (4th) 685 (B.C.S.C.), opening statements and claims for the Gitksan and Wet'suwet'en were made in full ceremonial dress and aboriginal concepts of evidence, history government and argument were presented. But these were contrasted with European understandings and anthropologists were called upon to support their claims about comparison with analogous European concepts and terms. Tully, *Strange Multiplicity : Constitutionalism in an Age of Diversity* (1995), p.132; and, GisdayWa and Delgamuukw, *The Spirit in the Land* (1992). Indeed James Tully argues that by focusing on the struggles of aboriginal peoples, "unnoticed aspects of its historical formation and current limitations can be brought to light," *op. cit.,* at 4. Further support for this approach can be found in, Webber, *Reimagining Canada: Language, Culture, Community and the Canadian Constitution* (1994).

[40] Goodrich, *Languages of Law: From Logics of Memory to Nomadic Masks* (1990) at 179 *et seq*.

questions of the self, of what it is that the court represents, which can be entertained only by undermining the basis of state law itself. The court would have to undertake a description of the legal system (a "self-description") which would be able to accommodate not only non-verbalised claims but also surprises, unaddressed expectations, circular perceptions and fluctuating binaries – that is, something totally alien to that which it projects as its very being.

Both Fitzpatrick and Goodrich provide similar arguments which, appropriately, sound warning sirens about the discourse of "recognition," and although each is different in intention, they agree as to ultimate effect: *viz*. the aboriginal "other" is not recognized and the State continues its existence unaffected by that which is outside its language or under its control. For Fitzpatrick, "the imperial project [is] decidedly less about a bringing into the fold of civilization and definitively more about a creation and containment as different."[41] The power to recognize or not the Buka people and respond to their differences as more than mere "secular savage" resides in the hands of the anthropomorphized State and consists in absolute domination of the aboriginal "other." The result of this imposed and enforced relation of power (that is decidedly unequal in its practice) is a failure of the legal edifice to reach the heights of its self-defined glory of responsiveness and trust. Goodrich is less exalting in his description of law. For him, state law just is intrinsically bound to clash with that outside of its logocentric realm, not because of an urge to dominate and secure command, but because of an inherent fatal flaw. However, Goodrich also relies heavily on an anthropomorphized State: one who's "self" is at risk and one which protects, as all "selves" do, its flaws by rejecting that which is exterior and threatening to its "being".

Both critiques, however, fail to take full account of the concept of power conceptualized by Foucault.[42] Fitzpatrick and Goodrich present tales of an omnipotent State which has or possesses a dominating and domineering power which the Buka and Haida do not. While Fitzpatrick provides a story which overtly reveals both "heterogeneous" facets of modern power as described by Foucault: as "a right of sovereignty" and as "a mechanism of discipline," this account is still found lacking. As a relational concept, power cannot merely be referred to or relied upon as an absolute domination or a zero-sum game,

> "Power is mostly relational [. . .] Even in the most unequal situations of relations of power, those subjected to power do exercise some choices, however limited."[43]

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[41] Fitzpatrick, *supra* n.27, at 161.

[42] I use the term "conceptualized" loosely here as Foucault, in fact, refused to define concepts like "power," but I hope that the brief, broad, brushstrokes provided of his project help challenge the limits of these corporate practices as top-down, legal colonizing ones with no room for the emergence of any other narratives beyond those of state law. For an excellent "mapping" of Foucault's work, see, Darier, "Foucault Against Environmental Ethics," pp.217-240, in Darier (ed.), *Discourses of the Environment* (1999).

[43] Darier (ed.), *Foucault and the Environment: Eco-Discourse, Environmentality and the Self* (1997) at 17.

Indeed, Fitzpatrick tells how the Tuki's ultimate failure is defined by its loss of funds through their investment in an ill-fated foreign venture (and one avoidable under the Buka's construction of the Tuki). As the failure is one constructed by and defined from the point of view of the State-created corporation (losses, not profits), Fitzpatrick neatly avoids any discussion of possible, albeit limited, successes that may have resulted (for example, the way in which the myriad factions or groupings came together under the umbrella of the Tuki). The critical edge of both Fitzpatrick's and Goodrich's arguments is not dulled by an acceptance of a broader normative field in which the power of the Buka and Haida may also find expression. "To know and understand the narratives of our *nomos* opens space for shifts: both in the shape of the narratives, and in their direction."[44] Surely, it is partial and imperfect successes, not incomprehension and utter failures of understanding, that typify the practices of recognition and its critique.

