
The Decision Dilemma

Diana Taylor, from *¡Presente! The Politics of Presence*, Duke University Press, 2020.

This book has explored various ways in which subjectivity is brought into presence or absence to be performed and reperformed in the public arena to question ongoing colonialist, neoliberal, and authoritarian rule. The struggle to be a person, with, to, and among others, has been a recurring theme throughout. In closing, I explore a direct encounter with Monsanto that, as a corporation, enjoys the status of a legal person, by revisiting a performance in which we impersonated the Monsanto corporation. This act of impersonation precipitated some interesting legal conundrums. Impersonation, as a practice of masquerading, troubles the boundaries between person, performance, and the law while, at the same time, masking and contesting continuing colonialist practices of exploitation and nullification. Impersonation, from an “assimilated form of Latin *in-* ‘into, in’ (from PIE root *en ‘in’) + persona ‘person’” challenges us to reflect on what constitutes a “person.”¹ Who counts as a person, a Somebody as opposed to a Nobody? How can

¹ “Impersonate,” *Online Etymology Dictionary*,
<https://www.etymonline.com/word/impersonate>.

individuals refuse, contest, and be presented in relation to the corporation as a person with legal standing and rights?

Impersonation, pretending to be someone else, originally meant “represent in bodily form” in the 1620s.² It comes with rules and repercussions. While it may be fine to pretend to be a police officer onstage, it’s against the law to do so in real life. Impersonation encompasses both theatrical and fraudulent behaviors—everything from actors to con men to criminal acts. Performance and theater, by definition, enact identities, critical positions, situations, and emotions that do not coincide with the actor's. Not me, but not necessarily *not* me. “There is a gap at the heart of the mimetic continuity,” as Jacques Rancière put it.³ Audiences recognize and participate in the gap, the as-ifness, or the deception. As Coleridge put it, people willingly participate in the “suspension of disbelief” when the story is infused with “human interest and a semblance of truth.”⁴ The law, however, has trouble with semblance and is often based on agreements, defined as “a meeting of minds with the understanding and acceptance of reciprocal legal rights and duties as to particular actions or obligations, which the parties intend to exchange; a mutual assent to do or refrain from

² “Impersonate,” Online Etymology Dictionary.

³ Jacques Rancière, “Aesthetic Separation, Aesthetic Continuity,” in *The Emancipated Spectator* (London: Verso, 2009), 62.

⁴ Samuel Taylor Coleridge, *The Collected Works of Samuel Taylor Coleridge: Biographia Literaria* (Princeton, NJ: Princeton University Press, 1983), chapter 14.

doing something; a contract.”⁵ However, terms such as “meeting of minds” and “intent” and “assent” might well be fictions suggesting that people (“parties” in legalese) clearly understand what they are agreeing to.⁶ What do impersonations intend to do? What do people assent to when participating in them? Some of the most effective political performances in the twentieth and twenty-first centuries (to focus on more contemporary examples) risk legal censure to mine the delightfully slippery terrain of impersonation.

Orson Welles’s 1938 radio broadcast, “War of the Worlds,” for example, terrified his audience. He pretended to be a newscaster giving live bulletins about an invasion from Mars. He found it shocking, he said afterward, that listeners would believe in Martians.⁷ Should there be a law, a critic asked him, against such enactments? And what would that legislation be? Sophie Calle, a French artist, dressed up in a wig and stalked a stranger, photographing even the most banal aspects of his existence (*Suite Venitienne*, 1980). In 1981, she pretended to be a maid to enter hotel rooms and photograph strangers’

⁵ “Legal dictionary,” *The Free Dictionary*, <http://legal-dictionary.thefreedictionary.com/agreement>.

⁶ Clearly some attempts at definition are coming from the legal system, such as the “Definitions; generally” section of the U.S. Code 21/321 (Legal Information Institute, Cornell Law School, <https://www.law.cornell.edu/uscode/text/21/321>). Nonetheless, many terms, such as “hate speech” and “crimes,” remain elusive.

⁷ Welles apologized for the “War of the Worlds” broadcast. CriticalPast, “George Orson Welles Apologizes for His Broadcast of the War of the Worlds: HD Stock Footage,” YouTube, May 30, 2014, <https://www.youtube.com/watch?v=IfBdm5MItew>.

belongings. At least one of her subjects sued her for invasion of privacy.⁸ Reverend Billy of the Church of Stop Shopping has been arrested repeatedly throughout the U.S. for reciting the First Amendment and exorcising cash registers. Reverend Billy, aka Bill Talen, is an actor pretending to be an evangelical preacher to take on corporate interests.

What's at stake in these performances that makes some want to impose legal controls and punishments on them? Is their intent to deceive or harm their subjects or their audiences? Or do these artists intend to make visible deep-seated assumptions (about national paranoia, privacy, and savage capitalism) that go unexamined? Do we agree on what the artist intended to achieve? Who is the authority? Does "freedom of speech" outweigh accusations against "false," even malicious, speech?⁹ Who gets to decide? The judge? The art world? A legal definition of "agreement" as "specify[ing] the minimum acceptable standard of performance" only further complicates the issue.¹⁰ It's a genuine challenge to define performance.¹¹

⁸⁹ "Sophie Calle's 'The Address Book,' an Excerpt," *New Yorker*, October 8, 2012, <http://www.newyorker.com/books/page-turner/sophie-calles-the-address-book-an-excerpt>.

⁹ See "Libel," Legal Information Institute, Cornell Law School, <https://www.law.cornell.edu/wex/libel>.

¹⁰ "Agreement," Business Dictionary, <http://www.businessdictionary.com/definition/agreement.html>.

¹¹ I outline the many challenges of defining performance in Diana Taylor, *Performance* (Durham, NC: Duke University Press, 2016).

