

Hang Together

"We must indeed all hang together, or most assuredly we shall all hang separately." Benjamin Franklin

Reality-Based Cultural Conversations: What Corporations Can Teach Us

Posted on January 15, 2013 by Daniel Kelly



Credit

It's funny how the language we use eventually influences the way we think and act. Not funny in the comic sense, but more in the "how-did-I-wind-up-with-these-odd-conclusions?" sort of way. I've had the experience before; maybe you have too. Does it matter? Here's just one example of language creating its own strange reality and interfering with rational conversations about some pretty important matters.

Greg brought this to mind when he reflected on what Mickey Kaus thinks of Starbucks' coffee—cup politicking. Kaus decries the corporate creepiness of asking employees to write a political message on coffee cups. Not just creepiness, mind you, but corporate creepiness.

On a closely related note, a 7th Circuit Court of Appeals judge believes there is no constitutional violation when the federal government requires a construction company to pay for medical procedures that violate religious tenets. What . . . you don't see how these are related? Hmm. Let's try another one.

We have recently debated what the corporate tax rate ought to be. Some say it is so high it encourages companies to relocate overseas. Some say it is not high enough, and that corporations ought to underwrite even more of our government's financial obligations. There. That ought to make things more than clear, yes?

Well, no, of course it doesn't. That's because the common thread running through these three anecdotes is a concept so seemingly unremarkable that we slide right by it without thought. And yet those situations are entirely unintelligible without it. That concept is the belief that there is such a thing as a corporation. A belief, it turns out, that is entirely mistaken. That's right Virginia, there's no such thing as a corporation.

Now, lest I be mistaken, I want to be clear that what I mean is that there is no such "thing" as a corporation. See the point? You don't have lunch with a corporation, nor even talk with one. Corporations don't own anything, don't make or spend wealth, don't help or hurt. In fact, they don't actually *do* anything. All of those things are reserved to *people*.

A "corporation" is nothing more than a collection of laws that govern the relationship between certain people, whether internally (between shareholders and employees), or externally (between the people we describe as a "corporation" and the rest of the world). It's nothing more than the label we give to a type of relationship (kind of like calling a certain grouping of relationships a "family"). A corporation is, in the eyes of the law, naught but a legal fiction. So when we refer to a corporation as a thing, something separate and apart from the people it describes, we are just pretending. It's make-believe. There actually is a man behind that curtain to whom we must pay attention.

Back to my original premise – how does this influence how we think and act? Well, sometimes the make-believe overtakes our reason. Let's look at those three anecdotes again, this time with the understanding that "corporation" is just how we refer to a certain group of people.

We'll start with that 7th Circuit Court of Appeals judge. The people who own the construction company believe the federal law requiring them to provide insurance for certain controversial medical procedures violates their religious beliefs. So they filed a lawsuit asking the court to protect their right to the freedom of religion. One of the three judges hearing the case thought they were entitled to no such protection. Why? Here's what he said:

“Although the Kortes contend that complying with the Patient Protection and Affordable Care Act’s insurance mandate violates their religious liberties, they are removed by multiple steps from the contraceptive services to which they object. First, it is the corporation rather than the Kortes individually which [sic] will pay for the insurance coverage. The corporate form may not be dispositive of the claims raised in this litigation, but neither is it meaningless: it does separate the Kortes, in some real measure, from the actions of their company.” (Emphasis supplied)

The Kortes are separable from the actions of the construction company they own? I’d love to see how *that* works. I want to see the company buy some building supplies without the Kortes or their employees taking any action. Or perhaps we could watch the buildings go up without their involvement. And I bet the employees would be anxious for the judge’s assurance that paychecks just write themselves. The judge didn’t elaborate, however, on how a company acts separately from the constituent members of that type of relationship. Nor could he. Because they can’t. And they can’t because there is no such “thing” as a corporation. Well, maybe that’s why he didn’t.

Fortunately, there were two other judges on the *Korte* panel who understood that corporations aren’t corporeal, they have no consciousness, and they are incapable of any action whatsoever. So, for now at least, the Kortes’ religious freedom is intact.

