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## **In law's eyes, corporations much like 'imaginary friends'**

AS I SEE IT

**By Andrej Thomas Starkis**

A couple of times in the last few months one of the hidden fictions of our daily lives has come close to attracting some public attention.

The first of these, a recent Supreme Court decision (*Federal Election Commission v. Wisconsin Right to Life Inc.*), didn't really break the surface to widespread public notice. The second was the manslaughter indictment of the company that supplied the epoxy fastener for the Big Dig ceiling supports that gave way and took the life of Milena Del Valle, an indictment that carried a maximum penalty of \$1,000.

It is perhaps a testament to our general indolence when it comes to public affairs that there has been little public outcry at the ludicrously disproportionate "punishment" that faces Power Fasteners Inc. if it is convicted of having caused Ms. Del Valle's death. (Apparently, not until some influential talk-show host or blogger picks up the issue and invites the wrath of listeners or readers will the public pay much attention.)

When someone finally does ask, "How can it be that a fine — even a big one — is the only penalty for a homicide?" that people may get the chance to see that we share this world of ours with countless imaginary beings, beings whose existence is no more or less real than the imaginary friends we or our children may have had as playmates. The only real difference between corporations and those imaginary friends is a government mandate that the rest of us (those who didn't make them up) have to treat them as though they were real beings.

And so we do. Ask anyone if Microsoft or Exxon/Mobil or General Motors is real and you'll likely get a look of deep befuddlement: Of course they're real. But they're not. They don't exist, and that's why you can't send them to jail.

Conservatives take note: Corporations are creatures of government. No government, no corporation. No government action to create it, no corporation. Period.

While pointing out this reality may seem like the beginning of some far-left-wing rant, it is important to note that corporations have been an enormous boon to all of our economic well-being. Without them, we would all be poorer and less secure.

But losing the understanding that they are legal fictions, not real beings, has the effect of obscuring our recognition that corporations can do nothing; whatever is done is done by people, people whose acts

should bear individual responsibility and accountability.

Corporations were devised to limit the personal liability owners of a company would otherwise have to people who are harmed by the business. It's a little like your child having a lemonade stand and collecting money customers hand over but telling them that they should see her imaginary friend for their change (because the imaginary friend owns the stand and your daughter only works there).

Corporations exist to shield owners (investors) from individual personal (dollar) liability for the losses and other obligations of a business enterprise. That is the key characteristic of a corporation and its *raison d'être*. Fine. It's a deal worth making. But that convenient — and profitable for all — fiction should not be allowed to hide the reality when people who run or work within corporations act in ways that are morally reprehensible or criminal, or when we begin to talk about rights and other attributes of real beings.

Which brings us to Wisconsin Right to Life Inc., a corporation whose “speech” could not, according to the U.S. Supreme Court, be limited or controlled by the government. Of course, those eminent jurists know corporations are created by governments, don't really exist, can't talk and can't possess the “right” to free speech under the First Amendment to the Constitution.

The court relied on an earlier case of some local interest (*First National Bank of Boston v. Bellotti*) for the notion that corporations' speech is protected by the First Amendment — not so much because those imaginary beings have rights but because the First Amendment protects our right to hear from them. The First Amendment protects “public discussion and the dissemination of information and ideas.” Therefore, no restriction on “speech” by corporations will be upheld unless the rationale for government control of its own creature “can survive ... exacting scrutiny.”

Again, that is how the law works. And it may be a fine and commendable outcome in terms of our larger interests as a society. But we need to keep in mind what is real and what is not. It's all right — even a good thing at times — to see and talk to the kids' imaginary companions.

They are there presumably because they serve a useful function, but we may be crossing a line if we begin to set up irrevocable trust funds for their college educations.

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