The usual definitions of impersonation cite the intention to deceive, to profit, or to harm behind the act that makes it a criminal offense. The issue is actually not that straightforward. Theater aims to deceive and reaps financial benefits at the box office from doing so. People going to the theater, however, know they will be deceived; they participate in and enjoy the deception. Yet certain performances might well start before the audience realizes it. A Chicano director, Daniel Martinez, staged his play in an old theater in a run-down part of downtown Los Angeles. The well-off theatergoing audience had to stand in line in front of the people who lived on the streets. The homeless folks looked at the audience with great curiosity. The theatergoers did not know that the performance was (about) them until they walked inside the theater and saw projections of audience members coming in from the street and from the lobby.¹² The Brazilian theater director Augusto Boal developed “invisible theatre.”¹³ Two actors, pretending to be ordinary citizens, stood at a bus stop and started an argument about the ongoing war. Was war justifiable? Soon a group of people started to congregate and join in the argument.

So when is impersonation unlawful? According to an online legal dictionary¹⁴, impersonation is by definition a crime: “The crime of false impersonation is defined by

¹² See Maria Teresa Marrero, “Public Art, Performance Art, and the Politics of Site,” in *Negotiating Performance: Gender, Sexuality, and Theatricality in Latin/o America*, ed. Diana Taylor and Juan Villegas (Durham, NC: Duke University Press, 1994), 111.

¹³ Augusto Boal, *Theatre of the Oppressed*, trans. Charles A. McBride and Maria-Odilia Leal McBride (New York: Theatre Communications Group, 1985), 144.

¹⁴ Au: Would it be better to consult a more standard legal dictionary?

federal statutes and by state statutes that differ from jurisdiction to jurisdiction.”¹⁵ Is there “true” impersonation? The tautological definition again reflects the lack of agreement on what impersonation means. Impersonation is always false, if by “false” we mean the pretend nature of taking on a persona or role that does not coincide with the actor’s own. Yet the definition confuses impersonation with fraud, as if every act of impersonation were fraudulent. Under federal law (18 US Code 912), someone who pretends to act as a U.S. officer or employee “as such, or in such pretended character demands or obtains any money, paper, document, or thing of value, shall be fined under this title or imprisoned not more than three years, or both.”¹⁶ Under the New York penal code, 190.25, criminal impersonation applies to those impersonating police officers or physicians, while subsections 1 and 2 classify as a misdemeanor an act whereby a person “pretends to be a representative of some person or organization and does an act in such pretended capacity with intent to obtain a benefit or to injure or defraud another.”¹⁷ What about a political performance that parodies a corporate website?

¹⁵ “Impersonation,” Free Dictionary, <http://legal-dictionary.thefreedictionary.com/Impersonation>.

¹⁶ June 25, 1948, ch. 645, 62 Stat. 742; Pub. L. 103-322, title XXXIII, § 330016(1)(H), September 13, 1994, 108 Stat. 2147, <https://www.law.cornell.edu/uscode/text/18/912>.

¹⁷ “New York Consolidated Laws, Penal Law, PEN § 190.25 Criminal Impersonation in the Second Degree,” FindLaw, <http://codes.lp.findlaw.com/nycode/PEN/THREE/K/190/190.25#sthash.3YcoLANi.dpuf>.

So back to the Monsanto incident, which allows me to examine the ambiguity inherent in person, persona, impersonation, and what it means to be impersonated by impersonating and trying to unmask a corporation.

Etymologically linked to *corporare*, Latin for “embody,” the word “corporation” came to refer to a “legally authorized entity” in the 1620s.¹⁸ Corporations, thus, came into presence as having “bodies.” They have been considered persons for a long time, expanding the temporal frame of what we normally understand as durational performance.¹⁹ “In every common-sense, everyday way, a corporation is not a person. Corporations don’t date, don’t have families, don’t go catch a movie on Friday night. They also don’t go to jail when they do something criminal. But in the eyes of the law, corporations enjoy many of the same rights—including free speech and religious expression—and protections afforded to individuals.”²⁰ In an 1892 case, it was established that “since a corporation has no soul, it cannot have actual wicked intent . . . and in 1909, the Supreme Court found it ‘true that there are some crimes which, in their nature, cannot be committed by corporations.’”²¹

¹⁸ “Corporation,” Online Etymology Dictionary, <http://www.etymonline.com/index.php?term=corporation>.

¹⁹ Thanks to David Shorter for this observation.

²⁰ Kate Cox, “How Corporations Got the Same Rights as People (but Don’t Ever Go to Jail),” *Consumerist*, September 12, 2014, <https://consumerist.com/2014/09/12/how-corporations-got-the-same-rights-as-people-but-dont-ever-go-to-jail/>.

²¹ Cox, “How Corporations Got the Same Rights.”

We're back to the "impossibility defense" that I mentioned in an earlier chapter: "a defendant is accused of a criminal attempt that failed only because the crime was factually or legally impossible to commit."²² Corporations, it seems, have all of the rights and none of the liabilities of persons. Pretending to be that body or person, as I discovered, can have adverse effects. Here, then, I examine the ways in which impersonation led to conundrums about which kinds of impersonation are naturalized, which are found to trouble the limits of the law, and which kinds of political subjectivities they bring into presence.

Over the years, the Hemispheric Institute has offered a number of courses called Art and Resistance in Chiapas, Mexico, as mentioned earlier in this work. Hemi, housed at New York University, offers graduate-level courses through the department of performance studies, where I teach, and accepts students from NYU and from universities throughout the Americas. In 2013, as usual, the goal was to create an immersive, multilingual environment in which collaborative learning could take place through doing as well as through traditional text- and discussion-based seminars. In addition to researching the topic of resistance as a series of acts—from armed resistance to civil disobedience, revolt, refusal, protest, foot-dragging, and so on—we always offer a workshop that ends in a public performance directed by Jesusa Rodríguez.

²² Richard M. Bonnie, Anne M. Coughlin, John C. Jefferies Jr., and Peter W. Low, *Criminal Law* (Westbury, NY: Foundation Press, 1997), 251. "Impossibility Defense," Wikipedia, https://en.wikipedia.org/wiki/Impossibility_defense. I discuss this defense in chapter 6.