But think on that for a minute. A judge one step below the United States Supreme Court is basing his work on make-believe. The long habit of talking about corporations as if they are somehow corporeal beings led him deep into error. And he would have, if he could have, turned that error into a legal requirement capable of depriving people of their constitutionally-protected rights. All because he couldn’t put aside a lifetime’s habit of talking about a fictional thing as if it was real.

Is one judge mired in make-believe an anomaly? Let’s look at that corporate tax debate; it might be instructive.

Everybody gets taxed, so why not corporations, right? Shouldn’t they pay their fair share? Well sure, if a corporation is a somebody. But as we’ve already seen, it’s nothing more than a mix of relationships amongst a defined group of people. When we levy a “corporate” tax we are taxing individuals – namely that group of people known as “shareholders.” And then we tax that same money again when we call it “dividends” instead of “income.” But we’re taxing the same money and the same people; we’re just giving the taxes different names so the trick isn’t quite so obvious.

It would be as if Congress decided to adopt a “family” tax. You’re not being taxed twice, your friendly neighborhood IRS agent might say – the family pays the “family income tax,” and you only pay the individual income tax. See? Two different entities, two different taxes. *You* get taxed only once. “But the family is not an entity separate from me,” you might object, “we are one!” “You don’t understand,” the IRS agent deprecatingly smiles, “let me tell you about the corporate tax”

Now, maybe you don’t object to being taxed twice and you think the corporate tax (or, possibly, a “family” tax) is good public policy. That, however, is not the debate we are having. The debate assumes the existence of a separate entity with the ability to earn income, own property, and spend its resources. That is to say, the foundation of the Congressional debate is a myth. You

could call the “corporate tax” the “unicorn tax” without losing one iota of descriptive accuracy. Either way, Congress would be taxing a fiction and asking people to pick up the bill.

Alright, so it’s not just a judge on a federal court, it’s also the members of Congress who have been carried away by their imaginations. The rest of us wouldn’t be taken in by that silliness. Back to you Mickey Kaus.

Why is there “corporate” creepiness in asking Starbucks employees to write “Come Together” on coffee cups? Presumably, Kaus wouldn’t have a problem if you asked your friend to do such a thing, so it’s not the phrase itself that bothers him (although it should). I think Kaus’ discomfort is a species of the “uncanny valley” effect (the freaky feeling we get when a robot looks just a little too human). He assumes that a corporation is a soulless entity, so it’s just plain weird when it starts acting as if it had one. Yes, that *would* be weird. But only if corporations are actual entities to begin with. As luck would have it, they’re not.

We’re fortunate that it’s just judges and congressmen and prominent opinion-makers that make that kind of mistake, right? Yeah. If the rest of us weren’t making the same error, don’t you think there would be an outcry? Or at least an energetic mumbling?

So. Does this matter? This is just one example of letting language create its own reality, and look what it has done. We’ve created tax policy based on a fantasy, we’ve been spooked by a figment of our imagination, and because the insurance mandate has not come before the Supreme Court, a fiction of our own making may yet cost us our constitutionally-protected freedom of religion.

You tell me if it matters. No, really. There’s a spot for leaving comments just below this. I’m interested in your thoughts.

Tweet

Share

This entry was posted in **Uncategorized** by **Daniel Kelly**. Bookmark the **permalink** [<https://web.archive.org/web/20130606005634/http://www.hangtogetherblog.com/2013/01/15/reality-based-cultural-conversations-what-corporations-can-teach-us/>] .

8 THOUGHTS ON “REALITY-BASED CULTURAL CONVERSATIONS: WHAT CORPORATIONS CAN TEACH US”



Michael Hintze

on **January 15, 2013 at 3:41 pm** said:

Dan has started a discussion on a theme that deserves further thought and explication. We are all, and I do not exclude myself, guilty of being lazy in the way we think and talk because we do not take the time to use our common language to communicate clearly. Instead, we lapse into the use of words something close to what we mean, and then upon further thought utter the too often heard, “Well, you know what I mean.”

