

CALL FOR PAPERS

A Workshop on Vulnerability and Corporate Subjectivity

April 10-11, 2020

Emory University School of Law, Atlanta

Vulnerability theory has long been critical of the liberal legal subject and an ideology that privileges consent and contract, manipulating concepts such as choice and autonomy to justify a restrained state. This workshop seeks to explore questions around the legal subject as manifested in its corporate form. The corporation is a legal construct, originally designed to meet social goals. However, throughout the years, and particularly since the rise of neoliberalism in the last decades, it has transformed into an institutional structure that often thwarts human well-being. The recent shift from liberalism to neoliberalism not only repositioned markets and capital, it also reformulated the idealized legal subject at the center of law and politics. Neoliberal legal subjects—both people and the corporations they form—are reconfigured as “units” of capital that, as such, demand constant investment and management to maximize value. Such units of capital then serve as the mediating institutions through which, according to neoliberalism, social goods are justly allocated and social goals are ideally achieved.

How has this profound shift been accomplished? What role has the perception of the corporation, as a legal construct, played in facilitating such transformation? To what extent have laws and policies been designed to respond to corporate vulnerability or to the need to support corporations by enhancing their resilience? A central tenet of vulnerability theory is that vulnerability is universal – for both natural persons and for legal persons (institutional subjects) created by law and policy. Despite this universality, individual and corporate vulnerability are fundamentally different – individual vulnerability is primary and corporate vulnerability is socially derived. A question can be asked about the ways in which the state chooses to address these universal vulnerabilities – directly, by focusing on individuals’ resilience, or indirectly, but focusing on corporate resilience.

Former French Prime Minister Lionel Jospin has been quoted as saying “yes to a *market economy*, no to a *market society*.” In a market society, individual vulnerability is addressed not by the state, but by private market actors. And if these actors are tasked to address individual vulnerability, then *their* resilience becomes a primary concern in the legal/political system. Has corporate vulnerability been permanently elevated above individual vulnerability? Consider the U.S. government’s response to the 2008 Global Financial Crisis: efforts went into bailing out corporations, while almost 10 million individual homeowners were left to foreclosure. The regulatory response to the crisis, the Dodd-Frank Act of 2010, sought to boost corporate resilience by focusing primarily on market actors that, according to this logic, were “too-big-to-fail.” The *Consumer Financial Protection Bureau* that the act created was highly controversial and has been largely defanged since 2017. The state may recognize the “universality and constancy of vulnerability and the need for providing mechanisms for building resilience,” but its efforts have been seeped in an ideological and legal “cult of corporate resilience.”

As new political and popular forces gain ground, corporations are proffering evidence, or perhaps just the illusion, of adaptation and evolution. Recently, The Business Roundtable, an association of large businesses concerned primarily with anti-regulatory lobbying, came out with a new [“statement on corporate purpose.”](#) Signed by close to 200 CEOs, it announced that corporations should be managed not solely in the interest of shareholders, but in the interest of all stakeholders, including employees, customers, suppliers, and communities. What are the implications for the individual and the corporation of this explicit acknowledgement that corporations are allowed or even should take individual vulnerability into account? How will corporations do so? Can they do so? If the pursuit of shareholder wealth maximization and economic growth at all costs are the defining characteristics of corporations and their purpose, then are corporations ever capable of compassion, kindness, and an accounting for human wellbeing?

This workshop will critically consider the neoliberal corporation, drawing on the analytical tools offered by the vulnerability theory. We welcome papers that utilize the vulnerability theory to interrogate the development of the neoliberal corporation, the values it reflects, and even the recent calls to expect corporations to care for individuals who are not investors. The workshop will allow participants to think through the complex relationships between corporations as legal subjects, legal or state governance of corporate activity, and the hope to achieve goals of social justice within a neoliberal age.



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Issues for Discussion May Include:

- What is corporate vulnerability? How is it expressed in law and policy discussions?
- How is corporate vulnerability qualitatively different from other types of institutional vulnerability? In what ways does the neoliberal legal order prioritize the former and minimize the latter?
- How is corporate vulnerability used in politics? In law? In social science?
- What are the manifestations of the state addressing *individual* vulnerability through an emphasis on *corporate* resilience?
- What are the philosophical, legal, and empirical principles underlying the idea that the corporation has legal personhood?
- What are the challenges posed by increased automation and social fragmentation for using humanistic approaches, such as vulnerability theory?
- What are the threats posed by big data, amassed and controlled by corporations, for the permanent entrenchment of neoliberal values in the legal and social order? How can vulnerability theory assist us in framing solutions to these threats?
- What lessons does vulnerability theory offer for the regulation of tech companies?
- If shareholder wealth maximization is to be supplanted by a focus on all stakeholders, who are the stakeholders?
- How should corporations think about the interests of different stakeholders?
 - Should workers, who are directly dependent on corporations, enjoy greater economic and decision rights?
 - What concern for consumers? For society?



The workshop is being convened by:

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Vulnerability and Resilience Background Reading at:

<http://web.gs.emory.edu/vulnerability/>

Submissions Procedure:

Email a proposal of several paragraphs as a Word or PDF document by **February 10th, 2020** to Mangala Kanayson (mkanays@emory.edu).

Decisions will be made by **February 14, 2020** and working paper drafts will be due **March 23, 2020** so they can be duplicated and distributed prior to the Workshop.

Workshop Details:

The Workshop begins **Friday, April 10th at 4:30 PM**