Legal Personality

by Bryant Smith[1]

The article entitled "Legal Personality" was first published in the January, 1928 issue of the *Yale Law Journal* (Vol. XXXVII No.3). It was only about eight pages long when I started reading it, but after adding my comments and clarifications (hopefully), the original artical has now ballooned to over 20 pages. I wouldn't normally run an article this long, except I think it offers some very important insights into questions of jurisdiction and personal "identity".

I have long believed that I, "Alfred Adask," and "ALFRED N. ADASK" (the entity named on my bank account, drivers license, voter registration, Social Security card, etc.) are two seprate and distinct "persons". While "Alfred" is a natural man, made by God of flesh and blood, "ALFRED" is some sort of artificial entity. While "Alfred" is subject to his creator (God), "ALFRED" appears to be created by government and is therefore subject to governmental jurisdiction. Government appears to trick or entice each natural man ("Alfred") into acting "as" the artificial entity ("ALFRED") or acting as the artificial entity's living representative or fiduciary. Government seems able to impose an unlimited number of duties (and thereby cause a correlative loss of unalienable Rights) on any natural person it can trick into acting as or for an artificial entity.

Although I'm convinced this duality and mechanism for governmental control is real, I have yet to fully understand or describe it's operation. At the heart of my confusion lies a single question: What *is* "ALFRED N. ADASK"? For several years, I've been convinced that "ALFRED" is an artificial entity—but what kind? A corporation? A trust? Both answers seemed to work sometimes and fail others. These answers seemed inadequate, but I couldn't think of any other *kind* of artificial enity.

However, after reading this 1928 article, I learned that there is a third kind of artificial entity called a "legal personality". As a result, I begin to wonder if "ALFRED" might be a "legal personality". But more precisely, while the name "Alfred Adask" may identify just one natural man, it appears that "ALFRED N. ADASK" may identify an *unlimited number* of "legal personalities"—all of which have the same name, but each of which have distinctly different bundles of rights and duties. Each unique set of rights and duties corresponds to a distinct legal

[A] First, your "legal personality" is the sum of whatever rights and/or duties you have (and use) at a particular time.

More importantly, since, "To *confer* legal rights or to impose legal duties . . . is to *confer* legal personality," then it follows that the entity that "confers" certain rights or duties effectively "creates" the resultant legal personality. God created flesh-and-blood man ("Alfred") and "endowed" him with "certain unalienable Rights". As such, God *created* that natural man's "legal personality". Under the creator-creation principle, because natural man is created by God, he is owned by God and subject to God's will.

However, if, in addition to the "unalienable Rights" conferred by God, our government were to "confer" additional civil, human or legal rights, duties or privileges on a person, government would thereby "create" a brand new legal personality" for that person. As government's creation, that "legal personality" would be owned by and subject to the control of government rather than God.

[B] Note: A legal personality (legal rights and duties) can be "conferred" on an inanimate thing like "ALFRED". However, the God-given, unalienable Rights declared in the Declaration of Independence are not conferred on inanimate things—only upon living men. Thus, "legal rights" conferred on a "thing" can't be unalienable Rights granted by God. If "legal rights" aren't unalienable (God-given) for "things," then they can't be God-given for *men*, either. I.e., legal rights are granted by the *state*.

If a "legal personality" is defined by a particular bundle of legal rights and duties not granted (conferred) by God, then the resultant "legal personality" isn't created by, or subject to, God. It follows that "legal personalities" must be different from (perhaps fundamentally opposed to) those "spiritual" personalities with which all natural men are "endowed" by God.

personality. As a result, the artificial entity "ALFRED" may be as legally schizophrenic as Sybil.

As I read this 1928 article, I understand it to indicate that 1) "natural persons" and "legal persons" are two different entities; 2) that every legal person can have a multitude of distinct "legal personalities"; 3) legal personality" and "capacity" appear to be synonymous terms; and 4) each legal personality/capacity is a function of a particular purpose.

If my understanding is correct, there may be only one "legal *person"* named "ALFRED N. ADASK," but that single "person" could have scores of separate and legally distinct "legal personalities". While one of "ALFRED's" legal personalities might be subject to a particular jurisdiction, another might not. In one "legal personality" ALFRED might be sued, but in another "legal personality" ALFRED might be immune.

For example, ALFRED N. ADASK, the automobile driver, is an entirely different legal personality from ALFRED N. ADASK, the bank customer, and ALFRED N. ADASK, the holder of a Social Security card. The distinguishing feature between these separate legal personalities is their "purpose". As you'll read, insofar as you can control or restrict the "purposes" of your various legal personalities, you may be able to avoid a court's jurisdiction.

Again, this is a long-winded, and often verbose article, but I regard the content as extremely illuminating. You may have to read the text more than once to begin to grasp the significance. I did. Stay with it. It's worth the effort.

The author's footnotes are numbered and appear at the end of the article. My comments are lettered and appear to the side of the original article on each page. Virtually any italicized highlight and all bracketed comments within the body of the original article are my additions.

To be a legal person is to be the subject of rights and duties. To confer legal rights or to impose legal duties, therefore, is to confer legal personality.[2] If society by effective sanctions and through its agents will coerce *A* to act or to forbear in favor of *B, B* has a right and *A* owes a duty.[3] Predictability of societal action, therefore, determines rights and duties and rights and duties determine legal personality.[A]

Whatever the controversies about the "essential nature" of legal personality, there seems to be a uniform concurrence in these as respectively the test of its existence in a given subject, and the manner in which it is conferred, whether upon a natural person or upon an inanimate thing.[B]

Among definitions to be found in discussions of the subject, perhaps the most satisfactory is that legal personality is the

capacity for legal relations.[4] But there is, nevertheless, an objection to the word "capacity" which seems of some importance. It suggests the possibility that the subject may have a capacity for legal relations without yet having become a *party* to such relations. A minor with *capacity* to marry is not necessarily married, whereas, when legal personality is conferred, the subject by that very act is *made a party* to legal relations. It would seem preferable, therefore, to define legal personality either as an abstraction of which legal relations are predicated, or as a name for the condition of being a party to legal relations.[C]

It is believed that this is all there should be to the story. But legal philosophers and students of jurisprudence have not been content with so simple an explanation. They have sought for the "internal nature" of legal personality, for an abstract essence of some sort which legal personality requires. Thus, Mr. Gray thinks there can be no right, and therefore no legal personality, without a *will* to exercise the right. "That a right should be given effect," says he, "there must be an exercise of will [as shown by personal *conduct*?] by the owner of the right."[5] But, after having adopted the premise that a will is of the essence of a right, he then proceeds to explain how it is that certain human beings without wills and even inanimate objects do have legal personality, a task which he complains is the *most difficult* "in the whole domain of Jurisprudence."[6] [D]

Mr. Salmond, on the other hand, discovers a different quality which, by his definition, is essential to a right. "Not being is capable of rights," says he, "unless also capable of *interests* which may be *affected by the acts of others*," and "no being is capable of duties unless also capable of acts by which the *interests* of others may be affected."[7] [E] But Mr. Salmond's presupposition of an intrinsic essence does not give him as much trouble as did Mr. Gray's, for no sooner has he discovered the necessity of an interest to the existence of a [civil or legal?] right than he also discovers that the same act of investiture which attributes the right also attributes the interest. He defines a legal person, therefore, as "any being to whom the law attributes a capacity of interests and, therefore, of rights, of acts and, therefore, of duties."[8] [F] This is substantially the same con-

[C] First, note that mere "capacity" does not constitute a "legal personality". That is, just because I'm eligible to get a drivers license doesn't mean that I have the legal personality of a licensed driver. To have that legal persoanlity (and thus be subject as a "party" to cases involving traffic laws), I must not only have the capacity to be licensed, I must actually have the license. Thus, the legal personality is not simply a question of capacity, but also of personal *conduct*. Unless you have actually *acted* as a licensed driver, you can't be charged as a party to a case in that "legal personality".

Second, it appears that a "legal personality" is not an independent entity. By definition, the "legal personality" seems to exist only in "relation" to others (including "this state"). For example, we might say God gave John one "natural" personality and God gave Bob another, different "natural" personality. Those "natural" personalities are *inherent* in each person and exist without regard to others. As a result, John's inherent or "natural" personality will not be measurably changed by Bob's death.

However, a "legal personality" is not the natural person per se, nor even *inherent* in the natural person, but rather a specific external *relationship* that exists between one person and another.

[D] "Most difficult" and perhaps also most obscure. How can you impose a "legal personality" on an inanimate object? Moreover, how is it that some inanimate objects have legal personalities, but others do not? I can see only one way to give a "legal personality" to an object—by tying that inanimate object to another legal entity by means of a legal relationship. For example, a bowling ball would seem to have no legal personality—unless it were owned or leased or possessed by someone. Then, by virtue of that legal relationship a mere inanimate bowling ball might assume the legal personality of "Alfred's bowling ball". The *relationship* between the bowling ball and Alfred might be the only means of creating a "legal personality" for an inanimate object.

[E] Mr. Salmond vaguely implies that rights in general (and "unalienable Rights" in particular) can be held independently by a single individual,without regard for others. However, the implication continues that an "interest" may be, by definition, a *relationship* to others and an admission of dependence.

