

The Legal and Social Ontology of Organizational Persons

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Organizational persons are formally ordered institutions that have intended purposes and act with self-governing authority. They include business firms, nonprofit organizations, schools, religious institutions, and governments. This paper provides a theoretical overview of the institutional place of organizational persons in modern social life. It offers a view that includes five interactive levels of society: individual people, informal groups, organizational persons, “super-institutions” (including economic markets, law, science, and the internet), and “nature-writ-large.” My aim is to orient an understanding of organizational persons within a larger map of social reality. This theoretical understanding may in turn supply a useful perspective for both those who act within organizational persons and policymakers who set the legal “rules of the game” for them over time.

Law is crucial in the formation and maintenance of all kinds of organizational persons. In *Business Persons*, I advance the argument that the law plays an essential role in the creation and maintenance of firms organized for economic purposes.¹ The law recognizes and gives substance to various “forms” of business enterprise ranging along a wide spectrum: sole proprietorships (single-person firms), partnerships, limited liability companies, and corporations. These business enterprises are “persons” in the sense that they are considered to be collective entities which have

¹ Eric W. Orts, *Business Persons: A Legal Theory of the Firm* (2013).

rights to appear in court (have “standing”), enter contracts, hold property, and self-organize in terms of their internal governance structures.

Although firms are “fictions” in the sense that they are created through the exercise of legal imagination, they are also “real” because legal systems enforce the rules of the game established for business firms in a larger society which generally accepts the substance of these rules and practices. In other words, firms are “real fictions” because the law both invents them and then imbues them with concrete meaning in everyday life.² Human beings in the modern world believe that firms are “real” because they develop their social beliefs in the context of how the world works and orient their activities accordingly. People who act within the organizational structures of firms have significant flexibility to enter into agency relationships with each other, make contracts both within and outside of the firm, and develop complex property ownerships relationships.³ Business firms have grown to become seminal organizational persons in modern society. In addition, the legal structure of business firms has enabled them to become global institutions under free-trade and investment regimes, including the World Trade Organization as well as bilateral investment treaties.

Similar arguments support an understanding of the legal and social underpinnings of other social organizations. Law creates and maintains organizations devoted to non-business purposes too. These organizations include political states, nonprofit organizations devoted to philanthropic or educational objectives, and religious institutions. These organizations of people rely on the law

² *Id.*, pp. 30-33. A long-standing jurisprudential debate divides “nominalists” and “realists” regarding the topic of legal personality. I argue for an interpretation that holds both perspectives to be correct when taken together.

³ For a more extended explication of how agency, contracts, and property relationship compose business firms, see *id.*, ch. 2.

for recognition and reinforcement. Nation-states, nonprofits, and religious organizations depend as well on an underlying general social acceptance of the rules of the game. In many respects similar to business firms, these organizations are also often characterized accurately as having “legal personality.” They are both created by law as “fictions” and dependent on a general social recognition of the law operating in “reality.” We therefore live in an organizational world of nation-states, nonprofit institutions (often called non-governmental organizations or NGOs), and religious bodies (e.g., churches, synagogues, and mosques) – as well as business firms of different shapes and sizes. In short, we live in a world populated by organizational persons as well as individual people.

The legal frameworks for the recognition of various kinds of nonprofit organizations is similar to various frameworks provided for business firms. Statutes commonly authorize “incorporation” or other formal organization of nonprofit enterprises.⁴ For nation-states, the founding legal documents are constitutions – often they are written, sometimes unwritten.⁵ Nation-states – as well as supra-national groups of nation-states (e.g., the European Union or the World Trade Organization) – are mutually recognized as well through treaties and the customary practices of international law.⁶ Nation-states have a special position in the social system because

⁴ See, e.g., American Law Institute, *The Principles of the Law of Nonprofit Organization*, summary available at http://www.ali.org/index.cfm?fuseaction=projects.proj_ip&projectid=3 (visiting Sept. 2, 2014). On the divide between nonprofit and business enterprises, see Orts, *Business Persons*, op. cit., pp. 200-06.

⁵ For example, the United States and most other countries have written constitutions adopted at “founding” moments. In some countries such as the United Kingdom, constitutional law of a nation-state is determined by traditional practices reaffirmed through legal decisions.