Moreover, one can but query that to which theorizing of this ilk condemns political action and resistance in these arenas. Critiques which take no account of the relational aspect of power must have deleterious effects upon just those whose activities are meant to be encouraged (albeit in a different direction). To argue that activists working toward greater recognition by state law of aboriginal "others" are labouring in ignorance or under some sort of false consciousness of a determined state of humanity[45] merely helps reinforce the apparent sovereignty of state law.[46] We must now turn toward the question of whether law, writ large by a critical legal pluralist perspective, suffers the same fate.

Corporate (Re-)forms: A Renaissance of Nations and Citizens through a Pluralist Legal Perspective?

To provide comparison, I would like to move forward in time and change place, to note how both variables contribute irrevocably to changes in the resistance provided by the corporate form. The setting for the example which follows is one in which an apparent systemic latitude necessitated the

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[44] Buchanan and Johnson, "The *Unforgiven* Sources of International Law: Nation-building, Violence, and Gender in the West(ern)," in Buss and Manji (eds.), *International Law: Feminist Perspectives* (2005). This sentiment is echoed in Hutcheon, *The Poetics of Postmodernism* (1987) at 13: "The very limitations imposed by the post-modern view are also perhaps ways of opening new doors."

[45] Engels, "Letter from Engels to Franz Mehring, London, July 14, 1893," in Ryan (ed.) [trans. Torr], *Marx and Engels Correspondence* (1968).

[46] I owe Ruth Buchanan my gratitude for bringing this point to my attention with regard to the work of many First Nations, activists and attorneys to put forward land claims in the Canadian province of British Columbia further to the Supreme Court decision in *Delgamuukw* v *R. in right of British Columbia* [1997] S.C.J. No. 108. Critical academic commentary in a seminar on the effects of *Delgamuukw* was spent entirely on the casting of doubt on the possibility of any First Nation being able to put forward a successful claim under the terms stipulated. The workshop was interrupted, however, by a lawyer and member of one of the First Nations in the territory of British Columbia who expressed his sincere hope that all the academics were wrong as he had spent the better part of several years, with the prospect of several more to come, on constructing just such a claim; and his clients joined him in a reserved, but optimistic, hope for success. Interview with R. Buchanan, (Vancouver, B.C.: September 2004).

specific corporate organization of some First Nations in the territory of the Canadian province of Québec. A landmark court decision in 1973, following a legal challenge by the Cree and the Inuit involving the James Bay hydroelectric project, marked an important stage in this evolution. Here the foundation was laid for the social, economic and administrative organization of a large segment of Québec's aboriginal people. Negotiations between the Government of Québec and the Cree and Inuit nations led to the signing of the James Bay and Northern Québec Agreement[47] in 1975, the first of its kind in Canada. It was a quality of economic pre-requisite in the system of negotiations between Quebec, Canada and the Cree and Inuit which required the latter to form into development corporations in order to implement the agreement.[48]

The James Bay and Northern Québec Agreement (JBNQA) recognized the rights and privileges of the Cree and Inuit living in northern Québec. Under the agreement, the Cree and Inuit relinquished their land claims on the region in exchange for absolute title to lands, monetary compensation and a body of rights related, among other things, to hunting, fishing and trapping, to health and education, to local administration, to the environment, and to social and economic development.[49] As a comprehensive claims settlement, they were to receive $225m in compensation from the Canadian and Québec Governments over a 10 year period beginning in 1975. The battles which led to the signing of the JBNQA took place on many fronts: legal battles were fought simultaneously with fights for public favour. The historical struggle between Quebec and Canada for the former's independence had shifted from the overt (yet "Quiet"![50]) revolution of the 1960s; the tension between separatists and federalists took on a public political face and the battle shifted to focus on, inter alia, improving provincial economic fortunes through mining and other mega-projects which took advantage of the myriad resource "discoveries" made in the province in the 1950s. Politically, the federalist Liberal Party of Quebec used their period of power to nationalize

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47 11 November 1975 (JBNQA).