This was the third time Rodríguez and I had taught the course, although we always changed the topic. That year we focused on the health, social, and economic problems caused by genetically modified (GM) corn. Monsanto had asked permission from SAGARPA, the Mexican Secretariat of Agriculture, to plant GM corn commercially in Mexico. They had planted it experimentally since 2009. Although Mexico's National Biosecurity Commission had issued a moratorium on planting GM corn in 1998, President Felipe Calderón lifted it in 2009 after a personal meeting with Monsanto.²³ Activists throughout Mexico were mobilized to intervene against further invasion of GM corn. Genetically modified organisms (GMOs), they agree, impoverish local farmers and can pose health dangers. They threaten the diversity of the crop, the environment, and the cultures that developed in connection to agricultural practices. Monsanto, like other corporations, funds scholars to contest the evidence against them. Its goal is not to prove that GMOs are safe or beneficial to society, but to create enough doubt in people's minds so that safety and economic issues become a matter of opinion rather than fact.²⁴ Mesoamericans have been developing corn for the past

²³ "Restrictions on Genetically Modified Organisms: Mexico," Library of Congress, June 9, 2015, <http://www.loc.gov/law/help/restrictions-on-gmos/mexico.php>.

²⁴ See the pro-GMO report by Graham Brookes and Peter Barfoot, "GM Crops: Global Social-economic and Environmental Impacts, 1996–2011" (Dorchester: PG Economics, 2013), which acknowledges that the study was partially funded by Monsanto. There are many more, but it's important to note as Jill Richardson does that Monsanto funds research, endows chairs, and interferes with research at top universities in the U.S. ("Stanford's 'Spin' on Organics Allegedly Tainted by Biotechnology Funding," Cornucopia Institute, September 12, 2012,

ten thousand years. They think of themselves, by extension, as the people of corn. Hundreds of countries have condemned planting GM crops and understand them as especially threatening to countries of origin, those places where the crops were first grown and developed.²⁵

In July 2013, as usual, the thirty-five participants from throughout the Americas (and beyond) staged a wonderful street performance of the People of Corn combating big bad Monsanto. As is typical of both theatrical and legal fictions, the mammoth agricultural <http://www.cornucopia.org/2012/09/stanfords-spin-on-organics-allegedly-tainted-by-biotechnology-funding/>). This funding of U.S. universities is common practice, as is the revolving door policy whereby officials from corporations serve as administrators at universities and vice versa. Naomi Oreskes and Erik M. Conway, in *Merchants of Doubt* (New York: Bloomsbury, 2010), explain how the tobacco industry kept regulation at bay, and customers hooked, long after it was known that smoking causes cancers by hiring scientists to muddy the picture by producing doubt. The same, Oreskes says, has been done by Exxon in the climate debate catastrophe: Naomi Oreskes, "Exxon's Climate Concealment," *New York Times*, October 10, 2015, A21. The same has happened with other industries.

²⁵ Convention on Biological Diversity: "adopted in 1992, the 190 ratifying countries agreed on the importance of establishing adequate safety measures for the environment and human health to address the possible risks posed by GMOS (genetically modified organisms). Intense negotiations started in 1995 and resulted in the adoption of the final text of the Cartagena Protocol on Biosafety (thereafter referred to as the Biosafety Protocol or BSP) in 2000."

http://www.google.com.mx/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCYQFjAA&url=http%3A%2F%2Fwww.greenpeace.org%2Finternational%2FPageFiles%2F24242%2FGeneralbackgrounderMOP.doc&ei=jjThUtNiKvflsASF-4CIDQ&usg=AFQjCNHIDqZE_Lqbhy9j1sGF6ZQX1Rzbgg&sig2=Cr_S16Zs8FE3TqQ0TtPZ7A&bvm=bv.59568121,d.cWc (accessed January 15, 2014).

complex was reduced to one representable character, Monsanto. For us, Monsanto wore a tuxedo, a top hat, and a pig's face. On his arm, a glorious drag performer dressed in a variation of the national flag pranced around as the adoring Motherland, eager to pick up the pennies that fell from Monsanto's wallet.

<Fig 9.1 here>

The performer could not wear the actual flag, as that is against the law in Mexico. The People of Corn, covered in body paint, sang and danced to the God of Corn. The performance moved toward the Plaza de la Paz in front of the cathedral, gathering more spectators as it moved along. The performance ended there with a public volleyball game between Monsanto's evildoers and the People of Corn. Everyone was invited to participate on either side, though almost everyone took the side of the People of Corn. A young Mayan girl threw the ball that defeated the Monsanto team, to great applause and shouts of joy. The group carried the beaming girl on their shoulders in triumph.

<Fig 9.2 & fig 9.3 here>

In 2013, as in previous years, we invited artists, scholars, and activists to participate in the course. Lorie Novak, a photographer and professor of photography and imaging at NYU, joined us for the second time. Jacques Servin of the Yes Men, who was a visiting professor in performance studies, also participated. Andy Bichlbaum (Jacques Servin) and Mike Bonanno (Igor Vamos) are the Yes Men, activists who parody powerful corporate leaders and spokesmen through what they call "identity correction," that is, "impersonating

big-time criminals in order to publicly humiliate them, and otherwise giving journalists excuses to cover important issues.”²⁶ So while the Yes Men use the media, they do not target the media. Rather, as they say, they give journalists the excuse to talk about serious and ongoing issues that do not necessarily qualify as newsworthy.

Servin (as Bichlbaum) writes in *Beautiful Trouble*:

When trying to understand how a machine works, it helps to expose its guts.

The same can be said of powerful people or corporations who enrich themselves at the expense of everyone else. By catching powerful entities off-guard—say, by speaking on their behalf about wonderful things they should do (but in reality won’t)—you can momentarily expose them to public scrutiny. In this way, everyone gets to see how they work and can figure out how better to oppose them. . . . This is identity correction. . . . Instead of speaking truth to power, as the Quakers suggest, you assume the mask of power to speak a little lie that tells a greater truth.²⁷

Telling a lie to tell the truth closely aligns with what Carrie Lambert-Beatty calls parafiction. Along with the other paraworlds mentioned in this study, parafiction marks the

²⁶ The Yes Men, accessed April 14, 2015, <http://theyesmen.org/>.