[F] Apparently, the "law" (the state)—not the God of Nature—creates the "legal personality". As such, the "legal personality" is an artificial entity, perhaps a legal fiction.

clusion Mr. Gray reached with respect to the necessity of a will. Where there is no will in fact, the law *attributes* one.[G] So long as it has unlimited power of attribution, neither theory need hinder the sovereign in bestowing legal personality upon whomever or whatever it will.[H]

A more difficult task than to define the concept itself is to explain this *persistent* tendency to make it *mysterious*. It is believed, however, without professing to give an adequate explanation, that some light can be thrown on the subject by contrasting the typical case of a human being [natural man], acting alone [*conduct* that is independent; without relationship to oghers] and in his own right, ["his own" rights would seem to be intrinsic and unalienable] with some of the marginal cases:

A Hindoo idol, being a legal person, it has been held, has peculiar desires and a will of its own which must be respected.[9] A corporation, it is said, "is no fiction, no symbol, no piece of the state's machinery, no collective name for individuals, but a living organism and a real person with a body and members and a will of its own."[10] A ship, described as a "mere congeries of wood and iron," on being launched, we are told, takes on a personality of its own, a name, volition, capacity to contract, employ agents, commit torts, sue and be sued.[11] Why do lawyers and judges assume thus to clothe inanimate objects and abstractions with the qualities of human beings? [Why, indeed?]

The answer, in part at least, is to be found in characteristics of human thought and speech not peculiar to the legal profession. Men are not realists either in thinking or in expressing their thoughts. In both processes they use figurative terms. The sea is *hungry,* thunder *rolls,* the wind *howls,* the stars *look down* at night, time is not an abstraction, rather it is "father time" or the "grim reaper"; the poet sees darkness as "the black cheek of night," or complains that "time's fell hand" has defaced the treasures of "outworn buried age." Speech is as forceful as its terms are concrete. Word pictures stir the imagination and enrich the language. Even if it were possible to inhibit this disposition to speak in images [fictions] and even if the inhibition would produce clarity in legal analysis, it would be to purchase the end at too great a price.[I]

Another aspect of this same phenomenon is that men are not apt in the invention of original terms for abstract ideas. Without being a philologist, one may know that, in its beginnings, language deals with the material and tangible world.[12] When, after generations of mental development and the accumulation of knowledge, abstract ideas finally begin to appear and multiply, the tendency is inevitably to stretch old words to new uses and to crowd the abstractions in under concrete terms which cover a bundle of ideas with which the newcomer appears to have most in common. To do so serves the double purpose of supplying a word where one is needed, and of obtaining a welcome for the new idea by introducing it under a familiar name.[J]

This disposition to label the field of abstractions with the names of a physical world is not confined to poetry or the higher reaches of

[G] This process of "attribution" sounds very similar to today's process of "construing" a constructive trust and trust relationships to exist between the parties to a lawsuit--even when no such relationship, in fact, exists.

[H] Thus, through "unlimited power of attribution," government can arbitrarily bestow both legal rights and legal duties on whoever it likes. An unlimited capacity to "bestow" rights *and duties* is the unlimited power of a tyrant. He can order anyone to do anything. This concept of "legal personality" that is bestowed by the government is contrary to the notion of God-given, unalienable Rights.

[I] As you'll read further on, the answer to "Why do lawyers and judges *assume* to clothe inanimate objects and abstractions with the qualities of human beings?" is simple: *Control* over others--even others who don't exist (like the rain) or natural men who are, in fact, independent and free from the court's equitable jurisdiction. We give inanimate objects a "legal personality" to make them subject to human jurisdiction rather than God's.

[J] True enough. But this still fails to answer the original question in a way that justifies the loss of unalienable Rights that seems to follow the creation of "legal personalities". In other words—recognizing that, according to the "Declaration of Independence," the primary purpose of government is to "secure" our God-given, unalienable Rights—what socio-political mumbo-jumbo is sufficient to justify the official creation of a "legal personality" that ignores or denies the individual's unalienable Rights?

literature. It has invaded also the prosaic legal vocabulary. Negotiations *take place* and *ripen* into a contract whose rights and duties *attach* and later *mature.* If the contract is *closed* it is *binding,* but may be *broken.* If not closed, notice may *operate* a *retraction* of the offer. A rule is said to be *settled* that the defendant must *restore* his adversary to the *position* he *occupied* before it was *altered,* and to *rest,* or to be based upon such and such *grounds.* A guarantee which we call *open* may be *withdrawn* or *recalled.* All these words, which bear unmistakable evidence of having been borrowed from the dictionary of the physical and the tangible, are taken from two pages of Corbin, *Cases on Contracts,* without by any means exhausting the material. The very sound of the word "break" resembles that of breaking a stick. Whether or not there is onomatopoeia in its origin, we hazard the statement that men broke many sticks before anyone ever broke his word, and still more before they became law breakers.[13]

Another characteristic of human thinking, relevant to the inquiry, is that which for certain purposes disregards human beings as individual units of classification and arranges its distinctions on the basis of functions. Eleven men as applicants for admission to the university are distinct individuals each with his own credentials; but as football players they become a team. For some purposes, each student in a university is a distinct and an individual problem, differing in essential particulars from every other student enrolled. For other purposes these individual peculiarities are of no importance and lose themselves in the junior class. For still other purposes, faculty, students, president, administrative officers and board of control, all fade out of the picture and become just Harvard, Yale, or Chicago. And so it is with any group. They are individuals in severalty or a unital aggregate, depending on the purpose in mind.[K]

The same faculty which ignores the individual in the group function, also, for relevant purposes, divides a single human being into different functions.[L] A man is said to be a good neighbor but a bad citizen, an affectionate husband and a stern father, a competent banker but a poor soldier. Even a scarecrow, for a particular purpose, *is* a human being, or a human being may be a scarecrow. The parable of the Samaritan shows how a stranger from distant parts may for some purposes be a neighbor. Nor is this method of analysis confined to our dealings with human beings. It characterizes our mental reactions throughout the whole field of experience. The same faculty of the mind, which, in certain circumstances and for certain purposes, looks upon the universe as one, in other circumstances and for other purposes, breaks up the atom.

If we bear in mind these characteristics of our mental processes, we may be able to discover in them an explanation of the phenomenon of legal personality as exemplified in the more difficult cases of legal persons [partnerships, trusts and corporations] which combine many human beings in one, or subdivide a single human being, or which are not predicated of human beings at all.[M] The typical subjects of rights and duties, of course, are normal human beings, [not "legal personalities"] acting in a single capacity and in their own [unalienable] right. It is between such persons, so circumstanced, that most disputes come to be settled; it is around them and with reference to them that legal ideas develop. The

[K] Comfortable analogy, but it doesn't come close to explaining or justifying a loss or unalienable Rigths.

[L] Note that this theory of "division" seems contrary to the biblical notion of man's "unity". That is, God is said to judge all men for every word, deed and thought. That judgment is not supposedly based on some notion of "division" and "function" wherein the sins you commit in one "function" may be damning while those committed in another function may forgiven or even applauded.

[M] [The author toys with the search for an "explanation" for the mysterious "phenomenon" of "legal personality," but so far, he accepts that phenomenon as real and at least convenient. He validates the "phenomenon" by not questioning the morality or desirability of that "phenomenon". It may be "mysterious" and almost incomprehensible but, so far, the author does not suggest it is dangerous or bad.

[N] This is the key question: what is the fundamental "reason" for creating "legal personalities"? The answer was hinted at earlier when the author mentioned the "sovereigns" unlimited capacity to "attribute" legal personalities (rights and duties) to others. That "attribution" is a device to *extend* seemingly absolute power over persons and entities that would otherwise be outside that sovereign's "natural" jurisdiction.

[O] Ah ha! There's the answer: The legal personality appears to be a *legal fiction* that is "attributed" to an entity or object to gain jurisdiction over a natural person who would not normally be subject to the jurisdiction (power) of a would-be "sovereign". Thus, this "legal personality" (relationship) is arguably an usurpation of power by a would-be sovereign over a person not ordinarily subject to that that sovereign's jurisdiction. As such, the legal personality constitutes a denial of the newly-created "subject's) unalienable Rights.

[P] This illustration assumes that a foreign property or person is within a sovereign's apparent jurisdiction but the *owner* of that property is *outside* that jurisdiction. This implies that, at law, at least, the sovereign must interact with the true "owner". However, if the owner is outside the "sovereign's" jurisdiction, but the owner's property is within that jurisdiction, how can the "sovereign" assert authority over the "foreign" property?

This faintly suggests that "ownership" may be an attribute of jurisdiction. That is, while I (as an American) might "own" title to a ship docked in an American harbor, my claim of ownership might be questionable when "my" ship is docked in a foreign harbor. It may be that only through treaties would my apparent right of ownership be recognized in foreign jurisdictions. Without treaties, my ship (in a foreign jurisdiction) might be regarded as abandoned property available to the first party able to claim ownership under that foreign jurisdiction.

The legal personality appears to be a local sovereign's device to gain jurisdiction over foreign persons or foreign-owned property. Further, the legal personality's dependence on "relationships" seems consistent with the modern doctrine of "minimum contacts" that allow one state to assert jurisdiction over citizens or corporations of another state.

