

Legal persons are not persons!

In looking at ethics and artificial intelligence, Ben Kuipers has pointed out that corporations (firms, government agencies) are cognitive agents and that we should be concerned about their behavior.

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Ben Kuipers was early to address the question of ethics in the application of Artificial Intelligence; by now the topic is in every daily newspaper, usually without anything substantive being said.

In a 2012 contribution, he made a surprising and, in my opinion, more far-reaching approach,¹ namely the consideration that *corporations* (companies, government agencies, and similar organizations) are *intelligent agents*. Millions of them already populate the earth and coexist with us humans there.

He thinks that we should focus our attention more on these intelligent agents and their ethical behavior instead of speculations about future agents controlled by artificial intelligence.

¹ [kuipers2012existing](#).

Rational Agents

Rational Agents

A central contribution of computer science is the definition of an intelligent or *rational agent*; usually cited is the definition by Russel and Norvic:² An *agent* is

Anything that can be viewed as perceiving its environment through sensors and acting upon that environment through actuators,

and a *rational agent*:

An agent that acts so as to maximize the expected value of a performance measure based on past experience and knowledge.

These definitions avoid a reference to human intelligence³ and is extremely fruitful⁴.

Rationality here must be understood in Simon's sense as *bounded rationality*;⁵ the agent maximizes the outcome only within the bounds of the facts known to him.

Corporations

Corporations

A corporation is a permanent association for a specific purpose of several people who may change.

In European law⁶, corporations are *legal persons*, which together with *natural persons* form the legal entities. Legal persons can be persons of civil law, which are especially companies, or of public law.⁷

Corporations are Intelligent Agents.

Kuipers states that *corporations* are rational agents, by the above definitions, and have existed since time immemorial: People join together and these associations organize themselves so that they have the characteristics of agents.⁸

In this view, the world is populated by the genus *homo* and the genus *corporation*.

The interaction of these two is to be examined below. These rational artificial agents already exist in large numbers and to study them seems to me more important than the more interesting speculations about *artificial intelligence*.

Organs of the corporation

Corporations have organs, which are people⁹ who can act for the corporation; they are the eyes, ears, and mouths of the corporation - but are not part of the corporation but are only empowered to act for the corporation. A corporation has an identity, usually a name, and

² russell2010artificial.

³ Which among other things also avoids the misunderstandings when translating English *artificial intelligence* to German *Künstliche Intelligenz*. English *intelligence* here means, arguably, information rather than intelligence (cf. the term CIA Central Intelligence Agency); the term was reportedly first used by John McCarthy in 1955 in a proposal for the U.S. Department of Defense

⁴ It was used, e.g., by Raubal as the basis of his Ph.D. thesis (Raubal2001)

⁵ Simon1956.

⁶ I use European here to differentiate the often similar legal traditions in continental Europe from the anglo-saxon ones.

⁷ In many different forms, e.g. monasteries, municipalities, universities and agencies

⁸ Prehistoric groups of hunters engaged in communal hunting were also such rational agents

⁹ Under European law, only natural persons can be organs of a corporation; thus the question does not arise whether a corporation could be controlled by AI alone

has a purpose. It has rules by which governing bodies are appointed and usually has property¹⁰.

Corporations are constructions of social reality;¹¹ they can be organized in different ways and come in many forms, some existing for many centuries¹².

Legal persons are not persons.

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Since at least Roman times, questions have been raised about the position of corporations in a legal dispute. Since at least the Middle Ages, legal acts of monasteries are known and partly foundation deeds have been handed down; corporations can therefore appear in court, can have rights and can be obliged to perform.

European legal systems generally divide legal person¹³ into legal persons¹⁴ and natural persons¹⁵. Thus there is little basis for confusion between persons and legal persons.

In the vast majority of cases, the organs of a legal person cannot be held liable for its misconduct¹⁶ and mostly they are not liable for their debts. But if an organ transgresses a law¹⁷ the person is prosecuted, not the company¹⁸.

In European law, I am not aware of a theory such as *Corporations are people* and a ruling similar to the one of by the U.S. Supreme Court. There is always a distinction between persons as such and in their capacity as an organ of the corporation.¹⁹

Decent behavior: *An Approach based on General Systems Theory.*

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I would like to avoid the philosophical ethics discourse and rather subscribe to a sociological systems theory approach²⁰, especially the work of Parson and the AGIL scheme²¹ or the thinking of Maslow.²²

Decent behavior is necessary for society as a whole to survive; *decent* is what does not harm society. This avoids discussion of ethics and morality, and leaves different views of ethics; thus also avoids imperialism by a hegemon's ethics.