²⁷ Andrew Boyd and David Oswald Mitchell, eds., *Beautiful Trouble: A Toolbox for Revolution* (New York: o/R, 2012), 60. *Beautiful Trouble* is also available online, <http://explore.beautifultrouble.org/#-1:00000>.

coexistence and besideness of “fiction or fictiveness,” and parafiction that “remains a bit outside . . . has one foot in the field of the real.” She continues, “Parafiction real and/or imaginary personages and stories intersect with the world as it is being lived.”²⁸ While pretending to be big bad Monsanto might belong to the fictive, big bad Monsanto continued to do terrible things in the real world. For Lambert-Beatty, parafiction focuses less on the “disappearance of the real than toward the pragmatics of trust. . . . For a moment at least, for various durations, and for various purposes, these fictions are experienced as fact.”²⁹ While Yes Men actions certainly have a foot in the real, one of the legal questions they raise is about the degree to which they are “experienced as fact.” In all cases, however, they do shake fictions of trust.

Since 1999, the Yes Men have been getting into all sorts of mischief with their parafictions, impersonating a spokesperson from Dow Chemical on the *BBC Newshour*, another from Halliburton, yet another claiming to be from the U.S. Chamber of Commerce in a live forum, and so on. During these impersonations, the two often build false hope that

²⁸ Carrie Lambert-Beatty, “Make-Believe: Parafiction and Plausibility,” *October* 129 (summer 2009): 54.

²⁹ Lambert-Beatty, “Make-Believe.” Lambert-Beatty adds, “Unlike historical fiction’s fact-based but imagined worlds, in parafiction real and/or imaginary personages and stories intersect with the world as it is being lived. Post-simulacral, parafictional strategies are oriented less toward the disappearance of the real than toward the pragmatics of trust. Simply put, with various degrees of success, for various durations, and for various purposes, these fictions are experienced as fact” (54).

companies will finally do the right thing (compensate the victims of the Bhopal disaster in Dow's case) or that the U.S. Chamber of Commerce would support environmental legislation.³⁰ When the organizations rushed to declare that in fact the announcements were a hoax, that they had no intention of doing the right thing, they fell into what is known as a "decision dilemma"—the "damned if you do and damned if you don't" gold standard for activists. The target looks ridiculous no matter what it does.³¹

Typically, a Yes Men action starts with a fake website that looks real. Servin and Vamos create nearly identical sites and simply change the URL slightly. Their fake Dow Chemical site drew some criticism from Dow, but nothing else. When the BBC was looking for a Dow Chemical representative to speak on the twentieth anniversary of the Bhopal disaster, they found Jude Finisterra (Servin as the saint of lost causes positioned at the end of the world) happy to comply. On the air, Servin played Finisterra with a straight face, the very picture of concern and thoughtfulness befitting a well-meaning executive.

<Fig 9.4 here>

³⁰ For the fake Dow Chemical announcement on the BBC, see Yes Men, "Bhopal Disaster," YouTube, January 2, 2007, <http://www.youtube.com/watch?v=LiWlvBro9eI>, and for the Chamber of Commerce hoax, "The Yes Men Pull Off Prank Claiming US Chamber of Commerce Had Changed Its Stance on Climate Change," *Democracy Now!*, October 20, 2009, http://www.democracynow.org/2009/10/20/yes_men_pull_off_prank_claiming.

³¹ See Yes Men, "Bhopal Disaster."

At moments, as often with Servin's various personas, he looked slightly baffled.³² The complexity of it all often throws his characters slightly off kilter, comically giving them a somewhat lost feel. The film *The Yes Men Fix the World* (2009) shows a very nervous Servin almost running out of the BBC studios, like David getting away from Goliath. Chalk up one for the little guy. Dow stock prices in Europe dropped precipitously. Trust had been shaken, although it seemed that the sinking stocks meant investors could not trust Dow to value money over lives. Dow was too savvy to sue the Yes Men, but they did send "spies," as Servin calls them, to keep track of their doings.³³

The U.S. Chamber of Commerce, on the other hand, demonstrated less caution. It was so incensed at the Yes Men's fake site that it issued a takedown notice in 2009 demanding they take down the "infringing material."³⁴ The Electronic Frontier Foundation, defending the Yes Men, argued that the "Parodic Site is obviously designed for purposes of

³² For the video of the BBC coverage of Dow Chemical accepting responsibility for the Bhopal disaster, see Yes Men, "Bhopal Disaster."

³³ "In February 2012, it was widely reported in the 2012 Stratfor email leak that Dow Chemical Company hired private intelligence firm Stratfor to monitor the Yes Men." The source for this is listed as "Stratfor Was Dow's Bhopal Spy: WikiLeaks," *Times of India*, February 28, 2012. "Yes Men," Wikipedia, https://en.wikipedia.org/wiki/The_Yes_Men#Dow_Chemical.

³⁴ "Chamber of Commerce v. Servin," Electronic Frontier Foundation, accessed October 2, 2015, <https://www.eff.org/cases/chamber-commerce-v-servin>.

criticism and comment and protected by the fair use doctrine.”³⁵ The argument was that parody, with a foot in the real, clearly belonged to a different (not real) register based on humor and criticism rather than fact.

As with the Dow case, the Yes Men decided to impersonate a Chamber of Commerce spokesperson to push the hoax further. In 2010, Servin as Andy as the spokesperson gave a press conference pretending to be a representative of the U.S. Chamber of Commerce, announcing the chamber had reversed its plans to derail responsible congressional legislation on climate change.³⁶ The chamber, which presents itself as if it were a government agency, sued the Yes Men for “fraudulent acts . . . [that] deceived the press and the public and caused injury to the Chamber.” In a way, the chamber suggests that the hoax violates public trust in its pretend status as an official, seemingly politically neutral state agency. “These acts,” the complaint continued, “are nothing less than commercial identity theft masquerading as social activism.”³⁷ The chamber insisted that these “conducts” are “destructive of public discourse” because they “disguise the true motives of the persons who took that property.” The defendants, Servin and Vamos, the lawsuit states, are

³⁵ “Chamber of Commerce v. Servin.” In *Campbell v. Acuff-Rose Music Inc.*, the Supreme Court recognized parody to be fair use, even when it is done for profit.