48 An overview of the JBNQA and development in Quebec is available in: Scott and Feit, *Aboriginal Autonomy and Development in Northern Quebec and Labrador* (2001).

49 The JBNQA provides specifically that: "the James Bay Crees and the Inuit of Quebec hereby cede, release, surrender and convey all their Native Claims, rights, titles and interests, whatever they may be, in and to land in the territory and in Quebec, and Quebec and Canada accept such surrender" (s.2, 2.1) for which, in exchange, the territory subject to the agreement is divided into three categories: Category I (of which the Crees have 2,158 sq. mi.; the Inuit 3,130 sq. mi.) which are set aside for their exclusive use and the development of these lands is in the control of these nations; Category II (of which the Crees have 25,230 sq. mi.; the Inuit 35,000 sq. mi.) comes with the grant of an exclusive right of hunting, fishing and trapping, but do not provide any special right of occupancy, allowing Quebec to appropriate for development with the *proviso* that lands be replaced or their loss compensated to the Cree and Inuit nations; and, Category III which includes all lands not included in the previous two categories, general access to these lands is provided in accordance with provincial legislation and regulations concerning public lands (JBNQA, ss.5 & 7).

50 See: Dickinson and Young *A Short History of Quebec* (2003) at 305-345 for a description of this period of massive social change in Quebec history between 1960 and 1969.

the province's electricity and begin a massive hydroelectric project in the James Bay area and instigated the claims of the Inuit and Cree against the province[51] which ultimately resulted in a period of two years of negotiations culminating in the JBNQA.[52] Indeed, it has long been claimed that the role played by the Canadian government in securing the JBNQA on the part of Quebec was instrumental in the subsequent support provided by First Nations in Quebec to the federal government against any move to separate the province from Canada.[53]

At the time the JBNQA was ratified, there were few formal Inuit or Cree organizations in the province, as is evidenced by the fact that the judicial actions were undertaken by chiefs on behalf of their bands and not by any group. But one of the primary effects of the JBNQA was an immediate increase and presence of Inuit and Cree institutions. Some of these organizations were required by the JBNQA for the disbursement of the vast sums of monies to be paid to its various aboriginal signatories. It is to a brief reflection on two of these development corporations that we now turn.

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[51] This announcement galvanized aboriginal peoples in the region, especially the Cree, into legal action opposing the development. In November 1973, the Quebec Superior Court granted an injunction halting the development based on claims that the development would violate Aboriginal rights and culture. (*Le Chef Max "One-Onti" Gros-Louis c. La Société de développement de la Baie James* [1974] R.P. 38.) Although the injunction was suspended one week later by the Court of Appeal (*La Société de développement de la Baie James c. Chef Robert Kanatewat* [1975] C.A. 166), it was clear to all parties that such a development could not proceed on a wholesale denial of Aboriginal rights. (Rynard, "'Welcome In, But Check Your Rights at the Door': The James Bay and Nisga'a Agreements in Canada" (2000) 33 *Can.J.L.Sc.* 211 at 215).

[52] The JBNQA was implemented federally by the *James Bay and Northern Quebec Native Claims Settlement Act* S.C. 1976-77, c. 32 and provincially by the *Act Approving the Agreement Concerning James Bay and Northern Quebec* S.Q. 1976, c. 46. The parties to these agreements have since signed numerous complementary agreements which deal mainly with additions or modifications to works provided for in hydroelectric projects and measures to mitigate environmental and social impacts.