[Q] Apparently, it's too tough for our ingenious judges and lawyers to sustain the original, constitutional legal process that respected and "secured" our God-given, unalienable Rights. So for the government's convenience, the courts chose to ignore those "foreign" unalienable Rights and simply "attribute" a more "convenient" and "managable" legal personality that was subject to local (artificial) jurisdiction.

wording of laws, the language of the courts, the statements of causes of action, the forms of the writs, contemplate such beings as the parties plaintiff and defendant in litigation. By repetition the language becomes habitual, the forms grow rigid, the behavior patterns are fixed.[14] Then, for some reason or other,[N] it becomes necessary or convenient ["Convenient" for who? For the "sovereign".] to deal with an inanimate object such as a ship, or with a human being in a *multiple capacity*, as a trustee or a guardian, or with an association of human beings in a single capacity, as a partnership or a corporation.

A merchant, for example, who has furnished supplies for a voyage, or a boss stevedore who has renovated the ship, cannot reach the owner of the vessel, who is outside the jurisdiction.[O] The obvious solution is to get at the ship itself and, through it, satisfy the owner's obligations.[P] But to devise a new system of jurisprudence for the purpose, to work out new forms and theories and processes, would too severely tax the ingenuity of the profession.[Q] The alternative is for the judges to shut their eyes to the *irrelevant* differences between a

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ship and a man and to treat the ship as if it were a man for the purpose of defending a libel.[R] The master of the vessel appears in court to represent the ship and the ship vindicates the rights or makes vicarious atonement for the wrongs of its owner.[15] [S]

" 'I have tasted eggs, certainly', said Alice (in Wonderland), who was a very truthful child: 'but little girls eat eggs quite as much as serpents do, you know.'

"'I don't believe it' said the Pigeon, 'but even if they do, why, then, they're a kind of serpent; that's all I can say!'"[T]

So it is that the ship, a kind of a man, takes on a personality, acquires volition, power to contract, sue and be sued. If it must have some of the qualities of human beings to adapt itself to the novel situation and avoid embarrassment both to itself and to the court, the law can readily bestow them by the simple process of attribution.[16] [U]

The ship, therefore, derives its personality from the compelling fact that it sails the seas *between different jurisdictions*.[V] In the case of the corporation, the demand, although perhaps equally compelling, is for other reasons. Of the mental processes previously discussed, that which ignores the individual *in the group function* [relations] is most responsible for the phenomenon of corporate personality.

Large aggregations of capital carry tremendous economic advantages. To accumulate the requisite funds, it is necessary to draw from a large number of investors. It is impracticable that each investor have an active part in the conduct of the enterprise. If he cannot participate he will not invest if, in doing so, he must hazard his entire fortune in a venture over which he has only the most limited control. The solution is to limit his risk to the amount of his contribution. This done, the shareholder becomes irrelevant to the purposes of

[R] Irrelevant differences? Our "Declaration of Independence" and American liberty are built on the premise that "all men are created equal and endowed by their Creator with certain unalienable Rights". There is no similar premise that ships and other inanimate objects are similarly endowed by God. Thus, the difference between men and objects is far from "irrelevant"—it is as enormous as the difference between a live child and a dead ancestor. When government finds the differences between men and objects to be largely "irrelevant," it doesn't raise the status of objects that of men—it degrades the status of men to that of objects.

[S] I don't yet fully grasp the significance of "ownership," but it seems crucial to the legal personality's operation. That is, the legal personality seems to overcome or bypass questions of "ownership" that would be crucial at law.

[T] Here the Pigeon (appalled by the idea of anyone eating bird eggs) "attributes" the legal personality of a snake to the little girl. But this does not, in fact, change the little girl into a snake. This attribution is simply a convenience for the Pigeon that allows the bird to maintain the *illusion* that birds are such high and lofty creatures that it is a kind of blasphemy for any other creature to eat bird's eggs. The truth in this case is not that Alice is a snake, but that the Pigeon is merely a bird without meaningful authority over Alice.

Similarly, when a judge "attributes" a legal personality to a defendant, the object of that attribution is to create and maintain the illusion, the fiction, that judges (and the government they represent) are superior to the "persons" of all litigants in their courts (jurisdictions). Thus, the legal personality's primary purpose is not to serve the *individual*, but to serve the *state*.

[U] Again, the words "attribute" and "construe" seem synonymous. If so, "bestowing" a legal personality is equivalent to construing a trust relationship between the parties to a case.

[V] Again, the essential object is to establish a *local jurisdiction* over a foreign person or property. The legal personality is "attributed" to the foreign ship by the local government to gain a jurisdiction (authority) that does not, in fact, exist. This seems to be the same process that takes place when the courts recognize "ALFRED" rather than "Alfred". "ALFRED" appears to be a "legal personality" that subject to "this state" and is attributed to "Alfred" to give "this state" a fictitious jurisdiction that does not, in fact, exist. This implies that the artificial entities identified with all-uppercase names (like ALFRED N. ADASK or GEORGE W. BUSH may be properly described as "legal personalities"—and perhaps even as "relationships" rather than isolated, independent legal entities.

[W] You can bet that a primary reason for creating "legal personalities" was to accomodate economic enterprises like corporations, trusts and partnerships that are artificial entities unknown to the law. In essence, to make a buck in "big bidness," it was necessary to create "legal personalities" that exist as fictions rather than as natural men. Without fictions, corporations couldn't be possible.

It was probably only later that various governments realized how handy it would be to impose the same sort of "legal personalities" on people that had previously been imposed on corporations, trusts, etc. Through the use of legal personalities, free people who might otherwise be able to claim unalienable Rights could be degraded from the status of sovereigns into subjects.

[X] The idea of a "group" name implies the presence of "relationships" rather than independent individuals.

[Y] Note that the legal personality (the "organization as a unit") exists only for a particular purpose. For example, if I were an executive for IBM, whenever I acted as an officer of IBM, my natural "personality" would be submerged and I would be perceived to act in the "legal personality" of IBM executive. However, when I went home or on vacation or engaged in activities that had no relevance to IBM or did not serve that corporation's express purpose, I would not be "clothed" with the legal personality of the IBM executive.

For example, even if I were in my IBM executive's office but I engaged in activities that were outside or contrary to the express purpose of the corporation (as expressed in the corporate charter and/or my job description), I would be acting outside scope of the "legal personality" of corporate executive and would not be able to claim whatever immunities that might otherwise attach to that legal personality.

This same analogy should also apply to government officials. Whenever they act outside the scope of their and government's official "purpose," they would forfeit their claim of immunity for acting in the legal personality of government official.

The determining factor in your particular "legal personality" seems to be your purpose at any given moment. Your legal personality is not determined by where you are, what uniform you're wearing, whether you're on duty or not, or even what you're doing, but rather by your purpose. The implications are intriguing.

Suppose a government official asked me if I were "ALFRED N. ADASK". I might reply "Who wants to know?" I might try to deny that name by claiming I am, in fact, "Alfred Adask," natural man, sui juris, etc. etc..

However, my clever defense might be ignored if government found *any* evidence (bank account, drivers license, voters registration, etc.) to indicate I had ever acted in one of the *many* legal personalities named "ALFRED N. ADASK". Remember that (apparently) each of these relationships (banking, driving, and voting) are distinct "legal personali-

one who wishes to do business with the group enterprise.[17]

There is also great economic advantage[W] in an unbroken continuity of effort. If a dissolution and the necessity for reorganization followed the death or the transfer of interest of any individual shareholder, *the enterprise could not function*. The solution is found in perpetual succession, by virtue of which each shareholder becomes still less significant, and even presidents and boards of directors lose their [natural] identity in the regular flow of successors.

If a creditor wishes to enforce a claim against the enterprise, it is impracticable and unnecessary to make all the participants, in whatever degree, parties to the action. The solution is to permit the organization to sue and be sued in a group name.[X]

So it is that for one *purpose* and another, it becomes convenient, if not indeed necessary, to let the *individual* participants fade out of the picture and to look upon the organization as a unit.[18] And so it is that the corporation, like the ship, comes to be fitted into the old behavior patterns and to be treated and spoken of *as if* it were a natural person.

Whenever society, [not God] in the administration of justice, sees fit to disregard the individual members of an organization [relationship] for a particular *purpose*, and for that *purpose* to look upon the organization as a unit, the organization to that extent or *for that purpose* becomes a legal person.[Y] This is true even where the group is organized as a partnership or other unincorporated association.