³⁶ The Yes Men’s film *The Yes Men Are Revolting* shows their impersonation of the Chamber of Commerce and its aftermath: Andy Bichlbaum, Mike Bonanno, and Laura Nix, dirs., *The Yes Men Are Revolting* (New York: The Orchard, 2014).

³⁷ “Chamber of Commerce v. Servin: Complaint,” Electronic Frontier Foundation, accessed October 2, 2015, <https://www.eff.org/node/56749>.

“engaged in a business [they] call ‘identity correction.’” The complaint repeated that the acts were fraud, not “hoaxes,” used to promote the Yes Men’s films and increase the sale of T-shirts. The Yes Men maintained it was all mimesis, as in ideas that “cluster around the motif of artistic ‘deception.’”³⁸ The chamber’s complaint quotes Servin as telling the *New York Times*, “We’re comedians, basically. It’s all theater.” The tension illuminated different understandings of both “lies” and the “real,” with each side claiming they were committed to defending or exposing the truth. As the lawsuit dragged on and on, the chamber finally gave up its suit. The Yes Men then sued them for dropping the suit. The legal framework ironically enabled the Yes Men to develop even more theater. “Sometimes it takes a lie to expose the truth,” the Yes Men say. All the brouhaha provoked by the hoaxes proved invaluable in keeping the companies’ wrongdoings in the public eye.

Impersonating corporations leads to a funhouse world of mirroring, masking, and masquerading as a person that troubles perception, making it look as if power always resides elsewhere, impossible to locate. Corporations are hard to pin down. Who is, or rather was, Monsanto now that Bayer has bought them out?³⁹ The corporation? Or the people who run it? Or the people who carry out company policies? In the Citizens United

³⁸ Stephen Halliwell, *The Aesthetics of Mimesis* (Princeton, NJ: Princeton University Press, 2002), 20.

³⁹ Zoë Schlanger, “Monsanto Is About to Disappear. Everything Will Stay Exactly the Same,” *Quartz*, June 5, 2018, <https://qz.com/1297749/the-end-of-the-monsanto-brand-bayer-pharmaceuticals-is-dropping-the-name-monsanto/>.

case, for example, the Supreme Court “held that if individuals have free speech, then so must collected groups of individuals. Corporations are groups of individuals and, therefore, they have free speech rights.”⁴⁰ Who exactly are these individuals who have rights but never have to accept responsibility for what the company does? Corporations also mask their transnational networks by buying real estate and branding it with their name. Here but not here. Bureaucrats wear suits and ties to embody and represent the financial interests of the mega rich who hide behind corporate labels and identities. Ventriloquists reiterate faux facts, little lies, and big lies that emanate from who knows where. Meanwhile actors are called fakes.

In 2013, when Servin was with us in Chiapas, activists were anxiously waiting for the news of whether SAGARPA would grant Monsanto’s bid to plant GM corn commercially. Rodríguez communicated with activists from throughout the country, coordinating events and efforts to intercede. For years she had led nationwide protests through her Resistencia Creativa project that creatively informs Mexicans about the dangers posed by GMOS.⁴¹ As we sat in the Zapatista restaurant on Real de Guadalupe, an upscale walking street in San Cristóbal de las Casas, the idea came to us—we would create a Yes Men action against Monsanto. Some local activists and some participants in the class wanted to join in. In a few days we had prepared our digital action. In true Yes Men fashion, we launched a fake

⁴⁰ Cox, “How Corporations Got the Same Rights.”

⁴¹ See Resistencia Creativa, <http://resistenciacreativadf.blogspot.com/>.

website claiming to be Monsanto's. Our press release, on the fake Monsanto website, announced that the request for expanded GMO cultivation had been granted by SAGARPA and thanked all those people in government for their invaluable help in moving Monsanto's interests along to fruition. We, of course, thanked them by name and carbon copied them in our communiqué.

<Fig 9.5 here>

MEXICO CITY (Aug 14, 2013): The planting of genetically modified (GM) cornfields on a large commercial scale has been approved by the Mexican Secretariat of Agriculture (SAGARPA). The permit allows the planting of 250,000 hectares of three varieties of GM corn (MON-89034-3, MON-00603-6 and MON-88017-3) in the states of Chihuahua, Coahuila and Durango. This is the first time GM corn will have been planted on a large commercial scale in Mexico.⁴²

Our release went on to add that Monsanto, aware that critics would decry the threat to the diversity of corn in Mexico that would be contaminated or displaced by the GM crops, would enact certain measures. "One such initiative is the National Seed Vault (Bóveda Nacional de Semillas, BNS), whose charter is to safeguard the 246 native Mexican corn strains from ever

⁴² For the full announcement on the fake website, see "Mexico Grants Monsanto Approval to Plant Large-Scale GM Corn Fields," Monsanto, August 14, 2013, <http://monsantoglobal.com.yeslab.org/mexico-grants-mexico-approval-to.html>.

being fully lost.” “Fully lost,” we felt, was a nice touch. Researchers and celebrity chefs could come and examine the native seeds in the vault.

Another initiative, we claimed, was the creation of the “Codex Mexico (Codice México), a digital archive preserving the vast wealth of Mexican culture for centuries to come. The five-hundred-year-old *amatl* (bark) manuscripts that contain much of what we know about preconquest Mexico are called “codexes.” Our “Codex México is a visionary initiative that will allow future generations of children to know far more about our lives today than we know of our pre-Columbian ancestors,” noted forensic anthropologist Marcelo Rodríguez Gutiérrez. ‘Never again will the wealth of this region’s culture be lost as social conditions change.’” This new conquest, we suggested, would be kinder and less devastating than the last. To illustrate the contribution of the codex, Lorie Novak included corny photographs and empty captions: “Mexican Corn.”

Monsanto, faced with the decision dilemma of responding to or ignoring the prank, did not take long to respond. Just as we were sitting down for a celebratory margarita, Monsanto had us on the phone demanding that we take our hoax site down.