Anyone who finds it necessary to say or think those words believes instinctively that the hearer did not understand, or understood only in the vaguest sense. Perhaps we should blame the Bard for having written, "A rose by any other name ..." While true, that statement takes no cognizance of the fact that in the English language, only the word rose designates the flower of that type. Even then, the simple word rose may not have enough precision to indicate to the hearer to which flower we are referring. One need only think of a garden planted with several varieties of rose to realize how true that is.

Early in my business career, the plant manager of the company at which I then worked called a number of people into his office to discuss problems being experienced in production. At one point during the discussion, one of his subordinates took issue with a statement the plant manager made that was clearly incorrect. The plant manager pointed to the tan phone on his desk and said, "Listen, if I tell you that phone is black, then the phone is black. Understand?" When words become disconnected from reality, we all lose.

Our current president is the clearest example in my lifetime of a person who uses words to mean whatever he wants them to mean, completely divorced from any objective reference to reality. Such an approach leads only to a complete misunderstanding of the world as it is on the part of those who cannot or will not take the time or make the effort to obtain such facts as are available and then think for themselves, or to complete distrust and frustration that eventually lead to anger on the part of those who recognize the president's mendacity.

I do not remember where I first read it, but someone once wrote, "You may not be who you think you are, but what you think, you are." The message is this: what you think about regularly, and how you think about it, determines who you are and the course your life will take. A corollary is the old saying, "The first step in solving a problem is to admit that there is one." I would add that the second step to solving a problem is the ability to name it. If you cannot name it, if you cannot say what "it" is, then you have zero chance of fixing it, other than through blind, dumb luck.

Do you wish to change the world? Think clearly, speak clearly, write clearly, and you may have a chance, however small. Failure to do so means you have no chance at all.



Greg Forster

on **January 15, 2013 at 3:50 pm** said:

We do have a family tax, don't we? Married couples file jointly.

I see this as just one specific instance of the general tendency to externalize institutional behavior. I think we do it more with economics than with anything else. This is why people come up with cockamamie ideas like the trillion dollar coin. They think you can just wish

value into existence because they've disconnected the economy from productive work. As a pastor friend of mine said, the people who think you can revive the economy by manipulating money are basically trying to create ex nihilo, i.e. they think they're God.



Michael Hintze

on **January 15, 2013 at 4:16 pm** said:

Not quite, Greg. Married couples filing jointly is analagous to two people submitting individual tax returns on one form. For there to be a family tax in the sense that I believe Dan meant that term, the family tax would need to be in addition to the tax each individual is required to pay, whether filed individually or jointly.



Daniel Kelly

on **January 16, 2013 at 7:43 am** said:

Mike is correct. You can file jointly or separately, but there is still just the one tax. If you file jointly and there are two incomes, you stack one on top of the other — which, if they are large enough, will push some of the income into a higher tax bracket. Filing separately will prevent the potential of one of the incomes being taxed at a higher rate simply because your spouse works as well, but you also forego some exemptions. In the end, however, it is one tax and it applies only once to the income. There is no family tax.

The corporate tax, however, presents an entirely different situation. The same dollar gets taxed once as income (the corporate tax), then again as a dividend. But “corporation” (in this context) is simply a way of referring to the shareholders as a group. So the same dollar is being taxed twice, and the same people pay both taxes.



Brutus

on **January 15, 2013 at 4:52 pm** said:

Corporations are, as you know, an intangible “thing” in much the same way that the Trinity is an intangible thing comprised of three parts. I think you miss the basis for the law’s recognition of the corporation as an artificial “thing”. Considering this basis is important.

After all, no one forced the Kortés family to claim this “thing” as their own fantasy. No one forced them to become shareholders. Indeed, I would argue that they lovingly and willingly accepted wholeheartedly, this legal fantasy. And what was the basis for this exchange? The Kortés clan has opted for a privileged regulation in exchange for little chocolates of limited liability and tax breaks.

Corporations do not exist as a matter of right. Individuals do. We make our own beds as the saying goes.



Daniel Kelly

on **January 16, 2013 at 7:28 am** said:

Brutus, thanks for the thoughts.