The single human being in a dual or multiple capacity is not ordinarily

regarded by writers as a part of the subject of legal personality.[19] The corporation sole, as exemplified in the parson, the bishop, or the crown, has been given a hearing and dismissed as either "natural man or juristic abortion."[20] Except for the corporation sole, it is usually assumed that one human being is only one legal person, in however many different capacities he may function. But such an assumption, consistent though it may be with some of the language we use, does not describe our conduct. As an individual in his own right, *A* can transfer property to himself as trustee,[21] or do business with himself as a member of a firm to which he belongs,[22] or, in a triple capacity, as an executor he can transfer property to himself as a trustee.[23] What shall we call such distinctions as these, if not distinctions of legal personality?[Z]

In an action in 1429 against the Commonalty of Ipswich and one Jabe, the defense was made that Jabe was a member of the Commonalty of Ipswich and therefore was being named twice as defendant in the same action, that if the defendants were found guilty Jabe would be charged twice over, that if the Commonalty should be found guilty, and Jabe not guilty, the result would be that Jabe was both guilty and not guilty. The case is cited in Pollock and Maitland to illustrate the failure to recognize the personality of Ipswich,[24] but it illustrates also, and equally well, does it not, the failure to distinguish Jabe as a *private individual* from Jabe as a *member* of the Commonalty?[25] [AA]

We smile at such a defense, as the naive reasoning of a time long past, and, indeed, we may boast that in many particulars we are more at home with the problems of *dual personality* than were those lawyers of 500 years ago.[26] But we have, nevertheless, missed some distinctions of the sort whose recognition we might have found very useful. In this, the 20th century, it is still the law, except where changed by statute, that a partner cannot, in a court of law, sue the firm of which he is a member,[27] nor can one firm sue another where the two have a common member.[28] Jabe the legal person is still only Jabe the human being.

In 1920 the United States Supreme Court held that the federal income tax, levied on all classes alike, was, as applied to the salaries of federal judges, a violation of the constitutional prohibition against reducing their salaries while in office.[29] A provision intended to protect the judges from mistreatment in their office as judges, was misapplied, was it not, to exempt them from their obligations as private citizens? The distinction between Jabe as a private individual and Jabe as a member of the Commonalty of Ipswich is only slightly more obvious than the distinction between X as a judge on the bench and X as an ordinary member of the community.

But enough of dual personality. It is submitted that the breaking up of human beings into *plural capacities* is not only an appropriate, but a most important, part of the subject of legal personality.[30] Whenever society,[BB] through its legislatures and courts, sees fit for a particular purpose to give effect to rights and duties in a human being in more than one capacity, such human being, *for that purpose* and to that extent, becomes *more than one* legal person.[CC]

ties". The legal personality of ALFRED N. ADASK, the bank customer is not the same legal personality as ALFRED N. ADASK, the driver, or ALFRED N. ADASK the voter. Even though all three "legal personalities" have the same name, they have different purposes (banking, driving or voting), different rights and duties, and are thus different legal personalities.

Thus, even though I concede that I sometimes act as or for "ALFRED N. ADASK," it may be possible to defeat jurisdiction in a particular by 1) carefully determining the specific "purpose" that underlies the "relationship" the plaintiff implicitly alleged to exist between him and me that created my legal liability; and 2) by specificially denying that I am "ALFRED N. ADASK" for whatever "purpose" lay at the foundation of the plaintiff's alleged particular issue. If I don't share the common purpose, I don't share the common (alleged) relationship or the resulting legal personality and status as "party" to the case.

The possibilities make me laugh.

[Z] Thus, each of us may be legally "schizophrenic" in that we may each have more "legal personalities" than Sybil.

[AA] Thus, which "Jabe" was on trial? Similarly, who is on trial if I go to court? "Alfred" or "ALFRED"? And if "ALFRED," which of his many legal personalities will be tried?

[BB] Society"—not God. This implies that "legal personality" is the work of the collective, not nature.

[CC] Again, the term "capacity" seems almost synonymous with "legal personality". Different purposes = different legal personalities = different capacities.

DD This implies that the one personality that is *not* a "legal personality" is your "natural human personality". If so, while "ALFRED N. ADASK" may be used to signify any number of legal personalities, it cannot signify the natural human personality and primary purpose (achieving eternal salvation) of "Alfred Adask".

Conversely, while "ALFRED N. ADASK" can collectively represent a schizophrenic cornucopia of legal personalities, "Alfred Adask" can never signify more than a *single* natural human personality (which, incidentally, may be subject to just one jurisdiction). For example, "Alfred Adask" might only be subject to the jurisdiction of a Republic, but "ALFRED N. ADASK" might be subjected to the jurisdiction of a democracy and/or any other jurisdiction that the local "sovereign" can construe.

EE Apparently, the "legal personality" can only exist in *relation* to others. Thus, when an individual is *isolated* (apart from other people) no "relationships" are possible, and thus no "legal personalities" can be attributed.

FF Note the use of the term "party". To be a legal person, you must be a "party" to legal *relations* (with other persons). Thus, a person is "party" to a lawsuit by virtue of his "legal *relation*" to some other party to that case. But if you have no legal *relation* (legal personality) to purpose of the complaint advanced by a plaintiff, you can't be a "party" (legal personality) to the case. Given that legal personalities are a function of purpose, it appears possible to have extensive relationships with a plaintiff and still not be a "party" (legal personality) to that plaintiff's lawsuit if none of your relationships embrace the same purpose as is implied by the plaintiff's allegation. Thus, a significant challenge to a plaintiff's claim and a court's resultant jurisdiction might be a denial of engaging in whatever specific common purpose is alleged to underlie the plaintiff's claim.

GG Not precisely so. To equate the "reality" of legal personalities of corporations with that of "normal human beings" is deceptive since both *legal* personalities are equally *artificial*. Since all legal personalities are artificial, none is "real" (endowed by God). The only "real" personality is the single "natural" (not "legal") personality of a human being. The author thus implicitly denies the existence of God-given, unalienable Rights and even God, Himself.

It is believed that most of the confusion of thought with respect to the subject comes from the disposition to read into legal personality the qualities of natural human personality.[31] **DD** So Mr. Gray gets his "will"[32] and so Mr. Salmond his "interest."[33] So it is that Mr. Geldart is led to observe that:

> "If corporate bodies are really, like individuals, the bearers of legal rights and duties, they must have something in common which qualifies them to be such and if that is not *personality* we may fairly ask to be told what it is."[34]

As evidence of the personality of such bodies, apart from the personality of the individuals who compose them, we are reminded that the same individuals may form two distinct corporations.[35] But the same has been held of partnerships.[36] We are referred also to a so-called group mind[37] and cited the obvious fact that people behave differently and get different results in an organization than when acting alone. But the *isolated* individual will also behave differently in different circumstances, and yet there is *no need* to read this variety into his legal personality. **EE** If it should suit the convenience of the economist or the sociologist to recognize in the group an economic or a social personality, he would certainly be privileged to do so, and, if he did, doubtless he would fix upon some one or more of the various aspects of group behavior as the identifying quality which the group must share with a natural person. But the ship, the corporation and the natural person all require the same thing *to make them legal person*s, namely, to be a *party to legal relations*. None of them requires anything more. **FF**

The voluminous arguments about whether corporate personality is real or fictitious, are, for the most part; to no purpose, chiefly for lack of a definition of terms.[38] One man's reality is another man's fiction.[39] In a sense, every idea that enters the human mind is a fact and has reality. In another sense it may be a fiction. One may as well ask if the "Private Life of Helen of Troy" is real or fictitious. There is certainly such a book. The legal personality of a corporation is just as real as and no more real than the legal personality of a normal human being. **GG** In either case it is an abstraction, one of the major abstractions of legal science, like title, possession, right and duty.[40]

If, without suggesting that there is an analogy for all purposes, we compare title with personality, it may be that we shall clarify somewhat our ideas about the latter term. To say that a subject has legal personality is to say that it ["it"—not "he"] is a party to legal relations without indicating in particular what the relations are. To say that one has title, is to say that one is a party to a particular *class* of legal relations, namely, those which go with the ownership of property. In either case, if one takes away all the rights, powers, privileges and immunities that shelter under the term, there is nothing left except the shelter which, thereafter, is but a word without a meaning.[41] To regard legal personality as a thing apart from the legal relations, is to commit an error of the same sort as that of distinguishing title from the rights, powers, privileges and immunities for which it is only a compendious name. Without the *relations*, in either case, there is no more left than the smile of the Cheshire Cat after the cat had disappeared.

The concession theory—that the corporation must be created by legislative act—has mystified the concept of corporate personality. But this theory, as well as the fiction theory, was devised for a *purpose*.[42] Joint stock companies and de facto corporations testify that the legislative grant is by way of *control* rather than an act of creative magic.[43] That the legislature has seen fit "to interpose a non-conductor through which," to quote Justice Holmes, "it is impossible to see the [natural] men behind [the "non-conductor"/corportion]"[44] **HH** is properly effective to the extent of the legislative *intent* [purpose], but it does not mean, either that the non-conductor is to make a Frankenstein creature of the corporation, or that the same nonconductor may not properly be applied in appropriate situations to *unincorporated associations*.[45] **II** The distinction is in degree and not in kind.

We have assumed that to be a legal person is to be a *party* to legal *relations*, and have seen that the sovereign can, and, if it suits its purposes, does, confer legal personality upon subjects that are not human beings [like "ALFRED"]. If we are to be consistent with these premises, we shall have to *abandon* the idea sponsored by Austin, Hohfeld, Justice Holmes, and others, that *only natural persons are parties* to legal relations.[46] In so far as legal persons and natural persons are the same, this is true.**JJ** But if the sovereign power confers legal personality upon a ship, or an idol, or upon an abstraction, such as one of the functional aspects of an individual or of an organized group, such ship or idol or functional aspect ipso facto is *party* to legal *relations*. To insist that only human beings are competent to the part is to confuse the concept of legal personality, in the same way as reading into the concept, when applied to non-human subjects, the attributes of human beings.