[53] Grand Council of the Crees, *Sovereign Injustice, Forcible Inclusion of the James Bay Crees and Cree Territory into a Sovereign Quebec* (1995) at 171-217. Prior to the 1995 referendum on independence in Quebec, the James Bay Cree, the Inuit of Nunavik, and the Innu each held referenda. In every case, over 95 per cent of those voting rejected being separated from Canada without their consent, Sheppard, "The Cree Intervention in the Canadian Reference on Quebec Secession: A Subjective Assessment" (1999) 23 *Vt.L.Rev.* 845 at 851. The Inuit held a similar referendum at the same time as the 1980 referendum on independence in Quebec: Grand Council of the Crees, *op. cit.* at 317. The Inuit "have on four occasions, in four separate referendums, overwhelmingly expressed their desire to remain within Canada and not to allow themselves or the territory of Nunavik to be separated from Canada by a unilateral declaration of independence by Quebec": *Reference Re Secession of Quebec*, [1998] 2 S.C.R. 217 (Factum of the Intervener Makivik Corporation at para.2) [Makivik Factum]. See also *Reference Re Secession of Quebec*, [1998] 2 S.C.R. 217 (Factum of the Intervener Grand Council of the Crees (Eeyou Estchee) at paras.8-9) [Cree Factum].

The Makivik Corporation and the Grand Council of the Crees (Inc?)

The Makivik Corporation was created in 1978 pursuant to the signing of the JBNQA, of which it was the recognized Inuit signatory party. As a development corporation, Makivik oversees the disbursement of funds it receives pursuant to the JBNQA through Inuit development in the territory of Nunavik. Inuit peoples have inhabited this territory, comprising almost a third of the land falling within the province of Quebec's borders (660,000 km2) for more than 4,000 years. There are no road links to Nunavik (all travel to and from the area is accomplished through air or maritime links and is thus subject to great seasonal fluctuations). There are over 9,200 Inuit living in Nunavik (in fifteen different communities, one of which is a bicultural Inuit/Cree community) and each Inuit, as a Nunavik resident, is a member of the Makivik Corporation. Makivik was incorporated as a non-profit organization owned by the Inuit of Nunavik. The corporation restricts the transfer and issue of shares to members ("local persons") and these members decide upon leadership following democratic structures with which we are all more or less familiar.[54] Each member has one vote and shares in the company are held by individuals directly. Makivik's corporate structure is composed of sixteen elected members of the board of directors (with a five member elected executive), and five appointed Nunavik Governors. All of the former (directors and executives) are elected by the Inuit residents of Nunavik; the Governors are appointed by the Executive Committee and the Board, and act as the Elders Council. Makivik's central mandate is the protection of the integrity of the JBNQA and the corporation's work focuses on the political, social and economic development of the Nunavik region.

Although similar in pedigree, the evolution of the Cree organizations took a slightly different turn. The Grand Council of the Crees (GCC) was created and in 1974 during negotiations between the Cree (or Eeyouch) and the Québec and Canadian governments. In concert with its corporate partner, the Cree Regional Authority (CRA), the Grand Council distributes the funds received under the JBNQA to the Eeyouch in the territory covered by the agreement (comprising one-sixth of the land falling within the province of Quebec's borders, or 344,854 km2). There are over 14,000 Eeyouch living in eastern James Bay and Southern Hudson Bay in the territory of Northern Quebec (in nine different communities, one of which is a bicultural Inuit/Cree community) and each Eeyouch, as a resident of this area, is member of the CRA and has an equivalent right to vote in GCC elections.

What is different from the Inuit example of Makivik is the structure of the organizations in play. The Cree Regional Authority was set up as the so-called "administrative arm" of the Cree government and the Grand Council of the Crees was the political organization (the latter, in fact, is generally

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[54] This structural form of enterprise in the region is, however, in stark contrast to the sharp separation between ownership and control envisaged in the classic Berle-Means corporation. Indeed, the corporate form, under the *Canada Business Corporations Act* or the *Quebec Corporations Act*, has not been found to be the dominant form of enterprise in a recent Social Science and Humanities Research Council (SSHRC) research project based in Quebec, *per* Richard Janda, McGill University.

recognized as the Cree government and the CRA as but one aspect of its work, in much the same way as the James Bay Development Corporation is a corporation carrying on the work of the provincial government in the area of the hydro-electric project). They are different organizations with different goals, but, interestingly, not so dissimilar upon further inspection: the directors of both corporations are the same and the titles slip quickly from Grand Chief to Chairman or Deputy Grand Chief to Vice-Chairperson. The Grand Council of the Crees has twenty members: a Grand Chief (Dr. Ted Moses) and a Deputy-Grand Chief (Paul Gull) who are elected at large by the Eeyouch people, the chiefs who are elected by each of the nine Eeyouch communities, and one other representative also elected from each community. Thus, the board of directors of the Cree Regional Authority consists in its Chairman, a Vice-Chairperson and eighteen directors (that is, the chiefs and other representatives). This overlap extends beyond mere facility, however, as we shall see below.

