

Chapter 3

DAOs vs. PBCs for Public Administration and Social Policy Entities

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ABSTRACT

The law in most countries has long recognized entities other than individual humans a matter of social policy. Entities recognized by the law are subject to the benefits of legal enforcement of applicable rights (e.g., property ownership rights) and burdens (e.g., taxation). Legal identities are thus a fundamental characteristic of modern society. Corporations are traditional, non-human legal entities. Public benefit corporations have recently emerged as a new type of corporation. Technology advancements have also created robots and decentralized autonomous organizations (DAOs) that are also gaining legal recognition. This chapter reviews and contrasts recent traditional and cyber evolutions of corporate legal entities. The benefits and challenges of the cyber approaches for corporate entities are developed and positioned within broader digital transformation trends impacting public and private sectors and accelerated by the recent pandemic.

INTRODUCTION

This chapter is concerned with recent developments in legal personality, particularly cyber approaches to legal personality, e.g., Decentralized Autonomous Organizations (DAOs) as recognized legal entities. This cyber approach is contrasted with another recent development in legal personality - the Public Benefit Corporation (B-Corp). These legal entity structures create new opportunities for the organizational functionality of the state and private actors delivering social benefits. The recent pandemic has created additional motivation of for mechanisms to facilitate organizations in an online context. There are advantages in consolidating taxation and regulatory reporting requirements through creation of legal personality for citizens online organizations providing public administration or other social benefits. Legal

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recognition for cyber entities creates new opportunities for efficiently structuring public administration and social policy to minimize corruption and improve economic efficiency.

Social policy and the Evolution of legal Personality

The law in most countries has long recognized entities other than individual humans a matter of social policy. Various types of groups or organization have arguably had some degree of legal recognition in English law back to the time of the Domesday book (Laski 1916). The seventeenth century Dutch and English colonial trading companies represented a breakthrough in the structure of the corporation with notable characteristics including legal personality, limited liability, permanent capital, separation of management from ownership, as well as transferable shares (Gelderblom, 2013). In 1829, while other European nations required incorporators to seek special governmental approvals, Spanish corporation law allowed any man to directly register a corporation (Martinez-Rodriguez, 2018). The increasing globalization of trade has led to a corresponding rise in corporate entities operating across multiple jurisdictions. Of the world's top economic revenue collectors, roughly 70% are corporations (Green 2018). Corporate entities are clearly significant economic actors in the modern world. The increasingly ubiquitous availability of internet access has enabled consumers in far flung corners of the globe to participate in global commerce with a swipe of the finger in an app on their mobile device. The counterparties in everyday online transactions are typically some flavor of legal personality.

Legal personality refers to the capacity for legal relations. Entities recognized by the law are subject to the benefits of legal enforcement of applicable rights (e.g., property ownership rights) and burdens (e.g., taxation). The legal personality of a corporation is neither more nor less real than that of an individual human being. Corporate legal entities have a variety of different names depending on the jurisdiction – e.g., *Societe Anonyme* in France vs *Private Limited Company* in the UK. Within a given jurisdiction there may be multiple variants of corporate entities with diverse characteristics; e.g., *Limited Partnership (LP)*, *Limited Liability Company (LLC)*, *Corporation (Corp)*, all have different legal characteristics that may make them more or less suited to a particular purpose.

In neoclassical microeconomics, a corporation exists and makes decisions to make profits. In this sense they exist to minimize the costs of coordinating economic activity. The organizers of corporations are not always profit seeking. Some corporations were established by governments to meet their objectives. Corporations as accounting entities maintain a separate coherent set of records for their assets and liabilities, regardless of whether they seek or achieve a profit. Corporations have also been used for charitable, non-profit, tax, asset management, and many other objectives by non-governmental organizers. Social policy expressed in various statutes has enabled and encouraged the formation of corporations. Corporate social responsibility has been researched since the 1950's (DeBakker et al., 2005) and is increasingly identified as impacting corporate reputations, the loyalty of their customers and suppliers, as marketing strategy as well as regulatory and reporting requirements. The public interacts daily with corporations. Governments have created social policies to influence corporate behavior. And corporations themselves increasingly consider broader social objectives in planning their economic activities. These corporate legal personalities are thus a fundamental characteristic of modern society.

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