HH Thus, it may be "impossible" for the "man" behind an artificial entity to "appear" in court. How could that "impossibility" by overcome? Perhaps by "special appearance" at the beginning of the trial wherein you assert your status as a natural person and/or deny the existence of any relationship and common purpose between yourself and the plaintiff on which the plaintiff has based his claim.

II Thus, it appears possible for the government and courts to impose an artificial/ "corporate" legal personality on "entities" (relationships) that are not, in fact, incorporated. For example, your *relationships* to your spouse, landlord, or bank might each be impressed with a corporate legal personality even though no corporation had, in fact, been "created by legislative act". Once that corporate legal personality were created, it might thereafter be "impossible to see the [natural] men behind" that artificial entity.

This process seems to conform very nearly to the phenomenon that many constitutionalists believe takes place in our courts today. The courts create or impose an artificial entity ("ALFRED") on the defendant and thereafter refuse to "see" the natural man ("Alfred") or recognize any of his claims to unalienable, God-given Rights.

JJ Note that the author did not write that legal persons and natural persons were, in fact, the same; he wrote "insofar" at they are the same. More importantly, note that a "legal person" or "natural person" both appear to a singularities like a specific corporation (IBM) or specific man (Alfred Adask). However, each of these singularities may have an unlimited number of "legal personalities". Thus, it appears that a "legal person" is not a "legal personality"—it is merely the singular name under which a *multitude* of "legal personalities" might operate.

KK The author implies that the ultimate purpose for "attributing" (or "construing") legal personalities is to *benefit* some human being. Whenever I see "benefit," I assume the presence of "beneficiaries" and therefore a trust. Similarly, the term "burden" reminds me of the duties of trustees. Again, the concept of "legal personality" seems congruent with our current understanding of constructive trusts. In both instances, the courts seem to attribute or construe a relationship or trust upon two parties in order to make both (especially the defendant) a "party" to a lawsuit and subject to the court's jurisdiction.

LL Here, the author seems to mean that the advantage to attributing legal personalities is that the sovereign need not "ultimately analyze" and thus expressly explain the new capacity, rights and duties to the subject on which they've been imposed. Thus, the attribution of "legal personality" (like the construing of constructive trusts) is a kind of trickery that a would-be "sovereign" can use to "secretly" gain jurisdiction over parties not naturally subject to that jurisdiction—and never bother explaining to these new subjects how that jurisdiction was obtained.

But. If this process avoids the "necessity" of the "ultimate analysis" of who will benefit (and how) from the imposition of legal personalities, the process still does not appear to absolutely prohibit that "ultimate analysis". This suggests that strategies might be devised to demand that the court/government expressly reveal who (in a particular case) will benefit from the imposition of legal personalities and whether those "benefits" are sufficient offset the loss to the parties of their God-given, unalienable Rights.

MM First, if the purpose of legal personality is to "regulate behavior," of human beings, then it's clear that legal personality is used to thwart or diminish one's natural, God-given liberty. Second, the attribution of a legal personality to one person appears to not only affect that person, but also all others who *relate* to that person. For example, in 2000 A.D. (approximately) the Indianapolis Baptist Temple was raided and seized by the IRS. In general, the reason for seizure was because that church had not been paying income taxes. But more specifically, the church was seized because it had employed persons who had Social Security Numbers and nevertheless failed to take out withholding for those employees. Even though the employees ultimately paid all required taxes and S.S. "contributions," the church was seized. Why? Perhaps because the employees, by virtue of having SSNs had a *legal personality* that not only created rights and duties for the employee, but also for any *employer* who hired that individual.

Thus, the "legal personality" of the person holding the SSN may have created rights and duties on people *relating* to that person. If I had to guess, I'd bet the church wrote checks to the employees that were deposited in bank accounts identified with SSNs. If so, the deposited checks may have "proved" that the employee was hired in the "legal personality" of a person with a SSN and thereby subjected both the employees and the church to the "legal relations," rights and duties imposed by the Social Security Trust Fund.

It is true, of course, that the *benefits* and *burdens* of legal personality in other than human *subjects*, on *ultimate analysis*, result to human beings, which, we have no doubt, is what the writers above cited mean.KK But the very *utility* of the concept, particularly in the case of corporate personality, lies in the fact that it *avoids* the necessity for this *ultimate analysis*.[47] LL

And this leads us back to the question put in the beginning, as to why lawyers and judges assume to clothe inanimate objects and abstractions [relationships?] with the qualities of human beings, a question which we trust we may now be permitted to modify so as to ask why it is that on such objects and abstractions we confer legal personality. Mr. Dewey says we do not make molecules and trees legal persons because "molecules and trees would continue to behave exactly as they do whether or not rights and duties were ascribed to them."[48] But, though the function of legal personality, as the quotation suggests, is to *regulate behavior* it is not alone to regulate the conduct of the [artificial or inanimate] subject on which it is conferred; it is to regulate also the conduct of *human beings* toward the subject or toward each other.MM It suits the purposes of *society* to make a ship a legal person, not because the ship's conduct will be any different, of course, but because its personality is an effective instrument to *control* in certain particulars the conduct of its

owner or of other *human beings*. The broad purpose of legal personality, whether of a ship, an idol, a molecule, or a man, and upon whomever or whatever conferred, is to facilitate the *regulation*, by organized society, [The "collective"?] of *human* conduct and intercourse.[NN]

If we grant this, we should be in a position to make effective use of the concept, without overworking it on the one hand, as it may be we have done in the case of corporations, or making too little use of it on the other, as we may have done in the case of unincorporated associations. It is conventional and orthodox to say that a corporation is a legal person and a partnership is not. The statement is only partially true. For some *purposes* a partnership is a legal person[49] and for some *purposes* a corporation is not.[50] [OO]

But, aside from its inaccuracy, there is a double danger in such an unqualified statement. One we have already noted, namely, that the use of the word "person," in accordance with Mr. Hohfeld's "principle of linguistic contamination," is an open invitation to read into the concept the qualities of natural persons, which, according to the statement, would be attributed to a corporation and denied to a partnership.[51] The other danger is that the two propositions, thus defined, may be exalted to the dignity of principles from which to deduce conclusions.[52] Indeed, corporate personality is the principle from which much, if not most, of the present law of corporations, in form at least, has actually been deduced. We say in form, because the facility with which corporate personality has

[NN] Again, this "regulation" seems contrary to the principles of freedom and liberty. According to the second sentence in the "Declaration of Independence," the primary purpose of government is to "secure" the "unalienable Rights" given each man by God. Insofar as the "regulation" achieved through "legal personalities" tends to deny those unalienable Rights, that regulation and legal personalities are contrary to basic American principles. Moreover, we may reasonably ask what part of our Declaration or State and Federal constitutions delegate power to our government to secretly attribute legal personalities to formerly free men? In a government of allegedly limited powers, where did We the People expressly delegate power to the government to secretly "attribute" a multitude of legal personalities to each of us that impose unexpected legal rights and duties which effectively deprive us of our God-given unalienable Rights?

[OO] Again, note the significance of "purpose". Your legal personality at any moment is a function of your *purpose*. And what legal personality (if any) might you have if your sole purpose, at all times, was to serve God and/or earn eternal salvation? What would happen if all of your signatures were immediately preceeded by the disclaimer, "without prejudice to my God-given, unalienable Rights"? Would that disclaimer/qualification establish that you would never knowingly enter into a "legal personality" that violated or compromised those God-given Rights? That disclaimer over your signature might qualify every "legal personality" into which you entered. It would establish that it was your purpose (when you filled out a bank account application or drivers license application) to do nothing that would violate or compromise your primary relationship to God.

According to the "legal personality" process, by establishing your "purpose," you also impose that purpose on anyone who relates to you in that "legal personality". In other words, just as the SSNs of the folks who worked at the Indianopolis Baptist Temple may have "contaminated" their employer with duties to Social Security and the IRS, your signature claiming your unalinable Rights might similarly "contaminate" those government officials who subsequently relate to you with a duty to "secure" those God-given Rights.

Others have qualified their signatures with disclaimers like "sui juris" and "Without Prejudice 1-207". But, so far as I know, few have understood (and thus been able to argue) that the significance of the disclaimer is to specify the "*purpose*" under which each legal personality is formed. OK, so you wrote "sui juris" next to your signature. But what will you say if they judge asks what you meant? What was your *purpose* in writing "sui juris"? Was it superstitious attempt to ward off the government much like using a Cross is rumored to ward off vampires?

Or can you specifically explain that your purpose in writing "sui juris" was to establish your purpose for whatever relationship flows from that signature and thus qualify and restrict the resulting legal personality? If you can't specifically explain why you did something (your *purpose*), then your act will probably have no legal effect as a defense against government jurisdiction and regulation.

PP Say *whaaat?* I usually interpret that kind of mumbo-jumbo as evidence that the author is writing to conceal rather than reveal. Whatever the author meant, it's beyond me. If you can deduce his meaning, let me know.

