

**SUFFICIENT AFFLUENCE/SUSTAINABLE ECONOMY:
ECONOMICS FOR EVERYONE (PART SEVEN)
WHEN CORPORATIONS BECOME LIKE MENTALLY ILL CHILDREN**

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*“Full fathom five thy father lies;
Of his bones are coral made;
Those are pearls that were his eyes:
Nothing of him that doth fade
But doth suffer a sea-change
Into something rich and strange.
Sea-nymphs hourly ring his knell.”*

--William Shakespeare, Ariel's Song from *The Tempest*, Act I, Scene 2

“Off with Their Heads!”

--Lewis Carroll, *Alice in Wonderland*

During the past six months, we have been laying out some basics of Economics for the recovery of Detroit. Thus far, we have considered 1) the fundamental purpose of Economics as one of fulfilling our needs and wants, 2) the management of resources that are scarce in both time and place, 3) the division of these resources into human and non-human, 4) the delineation of human resources into wage labor and entrepreneurial work for profit, and 5) the separation of non-human resources into land, capital, and technology (Intellectual Property).

Last month, we discussed the interaction of the Federal government with the economy.

Specifically, we reviewed the structures and actions of both Monetary Policy as executed by the Federal Reserve Bank system and Fiscal Policy as carried out by the U.S. Congress. This month, we will explore the involvement of our Judicial Branch in alliance with Congress. In order for Detroit or any other metropolitan area to recover and to rebuild its economy, the behavior and regulation of large corporate employers that form the economic base of production and trade to outside regions remains crucial. However, with great size comes great responsibility to the larger community--one that extends beyond our national borders.

The present poster-child for this concern in Southeast Michigan is the “New” General Motors, which inherited major baggage from the “Old” GM. Currently, GM and its corporate officers face an ongoing investigation by Congress, the Justice Department, and commissions of our Federal government as a result of a series of deaths allegedly tied to non-disclosure and to a subsequent cover-up involving a faulty ignition-switch that was included on several models produced by the company. The possibility of the criminal prosecution of GM employees remains unclear. Legal analysts have proffered the opinion that, though it is easier to show corporate wrongdoing, it may be difficult to target specific employees. The reasoning behind this difficulty is that corporate documents, which can be used in a civil lawsuit against a company, may not be admissible as evidence in criminal cases against people.

Nevertheless, doubts about the feasibility of litigating criminal prosecution have not stopped the Justice Department from proceeding. Through its Southern District of New York office, the Department is looking into the possibility of criminal prosecution of individuals. This move raises the question of whether or not General Motors intentionally misled Federal regulators in respect to the extent of the problems. However, even if Federal prosecutors determine that they cannot prove criminal liability, they likely may pursue civil charges instead.

During a Congressional hearing on 2 April 2014, Senator Claire McCaskill (D-MO) addressed the matter of perjury by lead switch-engineer Ray DeGiorgio. McCaskill said “[DeGiorgio] lied” under oath at his deposition on 29 April 2013. The Senator cited that the engineer perjured himself about the existence of “two different ignition parts with the same numbers of which one ... is defective.” Subsequently, the Senator questioned GM CEO and respondent Mary Barra about “what investigation began after that deposition?” Barra was not forthcoming with a response that satisfied McCaskill. The CEO said, “I don’t have the complete facts to share with you today.”

Next, McCaskill motioned with a copy of the key documentation, which was hidden from the family members of those who died in crashes linked to the defective part. The clearly outraged McCaskill demanded to know the true number of cases involving this part in which this part-change document was buried. In a cutting voice directed at Barra, the Senator waved the document angrily and declared, “This is what happens in America. Corporations think that they can get away with hiding documents from litigants and that there will be no consequences. I want to make sure that there will be consequences for hiding documents because this is hiding the truth.”

Are Corporations People?

An old debate has resurfaced as to whether or not corporations are people, in terms of rights and treatment under the law. The recent discussion involves exemptions from the requirements of the Affordable Care Act using the application of First Amendment free-speech protections to corporations as established by the U.S. Supreme Court decision in the case of *Citizens United v. Federal Election Commission* in 2010 (558 U.S.310). In this case, the Supreme Court held that the First Amendment prohibits the government from restricting political independent expenditures by corporations, associations, or labor unions. The current case involves the Hobby Lobby Corporation, a group of stores selling hobby-related merchandise that is closely held by the Green family. Essentially, the case commonly known as *Sebelius v. Hobby Lobby* asserts that the Affordable Care Act requires corporations to cover contraception for their female employees; this requirement violates the religious beliefs of the Green family, who are Evangelical Christians.