I can't speak authoritatively to the nature of the Trinity, so I don't know if the intangibility of corporations is similar. However, I think it is safe to say that professing Christians will at least agree that the Trinity is not a fiction, so there is at least that distinction.

More basically, however, there is this. Corporations do not even rise to the level of intangibility. Emotions are intangible, but they certainly exist. Corporations, as entities, don't. A corporation is just a codified set of relationships between certain people. It simply does not exist at all apart from the people described by those relationships.

You are right that the Kortés were not forced to incorporate their business, and that there are trade-offs. But those trade-offs must appear in the law or not at all. One does not simply give oneself over to the state lock, stock, and barrel as the price of incorporating a business. And there is certainly nothing in the incorporation statutes that says you forego your fundamental and constitutionally-protected rights in exchange for limited liability. As for tax breaks, I'm not sure that being taxed twice at near-confiscatory rates counts as a break.



Geoff Hemphill

on **January 18, 2013 at 7:45 am** said:

Dan, clients pay me my ridiculous hourly rates to tell them their corporation is a separate legal person that can sue, be sued, enter into contracts, own property, file tax returns, pay

taxes, etc. Giving a corporation corporeal form works in business/tax law. Waxing eloquent about the corporation's non-existence would likely lose me some clients, so I doubt I will change my lexicon any time soon regardless of your eminent persuasion. But in my defense, the essence of my counsel is to protect what the shareholder brings home at the end of the day – to protect his house from the creditors of his corporation. So please forgive my sloppy English, as my advice ultimately benefits a living breathing person (including me). (Let's not even get into the gymnastics I must perform with respect to my ethical duties in representing the disparate interests of shareholders and their closely held corporations.)

But (correct me if I am wrong) I glean from your article that this imprecise personification of the legal fiction is an accident owing to poor command of the Queen's English. Lazy minds producing tragic consequences, if you will. May I offer a more cynical reason? (I can just hear you muse: "aren't all your reasons cynical?") Guilty. Let's move on.

Cowardice.

How often have we heard "occupiers" and their ilk complain about corporate greed or other corporate deadly sins? Surely they must realize all those greedy decisions were made by men and women with flesh and bones (and superior hygiene, but that is another story), yes? So why pin the blame on an inanimate fiction when the real culprit lives and breathes? How does that advance the argument?

Cowardice. It is easy to cast aspersions on a non-existent straw boogie man than on a real man who can and will fight back. The straw boogie corporation will never hurt the accuser – will never humiliate him with a reasoned, fact-intensive rebuttal. A temper tantrum will never be punished by an imaginary foe. Why enter a fight when you might get hurt? They will not because they are cowards. Or as my 11-year-old would say – wusses.

So while your concerns about the effect of imprecise language on our legal, economic and social discourse are noble and correct, I doubt there is any will on the part of the populace to change. It is just so much easier to shoot recklessly at an enemy who can't shoot back.

I recall CS Lewis lamenting the decline of shame and stigma for acts of cowardice. As usual, I think he was spot on. I wonder if cowardice is even recognized anymore, much less considered a sin.



Daniel Kelly

on January 19, 2013 at 1:32 pm said:

Geoff — fear not, you have not transgressed!

Referring to a corporation as a corporeal entity is a powerful explanatory device when addressing certain elements of the law of corporations. To the extent it can

usefully illustrate those principles, we should not be shy of using it.

The trouble comes only when we carelessly let the device escape the corral and we start using it to define and explain things other than the legal principles applicable to corporations.

I am intrigued by your cowardice theme; I think you're largely right. Attacking something that doesn't exist isn't likely to generate much of a response. And the attackers can maintain their self-righteousness because it appears as though they are assaulting a faceless entity when in actuality they are impugning people busily engaged in creating the very wealth for which they are so loudly clamoring. Cowards indeed.

It also plays well with the companion theory that wealth exists independently of those who create it. If a corporation owns wealth separately from people, then no one is impoverished or wronged when the government confiscates and redistributes it.

If this was an intentional campaign to break down resistance to socialist policies, it would be a brilliant one. If not, it's just accidentally effective. In either event, it's corrosive and we need to do what we can to herd this explanatory device back inside the corral before it does any more damage.