QQ Here, the author tells us that a single name (like "ALFRED") can have any number of legal personalities. However, the fact that "ALFRED" has the capacity to have several legal personalities does not mean that "ALFRED" necessarily has *all* legal personalities or even any particular legal personality. The question is one of *purpose*. If the person acting as or for "ALFRED" does not share a common purpose with another particular person, that person cannot invoke a court of equity to enforce the rights and duties of that a non-existant legal relationship, legal personality and status as party to the case. "ALFRED" the driver is not "ALFRED" the bank customer or "ALFRED" the Social Security beneficiary. Different purposes create different legal personalities and resultant duties and liabilities. Your name seems generally unimportant. Your *purpose* (and perhaps that of the legislature when it passed various laws), however, appears to be the crucial, determinative factor.

RR Here "merit" seems to imply a case-by-case determination of each legal personality's "purpose". To paraphrase Johnny Cochran, "If the purpose don't fit, you must acquit." Beyond that, the legal personality of a defendant is probably always presumed based on the plaintiff's initial claim. If the defendant fails to expressly deny that "legal personality" and especially its underlying *purpose*, I suspect that the court will assume automatic "in personam" jurisdiction over the defendant. Essentially, when the plaintiff files his case, he implicitly claims he and the defendant shared a common "purpose"/relationship and that the resulting "legal personality" makes the defendant a "party" to the case. Unless the defendant expressly denies that underlying purpose and alleged legal relationship, he's probably caught in the court's jurisdiction.

adapted itself to the inevitability of the deductive process suggests that not infrequently there is something more compelling than the major premise back of the phraseology of the opinions or between the lines, which demands a workable conclusion.[53] **PP**

It is not the part of legal personality to dictate conclusions. To insist that because it has been decided that a corporation is a legal person for *some* purposes it must therefore be a legal person for *all* purposes, or to insist that because it has been decided that a partnership is not a legal person for *some* purposes it cannot therefore be so for *any* purposes, is to make of both corporate personality and partnership impersonality a master rather than a servant, and to decide legal questions on irrelevant considerations without inquiry into their merits.[54] Issues do not properly turn upon a *name*. **QQ**

Kynge had the right idea, when, in 1293, in answer to Spigurnel's objection that his client was not a cousin, so as to sue out a writ of cosinage, he urged that, since there was no other remedy available to him, a man's great-great-grandfather was his cousin *for that purpose*.[55] If the court had followed this reasoning, we may doubt whether even Kynge would have thought the decision an authority on which to fix degrees of consanguinity for other purposes.

A Brooklyn traffic court last summer decided that a hearse is a pleasure vehicle. The issue was whether hearses should drive in a traffic lane assigned to pleasure vehicles or in another traffic lane assigned to trucks and other commercial vehicles. The propriety of the decision, I take it, is unquestioned. But if some later court, on the authority of that case, should apply to hearses a Sunday law against driving pleasure vehicles on the Sabbath, the decision would be neither good logic nor good sense.

Whether a corporation, or a partnership, or other unincorporated association is to be treated as a legal person in a particular respect [for a particular *purpose*], is improperly decided unless decided on its own merits. **RR** That it [a corporation] is so regarded [as a legal person] in other respects [for other *purposes*], though

perhaps relevant, is certainly not conclusive.[SS] Cases accumulate in which the courts have recognized a partnership entity,[56] and at the same time cases also accumulate in which the courts look behind the corporate veil.[57] Thus it is that the utility of the concept breaks down the partnership dogma, while, on the other hand, the abuse of the concept exposes limitations on the corporate dogma.[58] Legal personality is a good servant, but it may be a bad master.[59] [TT]

[1] This paper was read before the Round Table on Business Associations at the meeting of the Association of American Law Schools at Chicago in December, 1926.

[2] GRAY, THE NATURE AND SOURCES OF THE LAW (2d ed. 1921) 27; SALMOND, JURISPRUDENCE (5th ed. 1916) 272; HOLLAND, JURISPRUDENCE (9th ed. 1900) 88; POLLOCK, A FIRST BOOK OF JURISPRUDENCE (1928) 114.

[3] Corbin, *Legal Analysis and Terminology* (1919) 29 YALE LAW JOURNAL 163; *ibid., Jural Relations and Their Classification* (1921) 30 YALE LAW JOURNAL 226; HOLMES, COLLECTED LEGAL PAPERS (1921). 167 *et seq.*

[4] SALMOND, *op. cit. supra* note 2, at 272; HOLLAND, *op. cit. supra* note 2, at 88, 91; *cf.* Geldart, *Legal Personality* (1911) 27 L. Q. REv. 90, 95.

[5] *Op. cit. supra* note 2, at 25, 26.

[6] *Ibid.* 28.

[7] *op. cit. supra* note 2, at 273.

[8] *Ibid.*

[9] Pramatha Nath Mullick v. Pradyumna Kumar Mullick, L. R. 52 I. A. 245 (1925); see Comment (1925) 41 L. Q. Rev. 419.

[10] Maitland, quoted by Geldart, *op. cit. supra* note 4, at 93.

[11] Justice Brown in Tucker v. Alexandroff, 183 U. 5. 424, 438, 22 Sup. Ct. 195, 201 (1902), cited by Justice McKenna in The Western Maid, 257 U. 5. 419, 436, 42 Sup. Ct. 159, 162 (1922).

[12] "Much of the difficulty, as regards legal terminology, arises from the fact that many of our words were originally applicable only to physical things; so that their use in connection with legal relations is, strictly speaking, figurative, or fictional." HOHFELD, FUNDAMENTAL LEGAL CONCEPTIONS (1923)· 30.

[SS] I've understood for some time that "Alfred Adask" and "ALFRED N. ADASK" are two different entities. Until now, however, I had not understood that "ALFRED N. ADASK" (the driver) is a different legal personality from "ALFRED N. ADASK" (the voter). Thus, if I'm charged with a traffic offence, it may be futile to deny that I am or represent "ALFRED N. ADASK" because—even I don't do so as a "driver"—I still do as a voter or bank customer, etc.. I have engaged (and continue to do so) in so many legal relationships (banking, voting, driving, SS, utilities, credit cards, rent, military, etc.) under the name "ALFRED N. ADASK" that it's virtually impossible to somehow renounce (or even recall) all of those legal relationships. I'd bet that if a court can find *any* instance wherein I've acted in a legal personality called "ALFRED N. ADASK," the court would dismiss as a lie any attempt by me to issue a blanket denial of my use of *all* legal personalities using that name. Thus, if I've *ever* used a legal personality named "ALFRED," the court may presume that I have again used that name in another legal personality that is the subject of litigation in his court.

The question, however, is not whether I have ever acted in a legal personality called "ALFRED N. ADASK," but whether I did so in this instance and for this specific, common purpose implicitly alleged by the plaintiff. Thus, when someone tries to subpoena me in the name (legal personality) of "ALFRED N. ADASK," my most effective response may not be "Who wants to know" or "That's not my proper name"—but rather, "For what purpose?"

Sure, I may use the name "ALFRED" for a dozen different purposes and thus for a dozen different legal personalities. But in *which* legal personality (purpose) are you addressing me? Further, if you're addressing me for a purpose which I do not currently embrace, then—while I sometimes use the legal personality "ALFRED N. ADASK" as driver, or sometimes as voter or sometimes as bank customer—I am NOT the legal personality "ALFRED N. ADASK" for the purpose of your inquiry, summons, or allegation. Therefore, I'm not party to your case. So please, buzz off.

[MM] Indeed. Since this article was written in 1928, we seem to have advanced a long way down the road of "legal personality". And if this doctrine lies as close to the heart of modern "law" as I suspect, it has helped strip us of our unalienable Rights and thereby become a truly wicked master.

[13] It would be interesting to speculate whether the application to contracts of terms of biology and horticulture, such, for example, as "ripen" and "mature," had anything to do with judicial aversion to the doctrine of anticipatory breach!

[14] For significance of habit in shaping legal institutions, see Moore, *Rational Basis of Legal Institutions* (1923) 23 COL. L. REV. 609.

[15] For other and similar "fictions," see GRAY, *op. cit. supra* note 2, at 30.

[16] This purely functional justification of the personality of a ship is only suggestive, of course, and does not profess to be historical. Justice Holmes finds its history in the primitive notion which gave life to things that moved; but thinks its survival may be due to its utility. HOLMES, THE COMMON LAW (1881) 28.

[17] The shareholder "is the least interesting, the least momentous fact in corporate life, as an individual after he has entered the corporate sphere." Deiser, *The Juristic Person* (1909) 57 U. PA. L. REv. 300, 801; see also, Vinogradoff, *Juridical Persons* (1924) 24 COL. L. REV. 594, 595.

[18] "The germ of the corporate idea lies merely in a mode of thought; in thinking of several as a group, as one." Raymond, *The Genesis of the Corporation* (1905). 19 HARV. L. REV. 350

[19] "This concept of the oneness of personality is bound up in our concept of a man. The trustee and the same man conducting his private business has one and the same personality . . . The law may take the position that one person in fact can have but one legal personality, or that he may have many . . . The legal theory that a man is one legal person . . . has this in its favor—the theory corresponds to the facts." Lewis, *The Uniform Partnership Act—A Reply to Mr. Crane's Criticism* (1915) 29 HARV. L. REV. 158, 161. [Thus, the way to establish that you are not a legal personality may be to introduce sufficient "facts" into evidence to prove that the artificial "legal personality" cannot possibly be you.]