⁶ For a classic and valuable introduction, see James Crawford, *Brownlie’s Principles of Public International Law* (8th ed. 2012).

they are also the source of legal institutions that create, establish, and enforce the law. At the same time, they depend themselves on law for claims of empirical and normative legitimacy.⁷

To the extent that social forces or motivations do not line up with received understandings, pressure for change can build up. Consider, for example, the recent and worrying rise of a group that calls itself the Islamic State in Iraq and Syria (ISIS). It is led by military officers and religious proselytizers.⁸ With violent medieval tactics combined with the internet (e.g., videos of ritual beheadings and mass executions), participants in this group are attempting to undo established organizational rules that have underpinned modern social organization, including contemporary nation-states and their boundaries, as well as the recognition of some degree of separation between politics and religion.⁹ The institutional threat exemplified by ISIS demonstrates the salience of legal practices and principles that structure our modern world into a complex web of interacting organizations. Modern foreign policy often focuses on perennial questions of whether received organizational principles – such as the integrity of nation-states and respect for their historical boundaries developed over time – will continue. The rise of ISIS highlights how some basic

⁷ There is thus a mutually reinforcing and even circular relationship between political states and legal systems. Time and space do not allow for an extended commentary on this jurisprudential point. Suffice it to say here that the theory presented in this paper assumes both that (1) modern law is established, maintained, and changed by political government (including legislatures, executive authority, and courts) and (2) the legitimacy of the nation-states as having this authority is at least in part gained and reinforced by trusted (and trustworthy) legal systems. In other words, contrary to some outmoded theories (such as early versions of legal positivism), the law does not derive in a direct “top-down” relationship from a governing nation-state. The law conditions the legitimacy and acceptance of political authority, and in this sense the law has become to some extent institutionally separated from government. As indicated in the paper, law has become one of the “super-institutions” in modern society.

⁸ See, e.g., Ben Hubbard and Eric Schmitt, “Army Know-How Seen as Factor in ISIS Successes,” *N.Y. Times*, Aug. 28, 2014, p. A1.

⁹ See, e.g., David Carr, “Medieval Message, Modern Delivery,” *N.Y. Times*, Sept. 8, 2014, p. B1.

organizational assumptions can be taken for granted.¹⁰ Similarly, recent Russian invasions of Crimea and other parts of the Ukraine – as well as Chinese disputes with Japan, Vietnam, and the Philippines over national claims to Pacific islands – raise alarms because the unsettling of traditional boundaries of nation-states has triggered cataclysmic global wars in the past.¹¹ These conflicts over boundaries implicate and endanger the relations of organizational persons that are today called nation-states, as well as networks of business firms and other nonprofit organizations which are embedded within this global system.¹²

The boundaries of nation-states themselves are also “imagined” and “fictional.”¹³ They are artificial in the sense that they are drawn on human-made topographical maps with often vague or unspoken historical assumptions and accidents at work. (How Crimea became a part of modern

¹⁰ As one commentator observes:

There has been a norm, developed gradually over the centuries, that politics is not a totalistic spiritual enterprise. Governments try to deliver order and economic benefits to people, but they do not organize their inner spiritual lives. . . . This is precisely the norm that ISIS and other jihadi groups are trying to destroy.

David Brooks, “The Revolt of the Weak,” *N.Y. Times*, Sept. 2, 2014, p. A10.

¹¹ Again as Brooks notes:

There has been a norm, generally operating over the past few decades, or even centuries, that big, powerful nations don’t gobble up everything around them just because they can. But this is precisely the norm that Putin is brazenly crushing under foot.

Id.

¹² These emerging challenges have recently been called “a three-heading monster for U.S. foreign policy. David E. Sanger, “The Three-Headed Monster Challenging the President’s Foreign Policy,” *N.Y. Times*, Sept. 4, 2014, p. A11.

¹³ On the artificial origins of nation-states, see Benedict Anderson, *Imagined Communities* (rev. ed. 1991); Ernest Gellner, *Nations and Nationalism* (1983); E.J. Hobsbawm, *Nations and Nationalism since 1780: Programme, Myth, Reality* (2d ed. 1992).

post-Soviet Ukraine, for example, appears to owe to a somewhat random act of bureaucratic line-drawing within the former USSR.)¹⁴ As anyone knows who has had to present a passport at a national border, the “fiction” of a nation-state becomes quite real in practice.¹⁵ The territorial boundaries of nation-states have concrete meaning and reality because of legal rules and government officials who take these rules seriously: they believe in them and enforce them. As a result, regular citizens (and non-citizens) believe in these boundaries and take them seriously as well. International border conflicts are worrying for good reason: and they can cause outbreaks of major warfare to settle or re-settle these fictional-but-real lines on maps.

The United States and China, then, are “real fictions” in a manner analogous to the “real fictions” of Exxon Mobil and Patagonia, as well as the Catholic Church and the Nature Conservancy. Through a combination of legal ordering as well as general social acceptance and normative legitimacy, business firms, nation-states, and other organizational persons compose an institutional layer of global society.¹⁶ In this paper, I sketch an outline of this social truth and seek

¹⁴ Steven Lee Meyers and Peter Baker, “Putin Recognizes Crimea Secession, Defying the West,” *N.Y. Times*, Mar. 18, 2014, p. A1 (noting that Ukraine was formally part of Russia until 1954 when the USSR transferred it to the Ukraine).