(Re-)Developing National Corporations

Colonial law is now seen to transcend its previous denial of legal personality and instead requires the adoption of its mantle for recognition by the colonial State: to receive compensation monies provided for by the JBNQA, the colonized people must adopt the form of organization prescribed by the colonial State. Laws relating to economic organization which had previously been more or less strictly applied as against the colonized become more malleable in their response to new forms of organization required by these agreements. The element of political and economic leadership has become prominent, and even predominant, with development corporations, frequently providing a base for leaders to emerge at the national (and international) level, as we shall see.

My question does not centre on whether or not colonial law's recognition of the legal personality of aboriginal groups entails a reversal of its previous denial of same to the aboriginal peoples within its claimed space. Rather it is the other, national, subjects that have been constructed within/by these corporations and which have been projected out into a state normativity to provide conflict which fascinates me. Indeed, in work in the area, one cannot help but "bump up against" these new subjectivities and normativities.

One of my first encounters with these subjects came at a conference to which I was invited a few years ago at the Maison du Québec in London – the offices of the official government of Québec in London (the "Delegation") – during which the issue of the "pluri-national" character of Quebec was to be debated by and amongst Québec governmental representatives, and representatives of aboriginal nations. While the discussion centred upon the image of the Québec government as the province being a nation of nations, this was but a small part of the interesting features of the day. More intriguing by far was the way in which the participants self-identified, the way in which they presented themselves to everyone. Representatives of the aboriginal nations present introduced themselves in terms of the relation to the communities they represented as well as with their titles derived from the status as executives of the development corporations. So, participants from business, government and academe met the President of the corporation of The Grand Council of the Crees as well as its Grand Chief of the Eeyouch

(Ted Moses); and we met Pita Aatami, President of Makivik Corporation and leader of the Inuit of Nunavik.

What I am trying to expose here are the slippages between discourses, but I am also suggesting that these slippages are perhaps not unintentional and decidedly not without strategic effect. In fact, possibilities are opened up by and through the legal person to assert narratives of previously ignored subjectivities and normativities. This is evident even more through an examination of the corporate aims and objectives of these corporations.[55]

The Makivik Corporation, for example, has as its object: "To receive, administer, use and invest the compensation money intended for the Inuit, as provided for in the James Bay and Northern Québec Agreement." Up to here all is well: a corporation was created to deal with fiscal matters arising out of the JBNQA. But this was not at all how the representatives (re-)presented either the corporation or themselves. Rather it was in terms of leaders of an autochthonous nation during conversations at the Delegation. Nor were the Québec governmental representatives alone in the slippage of discourse between corporation and nation, the Makivik and Cree delegates played on both plains. Moreover, if we examine the respective corporate documents, we rapidly note that the objects of the corporations could easily describes the aims and goals of a nation (its constitution), among aims to economically develop the region are other, decidedly national ones, including:

- To relieve poverty and to promote the welfare, advancement, and education of the Inuit.
- To foster, promote, protect and assist in preserving the Inuit way of life, values and traditions.
- To develop and improve the Inuit communities and to improve their means of actions.
- To initiate, expand and develop opportunities for the Inuit to participate in the economic development of their society.
- To share with the world our vision of our nation.

Indeed, it cannot go without note that the Cree and Inuit of Québec are the only First Nations in Canada to have pushed their development corporations so close to their respective political organizations.[56] Ironically, one might suggest that the overt colonizing acts of Robert Bourassa's government in building "La Grande Hydro" (the James Bay Project) had a double-effect which has provided Québec First Nations a previously absent ability to exert their own sovereignty. The success of these sovereignty claims is undeniable. After a period in the 1990s, the Cree Regional Authority and the Grand Council of the Crees placed strong emphasis on building an apparently

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[55] Indeed, Annual Reports of the Cree Regional Authority contain statements from "Grand Chief Ted Moses" and "Deputy Grand Chief Paul Gull" but not from either a Chairman or a Vice-Chairman.