"When a man Is executor, administrator, trustee, bailee, or agent, we do not feel it necessary to speak of corporateness or artificial personality." 3 MAITLAND, COLLECTED PAPERS (1911) 242. [But even though unspoken, Maitland implies that such artificial personalities are still presumed to exist.]

"A human being Is, in the nature of things, a unit. A philosopher might entertain a doubt upon this,—*homo* might seem to him merely a convenient word to designate a large number of molecules. But the *common law* judges seem never to have doubted." warren, *Collateral Attack on Incorporation* (1908) 21 HARV. L. REV. 305. For a recognition and treatment of this phenomenon as a distinctive feature of the subject of legal personality, see SALMOND, *op. cit. supra* note 2, at 278. "Every contract, debt, obligation, or assignment requires two persons; but *those two persons may be the same human being*." *Ibid.*

[20] 3 MAITLAND, *op. cit. supra* note 19, at 243. "A queer creature that is always turning out to be a mere mortal man just when we have need of an immortal person." 3 *ibid.* 280.

[21] Smith's Estate, 144 Pa. 428, 22 Atl. 916 (1891).

[22] Farney v. Hauser, 109 Kan. 75, 198 Pac. 178 (1921); Huffman Farm Co. v. Rush, 173 Pa. 264, 33 Atl. 1013 (1895) .

[23] Williams v. Cobb, 242 U. 5. 307, 37 Sup. Ct. 115 (1915).

[24] 1 HISTORY OF ENGLISH LAW (2d ed. 1899) 493.

[25] For another case illustrating the same sort of confusion, see *ibid.* 492.

[26] For example, in Bank of Syracuse v. Hollister, 17 N. Y. 45 (1858), S, acting as agent for the holder of a check, in contemplation of law, demanded payment of himself as teller of the bank on which it was drawn.

Acting as teller, he refused to pay himself as agent for the holder, because the drawer had no funds in the bank. Then, as teller, he handed the check back to himself as agent for the holder and as agent for the holder he returned it to himself as notary public to have it protested for non-payment. After he had protested it as notary, he delivered it back to himself as agent for the holder and, thereupon, in that capacity, turned it over to his principal, the owner. Such multiplicity we take as a matter of course.

[27] MECHEM, ELEMENTS OF PARTNERSHIP (2d ed. 1920). § 199.

[28] Thompson v. Young, 90 Md. 72, 44 Atl. 1037 (1899) .

[29] Evans v. Gore, 253 U. 5. 245, 40 Sup. Ct. 550 (1920) .

[30] "In recognizing the possibility of one man having, as we should say, two capacities, a natural and a politic or official capacity, the law made an important step; these are signs that it was not easily made." 1 POLLOCK & MAITLAND, *op. cit. supra* note 24, at 506.

whether the profession wishes to regard this as a problem in legal personality or not, the phenomenon has long been common property. In Iolanthe," one of Gilbert and Sullivan's comic operas, the old Lord Chancellor, who has fallen in love with his rich and beautiful young ward, faces with trepidation the dilemma which confronts him by reason of the numerous capacities in which he has to deal with the situation. "Can the Lord Chancellor," he asks, "give his own consent to his own marriage with his own ward? Can he marry his own ward without his own consent? And if he marries his own ward without his consent, can he commit himself for contempt of his own court? Can he appear by counsel before himself to move for arrest of his own judgment? Ah, my lords, it is indeed painful to have to sit upon a woolsack which is studded with such thorns as these."

[31] "It is *personality*, not human nature, that is *fictitiously* attributed by the law to bodies corporate." SALMOND, *op. cit. supra* note 2, at 272.

[32] *Supra* notes 4, 5.

[33] *Supra* notes 6, 7.

[34] Geldart, *op. cit. supra* note 4, at 97.

[35] Brown, *The Personality of the Corporation and the State* (1905) 21 L. Q. Rev. 365, 866.

[36] West & Co. v. The Valley Bank, 6 Ohio St. 169 (1856); Second Nat'l Bank of Oswego v. Burt, 93 N. Y. 233 (1883) .

[37] "In every group of men acting together for a common purpose, the common *purpose* inevitably begets a common spirit which is real, though it may be vague and indefinite to us because our vision is limited, or because the group is in the making. The group becomes, or tends to become, a unit, and as Bluntschli so well said, a mere sum of individuals as such can no more become a unit than a heap of sand can become a statute. So a symphony is something more than a mere concurrence of sounds and a cathedral than so much stone and mortar. . . The group is not an organism (natural), and numberless difficulties have to be overcome when the group mind seeks realization in the external world . . . The difficulties will be overcome somehow, though possibly the group may never pass beyond the state when action of the whole is only possible by combined action of each of the parts." Brown, *op. cit. supra* note 35, at 368, 369.

[38] For discussions by "realists" see: GIERKE, POLITICAL THEORIES OF THE MIDDLE AGES (1900), Maitland's Introduction; Geldart, *loc. cit. supra* note 4; Laski, *The Personality of Associations* (1916) 29 HARV. L. REV. 404; chapter on "Moral Personality and Legal Personality" 3 MAITLAND, *op. cit. supra* note 19.

"Much disinclined though he may be to allow the group a real will of its own, just as really real as the will of a man, still he has to admit that if

n men unite themselves in an organized body, jurisprudence, unless it wishes to pulverize the group, must see n plus1 persons. And that for the lawyer should I think be enough . . . A fiction that we needs must feign is somehow or another very like the simple truth." *Ibid.* 316.

For discussions by non-realists, see: FREUND, THE LEGAL NATURE OF CORPORATIONS (1896); Cohen, *Communal Ghosts and other Perils in Social Philosophy* (1919) 16 JOURNAL OF PHILOSOPHY, PSYCHOLOGY, AND SCIENTIFIC METHOD 673. The latter writer would be tempted "to conclude that the quarrel between those who believe in the reality of corporate personality and those who believe it is fictional is a quarrel over words," were it not that "no question of this sort can be *merely* verbal, because words are most potent influences in determining thought as well as action." *Ibid.* 681. If, by the reality of group personality, it is meant that group persons "have all the characteristics of those we ordinarily call persons," Mr. Cohen thinks that "we are dealing with the kind of a statement which is believed because it is absurd." *Ibid.* 680.

"Whether the corporation is a fictitious entity, or whether it is a real entity, with no real will, or whether, according to Gierke's theory, it is a real entity with a real will, seems to be a matter of no practical importance or interest. On either theory the duties *imposed by the state* are the same. GRAY, *op. cit. supra* note 2, at 55. That a corporation is only a bundle of working rules, see COMMONS, LEGAL FOUNDATIONS OF CAPITALISM (1924) c. 4.

The difficulty is that we conceive of a corporation as something ultimate, or absolute and fundamental and so attempt to define it. The limit of any useful definition is only a certain aspect or for a particular purpose. "At one time it (the corporation) appears to be an *association* of persons, at another time *a person;* at one time it is an independent existence separate from its members, at another, a dummy concealing the acts of its stockholders. At one time it is a fiction existing only in contemplation of law and limited strictly to the powers granted in the act that created it; at another it is a set of transactions giving rise to obligations not authorized expressly by the charter, but read into it by operation of law." *Ibid.* 291.

This paper is interested in the corporation as a functional aspect of an organized group of which *legal rights and duties* are predicated. Other aspects of the corporation may be just as important for other purposes, but they are strangers to its *legal personality*.

[39] The possibilities for discussion are suggested by Mr. Kocourek's distinctions. According to him, corporate personality is not a fiction but a fact. But neither, says he, is it real, nor is it either natural or artificial. Rather, it is a conceptual fact. Kocourek, *Review of Hohfeld, Fundamental Legal Conceptions* (1928), (1924) 18 ILL. L. REV. 281. *et seq.* To our mind, Mr. Kocourek's is a discriminating treatment, and yet, without further definition, a conceptual fact may as well be a fiction for lack of correspondence to an objective world. For some purposes this would satisfy the definition of a fiction.

[40] "The legal personality of the so-called natural person is as *artificial* as is that of the thing or group which is personified. In both cases the character or attribute of personality is but a *creation of the jurist's mind*—a mere conception which he finds it useful to employ in order to give logical coherence to *his* thought." WILLOUGHBY, THE FUNDAMENTAL CONCEPTS OF PUBLIC LAW (1924). 84.

[41] HOHFELD, *op. cit. supra* note 12, at 23—64; HEARN, LEGAL RIGHTS AND DUTIES (1883) 186.

[42] Dewey, *The Historic Background of Corporate Legal Personality* (1926) 35 YALE LAW JOURNAL 655; Raymond, *op. cit. supra* note 18, at 362; 3 MAITLAND, *op. cit. supra* note 19, at 308 *et seq.;* Geldart; *loc. cit. supra* note 4; 1 POLLOCK & MAITLAND, *op. cit. supra* note 24, at 502.