¹⁵ One of my Wharton colleagues recently reported an example: carrying a U.S. passport at an airport on a flight from Kiev to Moscow. Continuing news of millions of refugees fleeing across borders into “non-state” status situations from Lebanon to the U.S.-Mexico border provide more heart-rending illustrations.

¹⁶ Legitimacy refers to both to empirical beliefs of people in a settled order (including most essentially the government) and a critical assessment of whether the settled order is normatively acceptable. I canvass these two ideas of legitimacy in Eric W. Orts, “Positive Law and Systemic Legitimacy: A Comment on Hart and Habermas,” 6 *Ratio Juris* 245 (1993). I will not delve further into this important feature of legal and political orders here, however, except to note that in many Western societies the view is held that some version of democratic government (and at least non-tyrannical government) is a prerequisite for normative legitimacy. See David Held, *Models of Democracy* (3rd ed. 2006).

to identify some of its basic structural elements.

Understanding the legal and social reality of modern organizations and institutions helps to orient our thinking about how to change various “rules of the game” concerning them to meet various collective objectives that we might agree to pursue as a society. One example of an increasingly important objective is global environmental sustainability in the face of climate change and other challenges regarding humanity’s collective impact on the natural world. Ideally, these change will occur through decentralized markets and the use of democratic decision-making processes in politics. An understanding of the organizational foundations on which modern society has been built highlights features that, at least arguably, should be preserved.

My primary purpose here is analytical, however, rather than normative. I aim to provide a general explanation of the legal and social ontology of organizational persons in modern society. I begin with a consideration of the place of organizational persons within the larger social fabric.

I. Layers of Human Society

The institutional layer of organizational persons lies above a foundational layer of billions of individual human beings and below a large-scale material layer of “nature-writ-large” conceived as the physical and material processes of the entire planet on which we live. Closer analysis further identifies social processes involving what I will call “super-institutions” which lie above the institutional layer of organizational persons but below the highest category of “nature-writ-large.” A category of informal groups is also distinguished from organizational persons. See Table 1.

On the ground floor are billions of individual living human beings who interact with each other on a daily basis: in commercial transactions, work, family, sex, and games – love and war, life and death.¹⁷ All human activities occur fundamentally on this level. Methodological

¹⁷ I restrict this description to “living” human beings. An interesting feature of organized social

individualism (which is most prominent in economics and also some versions of sociology) focuses on this truth of the primacy of individual relations – but it is not the whole truth. Organized groups of people are important too.¹⁸

A second level of society includes informal groups of human beings. As Aristotle famously noted, we are social animals. To the extent that these communal kinds of relationships define our species, the organization of groups is primary and originally occurred mostly in kinship associations of “hunters and gatherers.” In modern society, informal social groups of many variations are widespread.

A group of people formed with some purpose in mind creates an ontological reality or “social fact” beyond the sum of the individual people who compose it.¹⁹ An informal social group, on this view, does not mean any random list or category of individuals (such as “all blonds,” “all men,” or “all nine-year olds”). Rather, an interactive and self-referential group is different from an inchoate bunch of individuals who are then “grouped” or “classified” by an outside observer according to shared characteristics. A key element of the definition of a social group on this view

life is that some organizational persons, such as corporations or nation-states, have indefinite “life” extended beyond the more finite lives of the human beings that compose them. The legal instrument of a “will” also extends the organizational influence of an individual person for a certain length of time (usually legally limited with respect to property to approximately three generations).

¹⁸ Elsewhere, I have suggested that one can “square the circle” in the debate between methodological individualism and methodological holism by recognizing that both perspectives have value. Orts, *Business Persons*, op. cit., pp. 6-7. Human society is composed of both individuals and collective organizations. Relative emphasis is often important and may even divide along some large cultural dimensions, such as the idea that Western cultures focuses more on individual rights and Eastern cultures focus more on groups and collective identifications. My assumption here is that both perspectives are valuable for a complete theory. Approaches that insist only on methodological individualism (e.g., some version of contemporary economic analysis) or only on methodological holism (e.g., some sociologists) are too narrow and unrealistic.

¹⁹ See, e.g., Margaret Gilbert, *On Social Facts* (1992).

is that its members are conscious of themselves as an entity (or “identity”) acting together for some collective purpose rather than purely individually.