Society is governed by a complex set of rules ranging from religious, ethical, and legal to *usual behavior*. These rules are social constructs²³ and as such are only valid within a *context*. It is not necessary that the rules be linguistically formulated, logically consistent, or even recorded²⁴. The rules are learned mainly by imitation²⁵, by examples that are told and probably only in a few cases explicitly explained.²⁶

Crucially, society survives in the long run with its set of rules.²⁷ In the long run, cultures with rule systems that were more effective seem to have prevailed over others. Rule systems were developed incrementally over a long time and are difficult to analyze because of complex externalities that are not easily detectable.

¹⁰ E.g., a monastery with contents and associated land
Searle1995.

¹² E.g. the Catholic Church, monasteries

¹³ French *personnalité juridique*

¹⁴ French *personne morale*

¹⁵ French *personne physique*

¹⁶ Under German law, however, they are liable if their actions are *immoral*. § 826 BGB

¹⁷ Driving too fast in a company car, falsifying a document.

¹⁸ Companies therefore seek to spread responsibility so that no organ can be directly prosecuted, although obviously serious mistakes were made; e.g. collapse of the highway bridge in Genoa

¹⁹ A corporation has trade secrets but no privacy; at most, the corporation can defend the privacy of its employees against video recordings by the landlord of its premises. ÖHG Decision.

²⁰ https://de.wikipedia.org/wiki/Soziologische_Systemtheorie

²¹ <https://de.wikipedia.org/wiki/AGIL-Schema>

²² maslow1968toward.

²³ Searle1995.

²⁴ For some areas of life, e.g., trade, however, of great advantage; the Roman or British empires may have achieved their success not the least through the systematic development of a legal system.

²⁵ Similar to a natural language.

²⁶ Fairy tales, sagas, comics, movies and literature gives examples of decent behavior and thus transmits social norms

²⁷ North1981; North1997; gibbon1788history.

By the way: Can a legal person have ethics?

I assume that ethical behavior of human beings is based on emotions and empathy. Since legal persons²⁸ do not have emotions and empathy, they are not capable of ethical behavior. Ethical behavior of legal persons must be enforced by rules.

These rules must affect the assets of the legal person or its continued existence²⁹; organs of the legal person, natural persons, can be threatened with penalties³⁰.

Aside: Ethics as a philosophical discipline

Ethics as a philosophical discipline deals with the evaluation of human actions; it establishes.

the criteria for good and bad action and for the evaluation of its motives and consequences.

However, ethics can only establish general principles and norms of good action or ethical judgment in general, or value preference judgments for certain types of problem situations. The situation-specific application of these principles to new situations and situations in life cannot be afforded by them.³¹

Modern approaches attempt to break away from religiously based notions and find a rationale for *good* action independent of ideological views. The search has not come much further after more than 2000 years and probably cannot be successful without presuppositions.

The rules of decent behavior

The rules of *decent behavior*

The manifold rules how a *good citizen* has to behave are context dependent. They must be *simple* in their principles, so that they can be understood by all and transgressions can be recognized by all and sanctioned if necessary.³² The rules societies have grown up with are simple:

- Thou shalt not kill.
- Thou shalt not lie.
- Thou shalt not covet another's wife/good.
- *pacta sunt servanda*.
- Give to Caesar what is Caesar's (means: pay your taxes).
- Do not take advantage of the weakness of the other but help him.
- Covert, concerted behavior (such as a gang of robbers, a cartel) or forming a monopoly is frowned upon.

The misunderstood Tragedy of the Commons.

The misunderstood *Tragedy of the Commons*.

If *decent behavior* is defined as behavior that does not harm society, society can be seen as the commons, a common good that is used by all and to which something is contributed by all.

²⁸ And other artificial agents

²⁹ By dissolving the legal person

³⁰ By punishing, for example, errors in tax returns as forgery or *perjury* (English: perjury) of the person who signed the document

³¹ <https://de.wikipedia.org/wiki/Ethik>

³² The often heard claim that complex ethical rules are necessary for the complex world is wrong according to empirical studies (**ostrom1990governing**)

The widely misunderstood discussion of the (*unregulated*) *tragedy of the commons* has, out of enthusiasm for free-market theory, overlooked the fact that commons have functioned in many parts of the world for centuries³³ without the dreaded overuse.³⁴

Ostrom³⁵ has studied functioning commons and their regulatives, and advised on the construction of new commons.³⁶ She proposes rules for the governance of a commons:³⁷

1. clearly defining the group boundaries (and effective exclusion of external un-entitled parties) and the contents of the common pool resource;
2. the appropriation and provision of common resources that are adapted to local conditions;
3. collective-choice arrangements that allow most resource appropriators to participate in the decision-making process;
4. effective monitoring by monitors who are part of or accountable to the appropriators;
5. a scale of graduated sanctions for resource appropriators who violate community rules;
6. mechanisms of conflict resolution that are cheap and of easy access;
7. self-determination of the community recognized by higher-level authorities; and
8. in the case of larger common-pool resources, organization in the form of multiple layers of nested enterprises, with small local CPRs at the base level.

