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The Queer Custom of Non-Human Personhood



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My input for the "Make Kin, Not Babies" session was to consider whether we might think about texts as kin, thus validating the work that academics, filmmakers, actors, etc. do as reproductive labor in the same vein that children have become understood as the fruits of similar labors. That has since turned into a longer meditation on the changing distinctions between human, non-human, and legal personhood, and for which I have been lucky enough to find a home for elsewhere (Fiereck Forthcoming). However, that text raises a number of questions that remain unanswered regarding Donna Haraway's suggestion that we make kin in place of biological children in conditions of the Anthropocene (Haraway 2015). One of these questions is how we might think politically about non-human personhood. For example, if we increasingly consider texts are people, what implications does this have in our current political moment? To put it more precisely: What are the political effects of developing and legitimizing forms of non-human personhood?

Obviously such speculative questions beg incomplete answers. There is no way to actually know precisely what the political effects of this process will be. However, to consider their implications is as important as ever. The point from which I begin is that whether one agrees with or not that non-human personhood implies the agency of non-human entities is beside the point. Most pointedly, this is because the politicization of non-human personhood has already begun. Even if one disagrees with granting agency to non-human entities, to pretend that non-human entities are endowed with agency in our advanced liberal societies is to pretend they are not a part of our societies, which is a false and untenable position to take. Further, such a position denies one's own participation in the economies and social processes that have produced these agencies in postcolonial societies globally, which is to undermine one's own position on the matter altogether. I want to take two examples from current legal jurisprudence in two advanced liberal societies where the legal recognition of non-human personhood has become a form of political change and agency both in putatively conservative and liberal directions.

The first concrete example is that of the United States, where political conservatives have stacked the Supreme Court of the United States with conservative justices during the past half century. In 2010, in the case *Citizen's United v. FEC* these justices agreed in a 5-4 majority that corporations are people too. They were granted legal recognition with the same rights as individual citizens. This paved the way for corporations to donate unrestricted amounts of money to political candidates whereas before the ruling there were limits on corporate contributions to political campaigns. The second example comes from New Zealand, as well as India, and is the culmination of 160 years of political and legal pressure by members of the Maori community to have the New Zealand nation-state recognize the Whanganui River as a person. As Attorney-General Chris Finlayson of New Zealand put it "I know the initial inclination of some people will say it's pretty strange to give a natural resource a legal personality. But it's no stranger than family trusts, or companies or incorporated societies." (*BBC* 2017). Days after the New Zealand court granted legal rights to the Whanganui River, an Indian court, invoking the Whanganui settlement, made the Ganges and Yamuna Rivers people too (*The Economist* 2017).

Finlayson makes the comparison between corporations and rivers for me. However, despite the exchangeability that has been legally produced between corporations and natural resources like rivers, Elizabeth Povinelli has recently considered whether the granting of personhood to a transgender estuary in Australia, might have undue political effects (2015). Specifically, she brings up the personal history of a transgender creek named Tjipel and how the creek's historical narrative might be unpalatable to the neo-liberal Australian government. For example, Povinelli tells the story of how Tjipel came to be. She cites Aboriginal informants' stories of a "beautiful teenage girl" who wanted to dress as a young man. While traveling down the coast, Tjipel went about spearing a wallaby. After spearing the wallaby, a bird tells Tjipel that an old man was coming so she lay down in the creek to hide the parts of her body that would reveal her gender to the old man. The old man took her to be a young man and told Tjipel to cook the wallaby, but she didn't want to. As he walked away, another bird told the old man Tjipel was a teenage girl. He went back and fought with her and, as the story goes, he won and she remains there. Not near the creek. Rather, Tjipel is the creek.

It is this personal narrative of non-human persons like Tjipel's that worries Povinelli. She tells us that in 2011 "a national sex panic erupted about alleged child sexual abuse in Aboriginal communities and town camps" (Povinelli 2015, 176). There was no comparative statistics among child sexual abuse among settler populations within Australia, which means there is no way to tell whether the child sexual abuse in those communities was abnormal. Despite the lack of evidence regarding whether child sexual abuse was more pronounced in Aboriginal versus settler communities, the sex panic rhetoric was used as a pretext for the federal government to withdraw funding from rural and remote

Indigenous communities. The government then seized control of community infrastructure in a number of instances. Now, given the similarity of Tijpel's narrative to this sex panic, Povinelli worries how the granting of personhood to this estuary in Australia might be interpreted in a legal battle over who has rights to the development of conservation of this transgender ecological entity. Specifically, might the Australian state feel that Tijpel's potentially abusive past legitimates the state's seizure of Tijpel from Aboriginal communities?