The philosopher Margaret Gilbert presents a theory of social groups that argues in favor of their real existence.²⁰ She describes groups as “plural subjects” and “social facts” that amount to more than the sum of their individual parts.²¹ Gilbert argues that social groups are more than conglomerations of individuals because people in groups are “conscious that they are linked by a certain special tie.”²² This “special tie” is defined socially and through communications, such as the tie of kinship in a family or ties of obligation and loyalty in a political unit such as a tribe or small city (what the ancient Greeks called a *polis*).²³ Alternatively, at least in contemporary societies in which values of individual autonomy and freedom have taken hold, the interaction of self-organizing participants in a group can itself determine the “special tie” defining the group.²⁴

Everyday language seems to reflect an objective basis for the existence of social groups in

²⁰ Margaret Gilbert, *On Social Facts* (1992); Margaret Gilbert, *Joint Commitment: How We Make the Social World* (2014). For a skeptical argument staking out an individualist position denying that groups represent anything more than the sum of their parts, see Anthony Quinton, “Social Objects,” 75 *Proceedings of the Aristotelian Society* 17 (1975). See also John Stuart Mill, *A System of Logic* (1970 ed.) (1843), bk. 6, ch. 7, sec. 1, p. 573 (observing that individual people individuals “are not, when brought together in society, converted into another kind of substance”).

²¹ Gilbert, *On Social Facts*, op. cit., pp. 204-25. 408-27.

²² *Id.*, p. 149. Gilbert relies on the arguments of the sociologist Georg Simmel. See Georg Simmel, “How Is Society Possible?” in *Georg Simmel: On Individuality and Social Forms* (Donald N. Levine ed.) (1971), pp. 6-22.

²³ See Mogens Herman Hansen, *Polis: An Introduction to the Ancient Greek City-State* (2006); Werner Jaeger, *Paideia: The Ideals of Greek Culture, Vol. I: Archaic Greece: The Mind of Athens* (Gilbert Highet trans.) (2d ed. 1945).

²⁴ Cf. Thomas Donaldson and Thomas W. Dunfee, *Ties That Bind: A Social Contracts Approach to Business Ethics* (1999) (referring to important role of informal as well as formal agreements within modern business enterprises).

the form and use of plural pronouns such as “we” and “us” to refer to a collective unit—or what Gilbert calls a “plural subject.”²⁵ Informal social groups on this understanding are ubiquitous, and many are transitory. An informal group may be said to exist whenever two or more people get together to pursue a common purpose and share mutual interactions conditioned or directed by this purpose. John Serle refers to this phenomenon in groups as “collective intentionality.”²⁶ A group of this kind is not simply a combination of two separate individual intentions: it requires an informal or formal agreement about a general purpose and activities to be pursued together.

Gilbert gives the example of two people who are traveling independently and then decide to share the adventure through a tacit or explicit agreement to “join forces” and coordinate, that is, to travel together rather than separately.²⁷ Their agreement creates a transitory group with a shared purpose. Friendships and love relationships are created and sustained in a similar fashion though often with a longer duration. Mutual interactions and choices transform some aspects of life from solitary into collective projects. Long-term and perhaps even permanent social groups are possible when people commit (or tacitly agree) to form relationships in order to act together and share responsibility for long-run objectives: such as raising children in a family, worshiping in a religious community, joining an army or political bureaucracy, or binding together to share the

²⁵ Gilbert, *Social Facts*, op. cit., pp. 152-53, 167-75, 199-225. See also Raimo Tuomela, “The We-Mode and the I-Mode,” in *Socializing Metaphysics: The Nature of Social Reality* (Frederick F. Schmitt ed.) (2003), ch. 7, pp. 93-127.

²⁶ John R. Serle, *The Construction of Social Reality* (1995), pp. 23-26. See also Michael E. Bratman, “Shared Cooperative Activity,” 101 *Philosophical Review* 327 (1992); Raimo Tuomela and Kaarlo Miller, “We-intentions,” 53 *Philosophical Studies* 367 (1988); John R. Serle, *Making the Social World, The Structure of Human Civilization* (2010). For an interesting debate between Serle and Colin McGinn, see Colin McGinn, “Is Just Thinking Enough,” *N.Y. Review of Books*, Nov. 11, 2010, and reply colloquy, Feb. 24, 2011 (online version).

²⁷ Gilbert, *Social Facts*, op. cit., pp. 161-64.

benefits and burdens of working collectively in a business enterprise.²⁸

These last examples relate to a distinguishable social layer of formally organized groups – also known as organizational persons. I explore the conceptual line between informal groups and formal organizational persons in the next section. The main distinction, however, concerns the role that the law plays in providing a formally recognized organizational structure for some groups (and more complex groups of groups that legal rules also enable). These organizational persons, as previously mentioned, include business firms, nation-states, and nonprofit organizations.