In June 2013, the U.S. Court of Appeals for the 10th Circuit upheld the position of the Green family. In this decision, which was based explicitly on the logic of the First Amendment regarding the ruling on the *Citizens United* case, Judge Timothy Tymkovich summarized the holding in the opinion for the court: “We see no reason the Supreme Court would recognize constitutional protection for a corporation’s political expression but not its religious expression.” However, this case remains in play. A final ruling is expected in June 2014.

The numerous issues that this decision raises include the delineation of corporations and people, or, corporations defined as persons. Under U.S. law, corporations and humans long have had different standards of responsibility. In effect, if corporations are treated as real people, they remain free to spend money in election campaigns and to invoke their religious beliefs to deny certain kinds of health coverage to their workers. The contrasting question asks when corporations may be excused from being treated as real people in other regards.

Historically, U.S. corporations emerged as legal entities for which owners do not take personal liability for debts of the firm, even though actual persons remain liable for their own debts. Both corporations and real people maintain the ability to discharge their debts through bankruptcy proceedings. However, the conditions placed upon actual people generally are more onerous than the requirements placed upon corporations. The question arises that, if corporations are people, then should they not be subject to the same bankruptcy laws as human beings? Conversely, why are human owners not liable for corporate debt, as they are for their personal obligations? Does it not stand to reason that, if corporations are given the freedoms enjoyed by actual persons, then should these corporations not be subject to the same restrictions and obligations as human beings?

Corporate Personhood

The legal/economic concept of corporate personhood pivots on the point that the law may recognize a corporation as an individual person. This forms the doctrine that supports the legal recognition of corporations as groups of people. However, this doctrine does not hold that corporations are human beings apart from their shareholders, officers, and directors. Neither does the doctrine grant corporations all the rights of citizens.

The concept of corporate personhood is not new. It appeared three decades after the adoption of the United States Constitution. As early as 1819, the U.S. Supreme Court recognized corporations as having the same rights to contract and to enforce contracts as natural persons (*Trustees of Dartmouth College v. Woodward* – 17 U.S. 518). However, the foundation for the current discussion dates from a judicial opinion stated in 1886. The case of *Santa Clara County v. Southern Pacific Railroad* (118 U.S. 394), which dealt with the taxation of railroads, began that year. The new California State Constitution denied the rights of railroads to deduct the amount of their mortgage debts from the taxable value of their property, a right that was given to individuals. The reporter in *The Official Court Syllabus in the United States* noted that Chief Justice Morrison R. Waite began his oral argument by stating, “The court does not wish to hear argument on the question whether the provision in the Fourteenth Amendment to the Constitution, which forbids a State to deny to any person within its jurisdiction the equal protection of the laws, applies to these corporations. We are all of the opinion that it does.” Though this case was brought before the Supreme Court, it was not decided by the Court. However, the Court affirmed Waite’s opinion two years later. In *Pembina Consolidated Silver Mining Co. v. Pennsylvania* (125 U.S. 181, 1888), the Court stated, “Under the designation of ‘person’ there is no doubt that a private corporation is included [in the Fourteenth Amendment].”

The Fourteenth Amendment

As one of the post-Civil War Reconstruction Amendments, Amendment XIV to the U.S. Constitution was adopted on 9 July 1868. This bitterly contested amendment, which deals with the rights of citizenship and equal protection under the law, addressed issues related to former slaves. The key element of the Amendment, known as the Citizenship Clause, was authored by Senator Jacob M. Howard of Detroit, Michigan. Due to this clause, the Amendment overruled the Dred Scott Decision made by the Supreme Court; this Decision stated that a black person was neither a citizen nor could gain citizenship and its benefits.

As in the cases from 1886 and 1888, the Supreme Court has reaffirmed this doctrine many times in respect to corporations. The Court has stated that these companies exist merely as associations of individuals who unite for a special purpose, are permitted to do business under a particular name, and may have a succession of members without dissolution. This is the foundation for the concept of corporate personhood, a concept that still is contested through the present day.