[43] 3 MAITLAND, *op. cit. supra* note 19, at 389. "The sovereign act was *not creation, but permission*." Raymond, *op. cit. supra* note 18, at 363; Warren, *loc. cit. supra* note 19; *ibid. De Facto Corporations* (1907) 20 HARV. L. REV. 456; Deiser, *op. cit. supra* note 17, at 304.

[44] Donnell v. Safe Co., 208 U. 5. 267, 273, 28 Sup. Ct. 288, 289 (1908) .

[45] "The extent to which a group is treated as one by those dealing with it depends entirely on the demands of practical convenience." Raymond, *op. cit. supra* note 18, at 352.

"There is therefore nothing in the nature of things which prevents a court from recognizing as a legal unit a body of persons unauthorized by the sovereign to act as a unit, but in fact acting as a unit." Warren, *op. cit. supra* note 19, at 309.

[Thus, a court can "recognize" a corporate "personality" even though an entity (like one or more men) is not, in fact, incorporated. The determining factor is not their corporate charter, but their conduct, their *actions*.]

"If the law allows men to form permanently organized groups, those groups will be for common opinion right-and-duty-bearing units; and if the law-giver will not openly treat them as such, he will misrepresent, or, as the French say, he will 'denature' the facts; in other words, he will make a mess and call it law." 3 MAITLAND, op. cit. supra note 19, at 314.

[46] HOHFELD, *op. cit. supra* note 12, at 75, 76, 198, 199, 200 and notes.

"The only entities who can really be invested with rights are natural persons." Baty, *The Rights of Ideas—And of Corporations* (1920) 33 HARV. L. REV. 858, 360.

"All rights reside in, and all duties are incumbent upon, physical or natural persons." AUSTIN, JURISPRUDENCE (5th ed. 1885) 354, quoted by HOHFELD, *op. cit. supra* at 200.

"There are not two kinds of persons. There is but one, and the law makes its enactments only for men. Deiser, *op. cit. supra* note 17, at 231.

[47] "It is beside the question that ultimate rights reside In the individuals. That question may well rest until we have to deal with the individual." Deiser, *op. cit. supra* note 17, at 234.

"Rights must at times be administered without reference to this ultimate holder—that is, without reference to the person, who may in the end derive the benefit of them." *Ibid.* 300.

It is submitted that these are more discriminating than the statements quoted in the preceding note. So is the statement that: "Every right belongs to a legal *unit* or *units;* every obligation binds a legal *unit* or *units."* Warren, *op. cit. supra* note 19, at 305.

That the personality of a corporation is only a "shorthand expression," or a mere "figment," "for the sake of brevity in discourse," does not distinguish the corporate legal personality from the legal personality of a human being. To say that X, a human being, has a right against *Y,* is merely a shorthand way of predicting that in certain contingencies governmental agencies will bring some one of a variety of sorts of pressure to bear on *Y* to make him act or forbear in certain particulars in X's favor. See Corbin, *op. cit. supra* note 3, at 164.

[I disagree. This comment ignores the rights given by God, but unenforced by governments. If the sole criteria for the existence of rights is whether a government will enforce them, then government, not God, is

the sovereign. God-given Rights exist; governments may choose not to enforce them, but they do so at their peril.]

[48] *Op. cit. supra* note 42, at 661.

[49] BURDICK, PARTNERSHIP (3d ed. 1917) 83.

[50] (1926) 5 TEX. L. REV. 77, 78, 79.

[51] "It is unfortunate that the word Person, as a technical term, should have found lodgment in jurisprudence, for the idea connoted by it is quite. distinct from the meaning attached to it by the moralist or psychologist, and, the difference not being steadily kept in mind, much confusion of thought has resulted." WILLOUGHBY, *op. cit. supra* note 40, at 31, 32.

"The power of words is such that, this word person once launched into circulation, has attached to it an absolute value." Deiser, *op. cit. supra* note 17, at 231.

"There is a danger of being led by a technical definition to apply a certain name, and then to deduce consequences which have no relation to the grounds on which the name was applied." Justice Holmes in *Guy v. Donald*, 203 U. S. 399, 406, 27 Sup. Ct. 63, 64 (1906) .

[52] One writer makes the fateful statement that "whatever deductions may be made from the theorem (of corporate personality), what corollaries may be said to flow from it, must inevitably be made," a statement hardly to be reconciled with the same writer's treatment of the theorem as a "working principle." Deiser, op. cit. supra note 17, at 307, 308.

[53] The Continental Tyre and Rubber Co. v. Daimler Co. [1915] 1 K. B. 893, [1916] 2 A. C. 307, is a happy illustration. The plaintiff in that case, suing in an English court on contract for a debt, was a corporation chartered under English law and doing business in England. All of its directors and shareholders, however, were Germans living in Germany, except the secretary who was a naturalized Englishman, formerly German, who held one share. The case was tried during the world war and the question arose whether the company was English or German within the meaning of the Enemy Trading Act. In the Court of Appeal the corporate personality prevailed, so that the enemy character of the directors and share-holders had no effect either upon the character of the firm or upon its power to sue. In the House of Lords, Lord Halsbury, disagreeing with the conclusion, had to rely on a different principle. He chose for his purpose that which makes lawful means unlawful if used for unlawful ends. [purposes] Lord Parmoor agreed with Lord Haisbury's conclusion, but as a deductive logician he displayed greater astuteness and finesse in getting the desired result without going back on the corporate entity. Like a Daniel come to judgment, he decided what he called the principle issue for the plaintiff, namely, that it was an English company despite the enemy character of its directors; but, even so, it was helpless to appoint a solicitor to represent It in litigation without the act of the Germans, so that it could not sue. "The pound of flesh is yours, but be careful of the blood!"

Having regard to the logical method exemplified in passages of these opinions, may we not yet hope to learn how many angels can sit on the point of a needle? But it would be unfair to judge the court by its method. In occasional passages the real reasons become articulate. For example, in Lord Justice Bulkley's observation that, "If the personality of the corporators can for no purpose be regarded, there is nothing to prevent alien enemies from owning and sailing British ships under the British flag," ([1915] 1 K. B. 918), or in Lord Halsbury's objection that, "It seems to me too monstrous to suppose that . . . enemies of the State, while actually at war with us, be allowed to continue trading and actually

to sue for their profits in trade in an English court of justice." [1916] 2 A. C. 316. Having regard to such passages, as well as to the conclusion finally reached, we may take comfort in the suggestion that the inevitability of a major premise is perhaps not so inevitable after all.

But the corporation is sometimes more insistent on its personality, as, for example, in People's Pleasure Park Co. v. Rohleder, 109 Va. 439, 61 S.E. 794 (1908), where a sale of lands to a *corporation* composed entirely of negroes, to be used as a recreation ground for negroes, was held not to violate a "condition" that the title should never vest in "persons of African descent."

That there is nothing ultimate or absolute in the personality of the corporation is evident from decisions holding the same corporation to be a legal person in one litigation and for one purpose, Sloan Shipyards Corporation v. Emergency Fleet Corporation, 258 U. 5. 549, 42 Sup. Ct. 386 (1921); and not a legal person in another litigation for another purpose. United States v. Walter, 263 U. 5. 15, 44 Sup. Ct. 10 (1923). [Again, we see that if you can deny that you are have a legal personality for the "purpose" of the plaintiff's claim, you can seemingly deny being a party to the suit.]

That the same is true of the impersonality of unincorporated associations is attested by decisions holding the same joint stock company to be a legal person for the purpose of being prosecuted under a criminal law, United States v. Adams Express Co., 199 Fed. 821 (W. D. N. Y. 1912); and not a legal person for the purpose of getting into the federal courts on diversity of citizenship, Rountree v. Adams Express Co., 165 Fed. 152 (C. C. A. 8th, 1908); and again, to be a legal person for being served with process, Adams Express Co. v. State, 55 Ohio 69, 44 N. E. 506 (1896). See (1926) 36 YALE LAW JOURNAL 254 *et seq.*

As courts of law are not consistent in decrying the personality of the firm, so courts of equity are not consistent in admitting it. The very same court will at one time deal with the firm as a person, and at another time assert that it is not an entity. Brannan, *The Separate Estates of Non-Bankrupt Partners in the Bankruptcy of a Partnership* (1907) 20 HARV. L. REV. 589.

[54] The position of the chairman of the committee that drafted the Uniform Partnership Act, that a legal fiction (or postulate) should not be permitted to shut off an examination of the merits of an issue is, it is believed, eminently sound. Lewis, *op. cit. supra* note 19, at 297.

[55] Y. B. 20 & 21 Edw. I, 154.

[56] Crane, *The Uniform Partnership Act, A Criticism* (1915) 28 HARV. L. REV. 762; Cowles, *The Firm as a Legal Person* (1903) 57 CENT. L. J. 343.

[57] (1926) 36 YALE LAW JOURNAL 254; (1926) 5 TEX. L. REV. 77; (1926) 10 MINN. L. REV. 598.

[58] *Persona Ficta* has repaid the hospitality of the law . . . by making the legal household permanently uncomfortable." Deiser, *op. cit. supra* note 17, at 131. If this is true, it has been unnecessarily so.

[59] Without committing him to anything that appears therein, the writer wishes to acknowledge his very great indebtedness to Prof. Walter Wheeler Cook, on whose major ideas of jurisprudence he has drawn freely in the foregoing discussion.