Schools, for example, compose organizational persons devoted to child-raising, education, and the advancement of knowledge. Schools have a general purpose of developing children, adolescents, and young adults into productive members of society (through teaching literacy, training for work, and a general introduction to the expanding worlds of human culture, knowledge, and the arts). University-level schools are designed also for research. Schools come in many varieties: public/government-run, private nonprofit, and religious. All of these kinds of schools, colleges, and universities, however, are organized as formal legal persons.²⁹ A school “principal” or “head” is usually appointed as the top executive manager of a school. These terms for top executives in schools parallel the legal governance structures of business firms, and they often use a nonprofit “corporation” as the legal form. “Heads,” “principals,” and “presidents” of

²⁸ Searle distinguishes between everyday relatively informal *social facts* such as going for a walk together, going out on a date, or hosting a party and *institutional facts* such as war, marriage, money, or business enterprises. These “institutional facts” involve the social creation and maintenance of various “rules,” including legal rules that in turn create “background” understandings among people living together in a society. Serle, *The Construction of Social Reality*, op. cit., pp. 113-47.

²⁹ There may be a few limited exceptions to the rule, such as home schooling and informal networks of families committed to home schooling. As soon as an “association” forms to promote home schooling, though, organizational persons arise. See, e.g., the Home Schooling Legal Defense Association, description available at <http://www.hslda.org/about/> (visited Sept. 8, 2014).

schools and universities are the authoritative equivalent of managing partners and CEOs. School boards also often mirror private boards in business corporations: with treasurers watching over organizational funds and trustees overseeing management. Like business firms, schools often have audited books and records. Like a business firm also, a school can also be sued for misfeasance of its teachers (or other agents) involving a student. Or a school can sue in a collective capacity for recovery on a contract. In these senses, schools act as “persons” in a manner analogous to the “business persons” of organized firms.³⁰

Business firms themselves are another large part of this layer of “organizational persons” in society. As I have explored at length elsewhere, business firms today enjoy considerable flexibility under legal regimes that establish “enabling rules” for people to self-organize into amalgamations of agency relationships, organizational contracts, and property ownership arrangements.³¹ They are legally endowed with the abilities to act as “persons” in society in many circumstances: some uncontroversial and some controversial.³² It is widely accepted and uncontroversial that business firms act as persons in terms of their commercial dealings. They also may act derivatively to protect the rights of their business participants: such as invoking constitutional rights against the expropriation or “taking” of their collectively owned property from government seizures. Other “rights” of business firms are more hotly contested, such as whether a business as a “person” may claim political rights to participate and contribute financially to candidates in government elections or whether they possess religious rights to object to their

³⁰ These basic principles are those of agency relationships as they are structured within firms and other organizations. See Orts, *Business Persons*, op. cit., pp. 42-43, 54-62.

³¹ *Id.*, especially ch. 2.

³² *Id.*, especially ch. 1.

participation in government policies.³³

“Super-institutions” compose a fourth layer of society. I coin this term to refer to formal institutional structures that do not have directive or governing “purposes” like organizational persons. Super-institutions include decentralized markets for commercial trading activities and global legal systems that have established networks that extend beyond nation-state control.³⁴ Additional super-institutions include modern science and the widespread cultural processes that develop normative moral beliefs and values (including religiously derived beliefs and values). New networks of information sharing and communications allowed by the internet (as well as older telecommunication technologies) qualify as super-institutions. Transportation infrastructure of roads, railways, shipping, and air transit probably count as super-institutions too.

Law plays a role here too: as both a kind of super-institution itself and as a primary instrument by which other institutions are created and reinforced. In particular, law makes it possible to establish reliable markets and encourages formal decision-making (such as in judicial trials) according to scientifically accepted methods. In this sense, the legal and social *design* of super-institutions may have purposes or objectives, but super-institutions are defined in part by having a decentralized operation. For example, commercial markets of various kinds are established and policed in order to facilitate economically beneficial trading. Internet protocols and rules are designed to improve the overall speed and reliability of communications

³³ *Id.*, especially ch. 7 (discussing the *Citizens United* case). For a collection of some emerging commentary on the more recent *Hobby Lobby* case, see blog posts on The Conglomerate, available at <http://www.theconglomerate.org/hobby-lobby/> (accessed on Sept. 6, 2014). See also Amy Sepinwall, “Can a Corporation Have a Conscience,” *Washington Post*, Mar. 21, 2014 (online edition).

³⁴ There is an important interaction between nation-states acting as “persons” and the emergence of what I am calling law as a global “super-institution.” The distinction emerges in a globalized societies in which law at the level of the nation-state and international law interact and inter-relate.

infrastructure. Although they may include purposive organizational persons in their activities, however, social forces operating as super-institutions do *not* operate in terms of having an organizational personality themselves – and it is helpful to identify this conceptual distinction.