<Fig 9.6 here>

They insisted we issue a retraction immediately. We agreed, of course. Another press release, by us but again seemingly from Monsanto, “denounced the release as a hoax, crediting a group of students and activists called *Sin Maíz No Hay Vida* (Without Corn There

Is No Life).⁴³ There we fully explained what Monsanto was up to. The reveal, the Yes Men’s revelation of the hoax, always happens within twenty-four hours of the act, if it hasn’t already been uncovered. The lie may be useful in illuminating a larger egregious act, but it is not allowed to stand.⁴⁴ Unlike fraud, our intentions were neither to profit nor deceive but, rather, to provoke a conversation. A few news outlets knew that both our press release and our denouncement were a prank—no one familiar with Monsanto’s strategies could believe that the corporation would issue such declarations—but they took advantage of the excuse to throw light on the corruption shrouding Monsanto and SAGARPA. Given the widespread activism around the GMO issue, we were leaked a confidential email that Monsanto had just sent to SAGARPA, apologizing for the confusion that our “reprehensible action” had caused and promising to get things under control.⁴⁵ Monsanto reiterated the need for confidentiality. Monsanto, imposters too, had to perform their role as responsible and efficacious collaborators for the authorities. We also published that email.⁴⁶

⁴³ See the Yes Lab website for a full description of the digital action (<http://yeslab.org/monsanto>).

⁴⁴ The Yes Men do not seek to perpetuate a lie, unlike the case in which a man lied about receiving the Medal of Honor (“United States v. Alvarez,” Legal Information Institute, Cornell Law School, <https://www.law.cornell.edu/supremecourt/text/11-210>). The point, rather, is to reveal the lie perpetrated on the public by corporations such as Dow Chemical and Monsanto.

⁴⁵ To read the leaked letter, see Yes Men, “Leaked Letter from Monsanto to Mexican Government,” Yes Lab, August 14, 2013, <http://yeslab.org/monsanto-leak>.

⁴⁶ Yes Men, “Leaked Letter.”

On September 13, 2013, Monsanto contacted the president of NYU to complain about the street and digital actions. They wanted to know about the course, see the syllabus, and understand the relationship of the actions to NYU. They demanded an apology from NYU.

This created a new drama, one that dominated our fall semester in 2013 at NYU. This drama was complex. In Victor Turner's language of social drama, it could be characterized as consisting of a breach or rupture caused by a transgressive act (launching the fake website?), a crisis (which spanned the fall semester), the reparative acts (involving Monsanto lawyers, NYU, and myself), and the resolution (hopefully to come).⁴⁷ The series of acts that constituted the drama shifted between overt and covert, play and "dark play" in Richard Schechner's words.⁴⁸ Play, like the law perhaps, is usually regulated by rules and agreements, but it was not quite clear during that time what we all thought we were agreeing to. Had we even agreed to agree? More in the realm of dark play, we did not all know who were playing. The law structured its performance of authority and consensus, agreeing that we were in violation. Servin and I started coming into presence as a problem, a problem for Monsanto and, by extension, a problem for NYU. We defended different rules based on freedom of speech that included the right to parody and critique.

⁴⁷ Victor Turner, *From Ritual to Theatre* (New York: Performing Arts Journal, 1982), 10.

⁴⁸ Richard Schechner, *The Future of Ritual* (London: Routledge, 1993), 27.

In several ways, Monsanto started to appear as a person and persona invested with personality before my eyes. Persona, in classical Greek theater, is literally the mask through which the actor speaks the words. No one ever saw the face of the being that uttered the words, only the mask or persona transmitting them. Monsanto's spokespeople were literally mouthpieces, ventriloquists conveying language. I never knew who, if anybody, was behind the mask. The mask of Monsanto removed the "object from our grasp," to paraphrase Brecht.⁴⁹ But contrary to Brecht's "alienation effect" that builds on dialectical materialism "to unearth society's laws of motion . . . [and] treats social situations as processes, and traces out all their inconsistencies," this form of alienation made the powers more inaccessible and potent, unlocatable yet ubiquitous.⁵⁰ Monsanto's spokespeople impersonated and embodied a corporation (*corporare*) that itself impersonated being a person.

On a different level, Monsanto seemed to be a person with feelings. It (he? she?) claimed to have been hurt and embarrassed, and needed an apology. Corporations legally count as persons after all; they have rights and, apparently, they have emotions. "Monsanto" had complained to NYU. But again, who is Monsanto and to whom did he/she/it complain? Where were the people behind these masks? That legal fiction functions as its own form of

⁴⁹ Bertolt Brecht, *Brecht on Theatre*, ed. and trans. John Willett (New York: Hill and Wang, 1964), 192.

⁵⁰ Brecht, *Brecht on Theatre*, 193.

impersonation. The fiction of the corporation as a person was, it seemed, an acceptable and permissible impersonation, while impersonating a corporate impersonation was not.

Lawyers for NYU repeatedly questioned Servin and me. We stressed that the digital action had nothing to do with NYU. It was not on the syllabus or part of the course. We forwarded the materials, syllabus included, requested by Monsanto. We reiterated that NYU had no reason to issue an apology.

We had a few questions of our own for Monsanto. We asked the lawyers to ask what Monsanto objected to—the street action or the digital action. Is impersonation on the street different from impersonation online? It could not be that simple. We had impersonated Monsanto before, in a street action comparing the insatiable agribusiness to the insatiable mouth of Tlaltecuhli, the Aztec god/dess of the earth who devours her creations. It would seem that embodied actions in some distant town in southern Mexico did not resonate much. Yet again Servin had been sued for impersonating a Chamber of Commerce in the flesh. The difference, Servin and I concluded, was not about the online or offline nature of the impersonation but about the reach of the prank.

We also wanted to know how our action had harmed Monsanto. After all, it was just play. A performance, such as the street action, can be considered a form of representation. Monsanto in a pig's mask was a representation. A performative, on the other hand, can be

considered a speech act, a form of incitement.⁵¹ We, like the Yes Men before, claimed ours was intended as an art project—a performance rather than a performative. We were not trying to do something, make something happen, we said. This was not an animative—a refusal to play the game. On the contrary, we were playing. And arguably, if readers had actually believed the fake website, it might be said that we were trying to make Monsanto look good, as if it cared about bio- and cultural diversity.⁵² Privately, of course, Servin and I actually hoped Monsanto could show we had injured them—that would have been proof of the efficacy of activist performance. But no proof of injury or efficacy was forthcoming.