[56] The Naskapi of Québec, however, have started to show signs of adopting this strategy. Arguably, First Nations residing in other provinces have been hampered by different political hurdles which have not succeeded in any successful claims (against provincial or federal governments).

unitary Cree nation from amongst the myriad communities in the territory. This nation building project resulted in the election of Chief Ted Moses as Grand Chief. With his expertise in discourses of sovereignty and his international accreditation as an expert on indigenous human rights (Moses was a founding member, with Rigoberta Menchu, of the Indigenous Initiative for Peace), negotiations were re-opened between the Grand Council of the Crees and the provincial government of Québec with regard to the status and claims of the former as a sovereign autonomous nation. These negotiations have culminated in the signing, on 7 February 2002, of the historic La Paix des Braves[57] agreement between the Eeyouch and the Québec government which proclaimed the existence of a new "nation-to-nation" relationship between the two parties.

Narratives of national belonging are being written by Eeyouch and Inuit peoples in Québec using the corporate structure of the Makivik and the GCC/CRA. It is not just traces of "nation" discourse that we find in these corporations now, rather the novel corporate narrative is firmly embedded in nationhood. These developments seem to point to conditions for the emergence of new legal persons who can and do provide resistance to the State-centred narratives of nationality and belonging in multi-national states. The presence and projection of new identities is apparently possible through the use of a legal construct historically reserved for non-political (*viz.* legal or economic) ends. National subjects are born and project their normativity upon other subjectivities and toward other normativities.

Conclusion

The claim that legal personality presents a double-bind is neither novel nor incredible. As an emanation of the State, the legal person does reinforce state law, but this is not its only power: through a different legal optic, this same person is subverted and disrupted (as is its State-creator). The two examples draw our attention, once again, to the porous nature of the boundaries between so-called "public" and "private" law when we consider questions of identity and reveal how a critical legal pluralist perspective which appreciates the normativity of subjective narratives demands the exploration of the myriad normativities created by subjects both within and outwith the State and its progeny, and valorises this interaction as legal scholarship.

I hope I have shown in some small way how the forces of personality also contain narratives of novel subjects and normativities with which state law must reckon and which it behoves us to study more closely as means of

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[57] One should bear in mind that *La Paix des Braves*, signed on 8 February 2002, implies some $4.5 billion of investment in nine Cree communities in northern Quebec, with a large part of this investment reserved for job creation through aboriginal enterprises. Aboriginal communities themselves administer funds designed to promote aboriginal enterprises, and northern development projects typically reserve to them some proportion of the total value of contracts. It is therefore of obvious practical concern to inquire into the nature of aboriginal enterprises, first with a view to understanding the range of governance structures they adopt and second with a view to identifying factors that contribute to their successful functioning within aboriginal communities.

resistance to the monolith of the State. Indeed, as has been highlighted above, the apparently closed discourse of corporate law can be pried open to make space for discussions of nationhood, citizenship and identity drawn out by the narratives of these subjects of law. The projections by these legal subjects of new identities and constructions of novel normative frameworks is realized on both the legal and the political landscape through a vehicle of state law which has historically been reserved for apolitical means and either cast aside as a fiction or provided a hermetic corporality of strict (State) legality.

We have also, as a counterbalance, seen that European companies (via mergers and takeovers) are injecting notions of multiculturalism into the debate: it is no longer a question of a company walking into a different cultural context from that within which it came into being, but a coming together within the walls of the company of differing cultural conceptions of groups and persons. And, in contradistinction to the ever expanding discourse of the corporation as some form of ill-conceived, capitalism-protecting, anti-humanist, evil creation of money moguls and conservatives (whatever the political aims of the organizations),[58] narratives of national belonging are being written by aboriginal groups in Québec using the corporate structure and these corporations seem to instantiate conditions for the emergence of new legal persons providing resistance to the State-centred discourse of nationality and belonging in multi-national states.

Finally, it is my sincere hope that the present paper is taken as an opening up of an invitation to see the world (and more specifically the corporate world of legal personality) otherwise than as we tend to do through the tunnel vision narratives of state law.

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[58] For a small sample of this literature, see: Bakan; Glasbeek; and, Klein, *supra* n.14.