A key feature of super-institutions is decentralization, at least as compared with organizational persons. Again consider ordinary commercial trading markets for goods and services. A price system for allocations in these markets works because of processes that do not privilege any particular individual or organizational person. Individual and organizational persons participate in these market but cannot (at least not ordinarily or ideally) control market operations and prices.³⁵

I use the term “super-institution” because these kinds of decentralized institutions lie “above” the layer of organization persons. I do not mean to say that super-institutions are therefore more important than organizational persons or individual people. (Some economists may tend to fall into this trap.) Super-institutions provide a background institutional environment – in addition to nature-writ-large – in which organizational persons act. But this does not privilege them normatively. Note also that a material basis of life and society is assumed throughout, but it is nevertheless useful to identify and make distinctions about the human-constructed features of the social edifice.³⁶

In describing this modern social institutional reality, I use “layers” and “levels” only in a

³⁵ There are some hybrid forms of markets that are also organizational persons. The New York Stock Exchange, for example, is both a decentralized market allowing for the buying and selling of stocks of listed companies and organized itself as a public corporation.

³⁶ A lively debate concerns the extent to which human institutions, including the categories that I describe of informal groups, organizational persons, and super-institutions, depend on material prerequisites as well as their creation through language, symbols, and the minds of people. See, for example, the debate between Searle and McGinn cited in note 24 above.

schematic or illustrative manner. In some sense, the ecological level of “nature-writ-large” is the “highest” or most “fundamental” because human life is entirely dependent and co-existent with natural biological processes and climatological conditions. In another sense, the existence of individual human beings is fundamental to any organization or institution involving people. I do not mean to imply that “organizational persons” or “super-institutions” are more important than “individuals” by placement of categories on an illustrative conceptual ladder. Individuals compose institutions – first at the level of organized persons and then at the larger and less intentional decentralized level of super-institutions. And in a sense the institutional processes are usually likely to have greater effects on “nature-writ-large” than people acting individually (and not as part of larger institutions). A less hierarchical diagram might make more sense: perhaps concentric circles with the various layers nested in and interacting with each other. See Figure 1.

In more general terms, all organizational persons combine legal capacities to act and legal limitations on their actions. A “social constitution” exists in the form of a global framework of law and organization: various organized persons coexist within this larger framework. They are composed of individual people acting together within legal frameworks and within a larger environment of super-institutions such as markets, law, science, and religion, as well as the material basis of nature-writ-large.

The largest encompassing category of nature-writ-large refers to the fact that all human beings and social institutions exist within the larger natural systems of the planet (though perhaps the material basis for human societies will one day extend further into the solar system). It is normatively important to recognize this analytical reality given that the collective actions of billions of individual people leveraged through their creation of powerful organizations and institutions are beginning to threaten the underlying material basis of global human societies. The

current global environmental challenge is one main reason to take the purposes and objectives of institutions and organizations seriously. But again, normative implications are not my primary focus here.

II. Informal Groups, Organizational Persons, and Super-Institutions

Analytically, it is important to distinguish among informal groups, organizational persons, and super-institutions, even though the categories sometimes bleed into each other at the edges. The social ontology of organizational persons requires that these other categories are excluded, if only for purposes of clear definition and understanding of an organizational person. Essentially, an organizational person must have an internally developed “identity” and self-governance over its actions taken as a collective.

Take business firms for example. Some degree of formal organization is required for business firms to exist, though it is also true that pure sole proprietors and one-person corporations are recognized and therefore exist under most modern legal systems today. If one individual person decides to produce goods or services for sale in commercial markets, then a business is created.³⁷ But if one person simply purchases good or services from commercial markets for personal or family consumption, then a business is not created. The individual person (and business firms acting in a consumer role) are instead acting as components within the super-institution of the market.³⁸ The super-institution of commercial markets, in other words, provides a background environment and context in which firms in production compete with each other to serve consumers.

³⁷ On pure sole proprietorships as the most basic business form, see Orts, *Business Persons*, op. cit., pp. 178-80.

³⁸ An exception would be consumers who organize into a cooperative purchasing group, which may then count as an organizational person.

It is helpful here to distinguish between the larger-scale commercial markets for consumption from the productive organizational forms of business persons. I have previously argued for a distinction between “consumption markets” and “production metamarkets.”³⁹ Consumption markets in the terms used here count as “super-institutions.” Many participants in making arms-length transaction together compose an undirected, decentralized market process. Organizational persons compete to supply markets as well, but they are internally organized as legal “identities.” They are oriented toward purposive goals and activities. They therefore act in markets and compete against each other in a “metamarket” of organizational and technological competition. Business firms are not themselves markets in the super-institutional sense.