Before long, an NYU lawyer and a top administrator came to visit me in my office. Phrases such as code of ethics, academic freedom, and conflict of interest came up. Apparently, our action had placed us on the wrong side of each. The lawyer and senior administrator from NYU told me with straight faces that I might be guilty of conflict of interest. Really? How so? I asked. Apparently the Hemispheric Institute site linked to the Yes Men's, where they sold T-shirts. But then I asked the senior administrator, "Weren't you once one of Monsanto's lead counsels? Some might call that a conflict of interest." The lawyer hastened to add that conflict of interest was not necessarily a bad thing, it just

⁵¹ See J. L. Austin, *How to Do Things with Words* (Cambridge, MA: Harvard University Press, 1962); and Judith Butler, *Excitable Speech: A Politics of the Performative* (New York: Routledge, 1997). Thanks to Anurima Banerji for pointing out this connection.

⁵² Thanks to Grace McLaughlin for her research assistance tracking down the cases and to Professor Amy Adler (NYU Law) for her help with this essay.

needed to be managed. The administrator straightened herself up uncomfortably in her chair and scratched “conflict of interest” off her list of our infractions.

Violation of an ethical code? An important university person had recently sent an email on official letterhead asking employees for donations to a right-wing politician, payable through his office. Was that against our ethical code, I asked them? Just asking. That violation was also scratched off the list of my infractions.

Monsanto, I said to my visitors, had seemingly infinite resources and strategies to counter any critiques or evidence of wrongdoing against them. All we (professors) had to shield us was academic freedom.⁵³ Were they really going to go after me on the grounds of academic freedom? They must have agreed it wasn’t worth their while to continue the conversation, but they did admonish me not to do it again.

As I put in an email to members of the administration who continued to question whether my actions were covered by academic freedom: “For me, as a performance studies scholar, the hoax and writing and acting are all ways to express ourselves in the face of enormous corporate interests that do very real harm.” Polluting the environment,

⁵³ Harvey A. Silverglate, David French, and Greg Lukianoff, *Fire’s Guide to Free Speech on Campus* (Philadelphia: Foundation for Individual Rights in Education, 2012), includes a chapter on academic freedom, which it defines “as a general recognition that the academy must be free to research, teach, and debate ideas without censorship or outside interference.” It notes that “however fuzzy its definition or uncertain its actual legal application [it] is still a powerful concept, crucial to our understanding of the university as a true marketplace of ideas” (1510).

destroying local economies, meddling in educational institutions, and harming humans all theoretically count as violations, but which violations matter and which do not? The law, apparently, legitimates certain performances, turning away from the harms they permit, and negatively sanctions others (plays, pranks) on the basis of a harm they are said to cause.

Nonetheless, the logic around academic freedom seemed paradoxical: if my use of a hoax were part of a course, it would be covered by academic freedom. If it were not covered because it took place outside the limits of my institutional commitments, then why would NYU have to weigh in? Again, there's no clear agreement on what academic freedom might mean and what it covers, especially now in the Trump era. Greg Lukianoff defined it in *Fire's Guide to Free Speech on Campus* "as a general recognition that the academy must be free to research, teach, and debate ideas without censorship or outside interference." Following that definition, those who study and teach there must be able to pursue knowledge without corporations impeding and subverting academic work.⁵⁴ Monsanto and other corporations and military entities fund research at all of our universities. There is a rotating-door hiring process between these industries and universities, as the role of ex-Monsanto lawyer, now current highly placed administrative officer, makes clear. These businesses influence what areas of inquiry are important, prioritized, and funded. And yet I am not allowed to critique them? Is that academic freedom?

⁵⁴ Silverglate, French, and Lukianoff, *Fire's Guide to Free Speech on Campus*.

If we must make a choice, as the law apparently requires, then we will need to agree on underlying values. Which performance is more important to society: a group of concerned artists and academics impersonating a hurtful corporation, or a corporation intent on impersonating hurt feelings?

After many back-and-forths, it seemed that the street action, which was officially related to the course, did not really bother Monsanto. While the actor wore a pig's mask to impersonate Monsanto, no one actually believed it was Monsanto—it was a performance; the joke was clear, and it took place far from the public eye. The digital action, on the other hand, reached a far broader audience (including the people who were considering granting permission to Monsanto). It might be argued that people for a short period of time actually thought the fake announcement came from Monsanto, which got them activated—thus it was a performative, language that acts, that makes something happen. In any case, that level of exposure was no laughing matter, and Monsanto was taking it very seriously indeed, operating behind closed doors as usual to intimidate their critics.

As the fall semester wore on, it seemed that Monsanto no longer insisted on a formal public apology from NYU. A confidential apology, available only to “persons who need to know,” as an email put it, would be sufficient. As before, I argued strongly against this, stating that Monsanto would use the (confidential) apology to justify itself and discredit critique before Mexican lawmakers.

Civil liberties lawyers argue that the ambiguity around the legal understandings of impersonation could clamp down on free speech. Matt Zimmerman, the lawyer with the Electronic Frontier Foundation that defended the Yes Men from the Chamber of Commerce, notes, “the concern is it gives a lot of discretion to law enforcement to go after First Amendment activity. . . . The resulting consequence of that is that people will feel chilled and intimidated and hence decide to not engage in perfectly legitimate forms of social protest because they’re worried that not only might they be sued, but they could actually go to jail.”⁵⁵ Political speech is, after all, what the First Amendment protects, according to Christopher Dunn of the New York Civil Liberties Union: “Political, religious and other speech often is intended to be annoying. But that is precisely the type of speech the First Amendment was designed to protect.”⁵⁶

In October 2013, a Mexico City judge, Marroquin Zaleta, issued a temporary halt that prohibited SAGARPA from granting Monsanto permission to plant GM corn in Mexico, either on an experimental, pilot, or commercial basis.⁵⁷ A December 2013 ruling upheld that

⁵⁵ Victor Luckerstan, “Can You Go to Jail for Impersonating Someone Online?,” *Time*, January 22, 2013, <http://business.time.com/2013/01/22/can-you-go-to-jail-for-impersonating-someone-online/>.