The Corporation as a Person

Joel Bakan, a professor of Law at the University of British Columbia, authored an unpublished manuscript on the pathological behavior of corporations. Based on his manuscript, Bakan, Mark Achbar, and Harold Crooks wrote the screenplay for the well-known, controversial documentary film *The Corporation* (directed by Mark Achbar and Jennifer Abbott, Big Picture Media Corporation, 2003). Bakan considers the modern-day corporation as a legal person that is subject to psychoanalysis in a way that is similar to human beings. He contends that the modern corporation often exhibits some or all of the characteristics of a psychopath/sociopath when assessed with the personality-diagnostic checklist that is used by the World Health Organization (WHO). The six characteristics considered include 1) callous unconcern for the feeling of others; 2) incapacity to maintain enduring relationships; 3) reckless disregard for the safety of others; 4) deceitfulness, in the form of repeated lying and conning others for profit; 5) incapacity to experience guilt; and 6) failure to conform to social norms with respect to lawful behaviors. After the release of the film, Bakan published a nonfiction title, *The Corporation: The Pathological Pursuit of Profit and Power* (Free Press, 2005), which complements it.

In *The Corporation*, Dr. Robert D. Hare, Ph.D., a Canadian researcher in the field of Criminal Psychology, narrates onscreen during the analysis of corporate behavior. Hare developed the checklist used by the World Health Organization to which Bakan refers in the film. This checklist is known as the Hare Psychopathy Checklist (PCL) Hare developed his checklist based on the work of Hervey M. Cleckley, an American psychiatrist and pioneer in the field of Psychopathy, from the 1940s. In addition, Hare drew on criminological concepts put forth by contemporary American sociologists/criminologists William and Joan McCord and others as well as from his own research on criminals and incarcerated offenders in Canada. Though there are numerous criticisms of the PCL as a theoretical tool and in real-world usage, it is widely used for assessing psychopathy (Hare, *The Psychopathy Checklist – Revised, 2nd Edition*, Toronto: Multi-Health Systems, 2003).

Corporate professionals who work within the corporate structure may be at risk in the workplace. Corporations value the manipulative skills of some human psychopaths for providing audacious leadership. Hare's colleague Paul Babiak, an American industrial psychologist, argues in his article "Psychopathic Manipulation in Organizations: Pawns, Patrons, and Patsies" that "psychopathy is adaptive in a highly competitive environment, because it gets results for both the

individual and the corporations or, often small political sects they represent” (*Issues in Criminological and Legal Psychology: No. 24, International Perspective on Psychopathy*, edited by D. J. Cooke, A. E. Forth, J. P. Newman, and R. D. Hare, British Psychological Society, 1996).

More recently, Babiak, Hare, and their colleagues have studied 203 corporate professionals who were selected by their companies to participate in management-development programs. The correlates included demographic and status variables as well as in-house 360° assessments and performance ratings. As measured by the PCL-R and related tools, the prevalence of psychopathic traits was higher than that found in community samples. The results indicate that the underlying latent structure of psychopathy in their corporate sample was consistent with that model found in community and offender studies. Though psychopathy was associated positively with in-house ratings of creativity, good strategic thinking, and communication skills, it was associated negatively with ratings of being a team player, management skills, and overall accomplishments. The authors contend that psychopathic individuals often will cause long-term harm, both to their coworkers and to the organization as a whole, due to their manipulative, deceitful, abusive, and fraudulent behavior. (Paul Babiak Ph.D., Craig S. Neumann Ph.D., and Robert D. Hare Ph.D., “Corporate Psychopathy: Talking the Walk,” in *Behavioral Sciences and the Law*, Volume 28, Issue 2, March/April 2010).

Further defining the work by Hare and his colleagues, the *American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders DSM-IV-TR* indicates that psychopathy and sociopathy are other names for Antisocial Personality Disorder. In its *International Classification of Diseases (ICD-10)*, the World Health Organization refers to psychopathy, antisocial personality, asocial personality, and amoral personality as synonyms for Dissocial Personality Disorder.

Creating a Corporation

If five human beings assemble and create a corporation, a total of six persons exist under the law--five humans and one legal person. We pose the following questions at this juncture: Is the sixth member—the corporation—psychopathic by its design, structure, and legal restrictions and therefore capable of turning the other five into psychopaths/sociopaths? Do the five human beings transfer their psychopathic tendencies to the corporate entity? Is there a two-way flow of this sociopathic mania among the human and legal persons, such that the physical act of corporate participation gives rise to psychopathic tendencies and behaviors?

If any of these postulates are true, then it follows that the larger the corporation, the more removed and isolated are its human members from the social norms of the wider community. In essence, the larger the organization, the greater are the dimensions of psychopathic behavior and the potential for it. To reiterate, these behaviors are callous unconcern for the feeling of others, incapacity to maintain enduring relationships, reckless disregard for the safety of others, deceitfulness manifested in repeated lying and conning others for profit, incapacity to experience guilt, and failure to conform to social norms with respect to lawful behaviors. Though the human members of the company may be responsible adults, the corporation as a legal person is merely a child that cannot reason or assume human responsibility. However, unthinkable actions such as isolating and controlling members as in a cult can result from psychotic brains.