This is not to say that various kinds of markets do not appear within firms. For example, labor markets operate to determine wages and other compensation paid to employees and managers. Capital markets operate also to supply financial means to pursue business ends. In a sense, large-scale markets for “labor” and “capital” are also super-institutions that condition the operations and activities of firms. I do not attempt here to provide a complete philosophical account of the nature and extent of these other economic markets. I will insist, however, that the structure of organizational persons such as business firms, nation-states, and nonprofit organizations is distinguishable from operations of markets that operate as super-institutions. With respect to labor markets, for example, business firms make decisions about wages and other compensation within a governance structure of hiring and firing (as well as interim decisions of salary raises, incentive pay, etc.) A business firm’s participation in labor markets, as well as

³⁹ *Id.*, pp. 175-77 and Table 5.1. I draw on Berle’s work in drawing this distinction. See his preface to a version of his class work with Means. Adolf A. Berle and Gardiner C. Means, *The Modern Corporation and Private Property* (rev. ed. 1968) (1932), p. xxiii.

markets for other “factors of production,” such as raw materials and capital financing, makes it a player in these markets, though, rather than a market itself.

My schematic description of commercial markets as involving business persons as “producers” and private individuals, business firms, and governments as “consumers” may be replicated with respect to relationships of other organizations persons. Educational institutions are often geographical and government-operated, but in some cases (such as in colleges and universities in the United States) they compete with each other. Incoming students are then “consumers” (of a particular sort) and colleges and universities compete with each other to attract them.⁴⁰ Nation-states also are often conceived as competitive, especially with respect to the relative strength of their own economies, though one hopes that the long-term historical competitive methods of major warfare will not continue forever. There is nevertheless a sense in which nation-states act as “persons” with respect to their relations with each other. More beneficent objectives include global cooperation to address common social and environmental challenges through international law and other collaborative efforts.

On one side, then, a boundary of organizational persons appears in the context of super-institutions. Here, by way of illustration, consider the example of modern science. Individual scientists often act within organizational persons (as employees or managers of research labs, hospitals, pharmaceutical companies, etc.) which contribute to the overall advancement of science as a super-institution. A global scientific community might be posited, though like commercial markets it is decentralized. The epistemological methods of working out what “counts” or is “accepted” as new and correct scientific knowledge are agreed through “peer-reviewed” journals

⁴⁰ I resist taking the analogy of “students as consumers” very far: and not only because I’m a professor who might want to resist competitive pressures!

as well as the long-term historical development of scientific education and teaching regimens. Individual people and organizational persons are involved in the creation, maintenance, and advancement of science, but they do not control scientific knowledge. More precisely, given specialization of knowledge, there are many scientific communities that focus on different fields and areas of study (e.g., physics, chemistry, mathematics, and social sciences).

On the other side of organizational persons lie informal groups. These are distinguished to some extent by whether super-institutions of are involved, including formal law and commercial markets. For example, much production and consumption in society involves non-commercial activities. Examples include unpaid domestic housework in families or between live-in couples (including home cooking and child-raising), as well as developing and playing non-commercial games, creating art, and writing for its own sake (such as shared on blogs). These informal activities can become commercial, of course. Maids and cooks may be employed to help with domestic work in return for wages. Commercial gaming is become a blockbuster modern industry, particularly in the form of internet and computer-based games.⁴¹ “Gamification” refers to business strategies to use gaming techniques (and attraction to play) for profit generation.⁴² Yet many instances of non-commercial and not-for-profit activities (such as internet publishing by individuals) lie outside of formal organizational persons and commercial markets.⁴³ These

⁴¹ Revenues from commercial computer gaming now exceed those from Hollywood movies. See, e.g., Tom Chatfield, “Videogames Now Outperform Hollywood Movies, *The Observer*, Sept. 26, 2009 (online ed.).

⁴² On the phenomenon of gamification, see Kevin Werbach and Dan Hunter, *For the Win: How Game Thinking Can Revolutionize Your Business* (2012).

⁴³ For some reflections on non-commercial creativity on the internet, see, e.g., John Quiggin and Dan Hunter, “Money Ruins Everything,” 30 *Hastings Communications and Entertainment Law Journal* 203 (2008).

informal kinds of activities – such as card games among friends, dinner parties, informal sports leagues for children, and various hobbies – do not constitute organizational persons. Many versions of “play” take place in informal groups and involve neither organized persons nor formally organized super-institutions.⁴⁴

Families and love relationships constitute another borderline phenomenon, at least in most modern societies. The institution of the family remains one important example of an informal group in some circumstances, though it also has formal legal properties. Modern families in Western cultures are often considered to be composed by two parents (or one) and any minor children under their care. “Extended” families may include grandparents and other relatives. Family relationships are usually biological, and they are often legally recognized and supported. Adoptions mimic childbirth as a method of adding children to a family group by legal means. In some historical societies (such as in ancient Rome), families might have been said to act as organizational persons – with a *pater familias* having authority to act on behalf and enter into obligations on behalf of the family unit. Still today, family relationships may be sometimes considered as a formal unit (though perhaps not as an integrated legal person, unless acting in an organized business capacity). For example, income tax returns in the United States may be filed “jointly” or “individually.” Even divorced parents often act as joint “co-parents” with the best interests of the children as an ideal in terms of their interactions. College calculations in the United States of “financial need” may require an assessment of the combined earning capacity of the family (both working parents) as a unit.