The tragedy of the unregulated commons is an example of the misunderstood application of game theory³⁸ to an economic problem where crucial externalities are missing. The rules governing the use of the commons introduce these externalities.

Corporations must behave like decent citizens.

Corporations must behave like *decent citizens*.

Corporations, as legal entities, are accorded rights; they must abide by the rules that apply to natural persons insofar as they apply *mutatis mutandis* to legal entities.

Some entrepreneurs, however, behave like stupid farmers who maximize the benefit from the commons for themselves and let more animals graze than is reasonable, without considering that this also ruins the commons for them: the proverbial *tragedy of the commons*.

The list of misbehaviors is long:

- The taxes necessary to make society function are avoided³⁹.
- Employees are exploited by constructing their benefits as *independent entrepreneurs*⁴⁰.
- Lying in communications with clients.
- Exploiting known weaknesses of clients.
- Taking advantage of monopolies and cartels.

³³ E.g., the management of alpine pastures in the Alps.

³⁴ [It also seems to be mostly overlooked in the theory that those entitled are obligated to provide services for the benefit of the commons]

³⁵ Elinor Ostrom received in 2009, as the first woman, the *Nobel Memorial Prize in Economic Sciences*

³⁶ E.g., the use of the aquifer below the Los Angeles metropolis, where overuse causes salt water to seep in from the sea and render the aquifer useless.

³⁷ **ostrom1990governing.**

³⁸ **Neumannvon1944.**

³⁹ Trump: that I don't pay taxes proves I'm *smart*

⁴⁰ For which the principal pays no social security taxes and the employee receives no pay for vacations and sick leave

- Not standing up for mistakes.⁴¹
- Shifting responsibility to subcontractors.⁴²

Decent behavior must be enforced by corporations through threat of punishment. However, it is usually cheaper for the corporation to reduce penalties through lobbying influence than to behave decently.⁴³

Here, European rules seem to differ from those in Anglo-Saxon countries. Worker protection, data protection, etc. is mandatory law⁴⁴ and are not based on an expectation of ethical behavior. Fines are now set as a percentage of global revenue, so they should have some effect⁴⁵.

Possible further developments:

- personal, civil and criminal responsibility of the bodies of the corporation in case of violation of rules that cannot be shifted to subcontractors⁴⁶.
- public discussion of the corporation's conduct without being able to invoke protection of a privacy⁴⁷.

Currently problematic is the behavior of mostly for-profit, commercial entities; here the legal framework needs to be changed so that there are no incentives to engage in socially harmful, i.e. unethical, behavior⁴⁸. This is equivalent to systematically preventing the benefits of externalities, i.e., actions that produce positive outcomes for the firm and shift the costs to the public.⁴⁹

It is possible that the apparent problems are due to

- an overprotection of private property⁵⁰,
- a downward competition between nation-states and similar entities⁵¹,
- nesting constructions that allow owners and responsibilities to be disguised at will.
- Subcontractors, which conceal responsibility for the proper execution of an activity and hinder the prosecution of misconduct.

Harmful, is the concentration of taxes on wages and consumption and lower tax rates for capital gain.⁵²

Market economy and its limits

Market economy and its limits

According to theory, the *invisible hand*⁵³ regulates the economy optimally. Unfortunately, the real economy rarely conforms to the theory.

Information technology creates *natural monopolies*⁵⁴ because the cost of development is extremely high, the cost of producing an additional output is extremely low.⁵⁵

The new big monopolistic IT oriented companies only very indirectly lead to Darwinian competition: when a new technology allows a big leap that the existing companies can't keep up with⁵⁶.

⁴¹ If the customer makes a mistake, the customer pays, if the company makes a mistake, it apologizes!
⁴² If possible in a long chain whose end has long since ceased to exist if liability is to be imposed

⁴³ The Koch brothers spent more on lobbyists for a few years than they paid in environmental fines; the fines were about \$100 million per year around 2000

⁴⁴ Can only be undermined by Amazon, Facebook, and the like until relevant court cases are finally decided

⁴⁵ So far, Facebook's fine is the highest at 2.4 billion euros (annual profit in 2022 23 billion euros)

⁴⁶ Corresponding rules on enforcement is already almost reached in case of employee protection

⁴⁷ "A legal entity has no privacy. Therefore, the business of a legal person cannot have a private purpose." [Law Basics](#)

⁴⁸ Must also include the distribution of profit and loss from risky decisions; too often the profit seems to accrue privately and the losses to the public; so-called *moral hazard* [wiki](#)

⁴⁹ [wiki](#)

⁵⁰ see especially ([piketty2021capital](#); [piketty2015economics](#); [piketty2013capital](#))

⁵¹ Amazing maximum ambiguous constructions, such as Isle of Man, Guernsey, Lichtenstein, Delaware, practically crying out for circumvention deals

⁵² Austria derives almost 2/3 of its revenue from income tax and social security contributions and the remaining third from consumption taxes.