⁵⁶ John Leland, “Top Court Champions Freedom to Annoy,” *New York Times*, May 13, 2014, http://www.nytimes.com/2014/05/14/nyregion/top-court-champions-freedom-to-annoy.html?smid=pl-share&_r=1.

⁵⁷ See <http://www.nationofchange.org/mexico-bans-gmo-corn-effective-immediately-13820223>

position.⁵⁸ Subsequent court rulings have prohibited the planting of GM corn in Central America. AgroBIO and other firms have lobbied to overturn Judge Marroquin Zaleta's 2013 ruling and demand he be taken off the case.⁵⁹ The struggles continue into the present, but the prohibition against planting GM corn stands.

Did our digital action prove efficacious? Did we really derail or at least postpone Monsanto's plans? Although we would love to think so, this hoax was one of thousands of interventions that artists and activists constantly carry out to keep GMOS out of Mexico and other countries. We did not know most of them, but we were reassured to be among people who use their talents to keep (further) bad things from happening. These networks of

49; and "Juez da sentencia histórica: Ordena a Sagarpa y Semarnat frenar entrega de permisos para el maíz transgénico," *SinEmbargo*, October 10, 2013, <http://www.sinembargo.mx/10-10-2013/781011>. For more information about the situation in Mexico in regard to Monsanto, and the activists who are working to keep the transnational corporation out, see "Análisis de Coyuntura Octubre 2013," Fundación Semillas de Vida, October 2013, <http://www.semillasdevida.org.mx/index.php/component/content/article/91-categ-analisis-de-coyuntura-2013/145-10-13>.

⁵⁸ Angélica Enciso L., "Firme, la suspensión de permisos para cultivo de maíz transgénico," *La Jornada*, December 24, 2013, <http://www.jornada.unam.mx/2013/12/24/politica/020n1pol>.

⁵⁹ See Don Quiñones, "Mexican Judge Departs from Script, Turns Monsanto's Mexican Dream into Legal Nightmare," *Wolf Street*, September 1, 2014, <http://wolfstreet.com/2014/09/01/mexican-judge-departs-from-script-turns-monsantos-mexican-dream-into-legal-nightmare/>.

coresistance can make a difference. Unfortunately, local activists are usually the ones taking the heat from corporations for intervening in their plans.⁶⁰

But the action did place many in a decision dilemma. Would NYU tell Monsanto to go away and reiterate that NYU had nothing to do with the digital action (my suggestion)? What would happen to Jesusa Rodríguez, to Jacques Servin, and to me? Would the Hemispheric Institute have to distance itself even further from direct actions such as this one?

As of this writing, the Hemi-NYU-Monsanto conundrum seems to have been resolved or, better, dropped. Instead of reaching a resolution, the issue went away. Monsanto, of course, was too smart to go after the Yes Men. Monsanto just wanted a letter from NYU declaring our action unethical. They were even willing to accept a confidential letter, read by only a few key people. I could not find out if NYU ever issued the letter of apology. Although Bayer absorbed Monsanto, deemed too toxic a brand, and Monsanto Roundup now masquerades as Bayer Roundup, “Bayer Chairman Werner Baumann said in a statement, ‘We will listen to our critics and work together where we find common ground.’”⁶¹

Happily, in any case, we were history.

⁶⁰ Jesusa Rodríguez, personal communication, August 3, 2018.

⁶¹ Nathan Bomey, “Monsanto Shedding Name: Bayer Acquisition Leads to Change for Environmental Lightning Rod,” *USA Today*, June 4, 2018, <https://www.usatoday.com/story/money/2018/06/04/monsanto-bayer-name/668418002/>.

But I too had been caught up in an identity correction. Coming into presence as an activist as well as a scholar has shifted my sense of temporality, responsibility, my worlds of interlocutors, and my understanding of the stakes. I remember one of the conversations we had at the first Hemi Encuentro in Rio de Janeiro in 2000. Apparently many participants found it strange that we would convene artists, activists, and scholars to think and collaborate together. Finally after working together for a few days, some of the artists spoke up: “We know why the artists and activists are here, but what are you [the scholars] doing here?” I responded that artists and activists often work with their bodies—everything from voice, to body art, to movement, to putting one’s body on the line. But who, I asked, complicated our understanding of the body as raced, gendered, sexed, and so on? “Okay, you can stay.” We agreed to work together. But it’s still difficult to refuse disciplinary lines and loyalties, the age-old divisions between the knowing and the doing. I have to do something, but accept that I can only do what I can do. If there’s a price to pay, so be it. I told the NYU lawyer that I would write the incident up in an essay. “If they [Monsanto] come after me for that, I’ll write more.” But again, it’s not that simple. I too have been forced to confront my mask of power and recognize how risk is unevenly distributed not just throughout society but in my own practice. Jesusa Rodríguez risks her life (which has been threatened more than once). Now a senator in Mexico, Rodríguez is taking the fight against GMOS to the Senate floor. Jacques Servin has a collection of injunctions, cease and desist letters, and other warnings. He answers the performative with an animative; he turns his back and keeps

laughing and finding ways to correct corrupt political and corporate identities. Visiting and adjunct faculty face more risks of losing jobs than do tenured, full, and distinguished professors. Servin was not reappointed to NYU. Organizations such as Hemi also run the risk of losing support and funding. In short, the prank had repercussions for all of us, in different ways.

Armed with scholarship and creativity, I continue to do what I can from where I am. What can I do when there's nothing to be done, and doing nothing is not an option? Lots of things, apparently.

Have I changed tactics in regard to knowledge, action, truth, and power?

YES MA'AM!!⁶²

¡Presente!

⁶² Thanks to Mary Notari, the original YES MA'AM, and Jacques Servin for conferring this title on me. An earlier and much shorter version of this piece appeared in Taylor, *Performance*.