These vestiges of legal personality in families, though, appear more as an exception rather

⁴⁴ For a classic treatment of the universal phenomenon of play and its cross-cutting cultural influences, see Johan Huizinga, *Homo Ludens: A Study in the Play-Element in Culture* (1955).

than a rule today (at least in many Western societies). Marriages are considered mutual partnerships in some senses, but most contemporary theories conceive of married couples as having a considerable degree of autonomy and individuality. Modern marriages and families are therefore best conceived as a borderline case: sometimes involving informal arrangement among individuals (adult couples and children) and sometimes involving formal legal recognition.⁴⁵ The worlds of work and education, as well as government, involve more formal organized persons.⁴⁶

A clarification concerning the relationship of groups and business firms (and other organizational persons) should also be made. Sometimes, a small group of people organized for a business purpose crosses the line from “informal group” to “business person” without much fanfare or change. One may simply establish a general partnership between two people, for example, and create a business firm. At the same time, legal recognition and methods of formal organization allow for the structure of large groups of people – and groups of groups organized within a single governing structure. Multinational corporations built of parents and subsidiaries as well as complex corporate pyramids are enabled by modern legal theory and practice.⁴⁷

So, the categories that I have introduced here of informal groups, organizational persons, and super-institutions have porous boundaries. My account of these categories and boundaries is

⁴⁵ Some theories would even allow for communal families: additional spouses or adults, as well as a “sharing” of children and responsibilities for raising them.

⁴⁶ Here, I will leave my discussion of the status of families ambiguous. As indicated, I believe that some family interactions occur at the individual level, some occur at the level of informal groups, and some involve formal recognition of duties and responsibilities (of parents to children or of married partners to each other). Some older social theories have placed the family at the center of an institutional account of society (including some versions of Christian and Confucian philosophies). I don’t follow this direction of argument here.

⁴⁷ For my breakdown of the many different and often complex forms of business enterprise, see Orts, *Business Persons*, op. cit., ch. 5.

meant to be suggestive and by no means complete or comprehensive. I hope, however, that my description has been sufficient to encourage others to continue thinking about the legal and social boundaries of organizational persons. These intermediary groups, organizations, and institutions in modern society are self-evidently important, and I hope to have provided at least a general understanding of the social and environmental context in which they exist today.

III. A Social Multiverse of Organizational and Individual Persons

An old adage urges us to remember even in a world of billions of individual human beings that “one person can make a difference.” It is true that one may call to mind hundreds of historically influential “great” individuals in politics, science, art, religion, the military, and many other fields of human endeavor. An appreciation of the importance of organization persons – and their “operating rules” provided by a legal framework and particularized governance arrangements – make a difference too. The actions of large organizations such as nation-states, multinational corporations, and religious institutions matter – as history generally recognizes (though perhaps still with an emphasis on nations and religions rather than business). In addition, the actions of many smaller organizations such as local governments, start-up enterprises, and a large host of nonprofit associations of many kinds (from sporting or gaming clubs to special interest political groups) make an aggregative difference in the world too.

Our modern globalized world is composed of a complex interaction among these different elements – and individual and organized persons. People act everyday as consumers and citizens, and they also develop intimate lives of connection on an individual basis. At the same time, people play roles in families, informal social groups, firms, and other “organized persons.” People and their organizations compose a dynamic and complex mosaic of modern life. A question for the future will continue to be how decentralized super-institutions including global markets, law,

scientific knowledge, and the internet will evolve. The development of the goals and purposes of organized persons can shift and change in accordance with the new challenges and opportunities that our species will inevitably face. This complexity is given, but our determinations about individual and organizational goals and purposes remain within our power.

Table 1: The Layers of Human Society

<u>Layer</u>	<u>Composition</u>	<u>Examples</u>
Individual Persons	billions of individual living human beings on the planet	daily interactions of work, love, sex, play, learning, etc.
Informal Groups	many interactions of individuals that are coordinated but not established by rules	agreements of friendships or courtships, companions going on a hike or an errand, informal games and play
Organizational Persons	organized groups with legally recognized existence (with attendant rights and duties) and a collective “identity”	business firms, nation-states, nonprofit organizations, religious and educational institutions, families for some purposes
Super-Institutions	formal but decentralized cultural infrastructure that facilitates various human economic and other social activities	commercial markets, science, global legal systems, the internet, transportation and other infrastructure
Nature-Writ-Large	natural processes operating at a global and universal level	hydrological and agriculture cycles, global climate and weather, geophysical events, biological systems

Figure 1