⁵³ [smith1863inquiry](#).

⁵⁴ [wiki](#)

⁵⁵ Google, Apple, Microsoft, Apple, Facebook do not compete against each other and set prices according to the ability of customers to pay. The high profits point to the monopoly business!

⁵⁶ Because a company is a prisoner of its customers and also its staff ([christensen2013innovator](#))

Large parts of the economy today are government services⁵⁷, where competition is almost everywhere eliminated.⁵⁸

Contrast commercial legal entities and traditional corporations.

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Socially irresponsible actions we see demonstrated by global corporations that use services of modern societies for their purposes⁵⁹ but dispense with the necessary contribution to the costs of these facilities⁶⁰.

In traditional corporations, the members know the persons acting personally and control their behavior; the rules that Ostrom observes in cases by not overusing a commons⁶¹ are observed.⁶²

From a business point of view, companies make considerable use of the services provided by society: from the training of their employees⁶³, from the services of police and fire departments, public transport, etc. They overuse public space with a *new* business idea, for example⁶⁴.

The resulting costs to society are, from the company's point of view, *externalities*, the costs of which are difficult to measure and even more difficult to pass on.

Move fast and break things (Mark Zuckerberg).

What fell by the wayside:

- Public transit in US cities (automakers after WW 2 were buying streetcar lines and shutting them down),
- newspapers (advertising revenue siphoned off by Google),
- downtown Florence, Venice, etc. by overtourism caused by cheap flights (Rynair et al.) and Airbnb,
- cinemas.

An oxymoron: a well-regulated capitalism

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The regularly occurring banking crises⁶⁵, in which usually many lose and some gain a lot, have so far always been absorbed by government programs; afterwards, the rules for banks are tightened and promises are made that a new banking crisis has thus been made impossible. Until the next one.

Latest case: The forced takeover of *Credit Suisse* by *UBS*⁶⁶. In the 2023 crisis, government help was only used as guarantees for loans for a short period of time and the losses were borne by (smaller) capitalists; as a consequence, a large number of lawsuits are underway a few weeks later

UBS, created by the merger, is one of the largest asset managers in the world.⁶⁷ How a Swiss supervisory authority will control this huge international bank and keep it from risky, but profitable, business remains open. Profits will still be private, but it remains to be seen who will bear the losses.

⁵⁸ [niskanen1968peculiar](#).

⁵⁷ In continental Europe, the government share is usually over 50%, in the US over 40%

⁵⁹ Amazon could not operate in a country without a modern internet, legal system, functioning transportation infrastructure, etc.

⁶⁰ By transferring profit to other countries where it is hardly taxed

⁶¹ [ostrom1990governing](#).

⁶² I live temporarily in a city founded by Etruscans about 3000 years ago, which has existed in various administrative forms ever since. Houses belong to a *contrade* and the inhabitants of these still organize traditional festivals. Other social cooperatives run pub-like venues for their members. Artisans and merchants are organized in various forms as civil law firms. The rich and complex local life here still takes place in many areas outside the grasp of the globalized economy. There is frequent repair work, public administration functions, craftsmen and merchants are honest.

⁶³ Countries like the UK have been importing well-trained paramedics from third world countries for decades without paying training costs.

⁶⁴ E.g. by filling it with rentable electric scooters and leaving parking and speeding to the police to punish until the necessary restrictions are enforced by the courts; the business is apparently profitable enough that the investment is worth it for the 2 to 3 years.

⁶⁵ [wiki](#)

⁶⁶ UBS was born out of a crisis that did not break out in 1998, and was avoided by the takeover of Bankverein by Bankgesellschaft

⁶⁷ UBS manages assets for 4.16 trillion euros in 2023, much more than the balance sheet total of the Swiss National Bank almost 900 billion CHF, the entire budget of the Swiss Confederation 80 billion CHF and also slightly more than the GDP of Switzerland. Should a crisis of this bank occur, the Swiss National Bank can hardly do anything.

In case of a problem, who should bail UBS out if Switzerland is too small to do so?⁶⁸.

⁶⁸ I have hope that the super-rich who entrust their assets to UBS will sooner or later realize that it is *too big to fail* but that there is no one behind it who has an interest in avoiding collapse.