In other words, Povinelli is concerned about how existing inequalities will haunt the personhood of natural resources as they are inevitably evaluated in various legal systems. Especially when the histories of these ecological subjects are unpalatable to state legislatures that have a history of objectifying and effacing cultural experiences in the name of a multiculturalism. It is the cunning of this multicultural recognition that Povinelli has warned against in the Australian context (Povinelli 1999; Povinelli 2002), which works to denigrate customary social life in lieu of a preoccupation with "authentic" ethnic performances. What this means is that the Australian multicultural state has become less interested in the actuality of lived customary life than it is in cultural authenticity in order to de/legitimate the redistribution of land taken from indigenous groups during colonization (Povinelli 2002).

What this seems to boil down to is questions and distributions of authenticity of various forms of personhood as well as questions of violence. For example, if Tijpel's personhood is considered authentic, yet too violent to be recognized by the late capitalist multicultural Australian state, the Aboriginal communities who care for her may not be legally allowed to retain their entitlement to her. So it would seem that while a non-human person is culturally authentic, it might be interpreted to inhabit contexts of excessive violence so that the state must intervene in order to ensure the rights of the entity and the persons it is related to. The paternalistic connotations this traffics in are clear, dangerous, and have a long, sordid history across all settler societies.

Shifting gears to consider a corporation as the non-human person, it is comparatively quite useful to inquire about questions of violence. It seems almost redundant to inquire about the authenticity of a corporation. Such an entity has only ever existed as a person in a representational space of an ostensibly inauthentic capitalist culture. That a person-corporation is "inauthentic" is a self-evident truism riven with contradictions. What is cultural authenticity anyway and who decides what is authentic, indigenous, or true? Further, a person that would recognize indigenous groups' granting of personhood to rivers and estuaries yet withhold recognition of late capitalist granting of legal personhood to corporations is engaging in the very hypocrisy they claim to refute. What is more, they do so in a way that undermines indigenous agency by paradoxically using

cultural authenticity and multiculturalism as a false chimera of truth and reality. The liberal undermining of indigenosity through a racist multiculturalism is clearly violent in ways that are hard to identify.

However, if we are to treat corporations like rivers, like Tijpel, the attendant question of what forms of violence the entity is responsible for and/or promulgates might also provide a legal strategy of redress by the state. All this is to say that the political implications of non-human personhood are many and the ecological and ethnic politics that will ensue as a result will have queer resonances since the norms of personhood will be made and remade as these politics unfold. Thus, questions around queerness, indigenosity and the customary must be engaged with anew and from a position of immanent critique of non-human personhood. Non-human person is neither a reality for the "left" or the "right" traditionally conceived. It is a norm that is inhabited already by both ostensible "sides" of the political spectrum. There is no outside to these processes except a false outside. We are all implicated. We are all responsible to varying degrees for the human and non-human; life and non-life; for their normative and antinormative instantiations. Further, this situation of shared responsibility across the political spectrum shows that the antinormative turn in queer theory is an inadequate paradigm for developing a politics of non-human personhood as it positions itself as a point of critique that is outside of (or in direct refutation to) some norm. It does so without acknowledging the norms of personhood that its antinormativity is secretly based upon (Wahlert and Fiereck 2016). This form of critique is, by definition, not immanent. Thus, the type of critique that is called for is a queer immanent critique of the ecologico-ethno politics that new forms of non-human personhood require.

An immanent critique of non-human personhood in late capitalism can be conducted in many ways. One example is to analyze the various ways that non-human personhood is constructed and construed in particular sociocultural and historical contexts. One could do this by understanding how the component parts of personhood (i.e., self, subject, psyche, personal and public personae, and body) fit together. One could then analyze the secret normativities that produce *both* the norm and the margin of each form of personhood. Given the examples above, the forms of violence that are produced and implicated by each form of non-human personhood could be analyzed and compared, thus allowing a comparison of the attendant violence of both "normative" non-human personhood (corporations are people too) and "non-normative" non-human personhood (ecological entities are people too). In this way, neither rivers nor corporations are inherently "bad" or "good" forms of personhood, but rather are productive of historically particular forms of sociality. Such social relations include both human and non-human persons and are productive of forms of violence and domination that can and must be evaluated on their own terms and in relation to their shared norms.

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