The Corporation as a Mentally Ill Child

Quite rightly, the public has reacted toward General Motors as it has to similar cases of corporate abuse in America. These recoils remind us of the common-public reactions directed at children who face special challenges in life. For many of us who have children of our own, we know that raising a normally challenged child can be both stressful and demanding. However, the National Alliance on Mental Illness (NAMI at www.nami.org) reminds us that “raising a child who suffers from a mental illness brings significant challenges to a parent’s skill and resources.” Some of these many challenges depend on the nature of the child’s mental illness and how that mental illness manifests itself. On the NAMI Web site, Nadine Kaslow, a clinical psychologist at Emory University, explains, “Parents can struggle with an assortment of emotions. If you have a child who is misbehaving all the time and getting into all sorts of trouble, then the parents may be mad at the child and very frustrated with the child. If the child has a psychotic illness or manic depression, parents might just be worried about their child. It can range from sadness to anger, to frustration, to even a sense of helplessness.”

Kaslow further notes, “When mental illness strikes young children, parents often are confused about what is happening—we question our own parenting skills, wonder if there is something we did wrong, and spend a lot of time and money searching for answers. We also hear a great deal of criticism and unsolicited advice from strangers, friends, and family: ‘You’re too permissive; I’d never let my child get away with that behavior.’” We live in a society in which mental illnesses is more typically handled through the U.S. Criminal Justice System rather than through the hospital system. When a child is unstable in public, strangers are more likely to offer to call the police for parents rather than to call for medical help.

Children need responsive parents to direct and guide them. Likewise, corporations need strong independent Boards of Directors, drawn from the larger human community, to take on similar responsibilities. Unfortunately, many a board has played the role of a detached parent, turning a deaf ear to its corporation and to the siblings of this entity—the corporate officers and employees who often corrupt and are corrupted by the nature of the corporation. Far worse, there are those board-members who act like parents who have relinquished any parental authority to a “child star” who brings financial support to the family. Often, these parents reduce their status to that of servant and chauffeur. Similarly, this kind of board member lets his/her mentally ill charge “rule the roost.” Sadly, such corporate children can run afoul of common morals and laws and, on occasion, can find themselves responsible for the death of the human beings whom they purport to serve.

In conclusion, let us bring our discussion of corporations back to our local level. As a large employer in Southeast Michigan, the revitalization of the region continues to depend on its creation of new jobs. Journalist/producer Doug Cunningham of Labor Radio (www.laborradio.org) has informed UAW members that General Motors is investing \$449 million more into its union plant in Hamtramck, Michigan, and that GM is adding 1,400 jobs to build next-generation electric vehicles and batteries. At a luncheon for the Auto Press Association in Detroit on 8 April 2014, GM made the announcement that a second shift will be added to the union plant beginning next year. This investment in plant, equipment and labor will be instrumental to Mayor Duggan and his plans to revitalize Detroit.

What parallels can we draw between the behavior of corporations and the current and future status of the City of Detroit and Southeast Michigan? We have addressed some of the mental-health issues of corporations themselves. Unless these matters are addressed fully, the questions

may be “Should these corporations survive” rather than “Can these corporations survive?” Another question that we may ask is whether or not the psychopathic/sociopathic behavior of corporations in recent decades has contributed to the current predicament in Detroit. If we can expect the Southeast Michigan economy to recover, we feel that this question is especially important.

The Big Three auto companies continue to be integral pieces of the economic fabric. In addition to companies that produce autos and automotive equipment, firms in health, energy, software, education, and other fields contribute major amounts of life-blood to the economy of the region. The income that they earn contributes to the area tax-base, directly and through employees. The wages, salaries, and profits earned by those involved with these corporate entities enter the local spending stream and circulate through the economy. As the old saying goes, a rising tide will lift all ships.

We hope that the preceding discussion of corporations has been enlightening to our readers. Next month, we will recap and discuss the role large corporations as well as explore small businesses and their importance to local economies such as Detroit.

A PDF copy of this article will be posted at <http://www.saseassociates.com/legalnewscolumn.html>. We continue to post videos related to our monthly column on www.YouTube.com/SaseAssociates in the Legal News Features playlist.

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