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Abstract

Before America recognized either African-Americans or women as "persons" with unalienable civil rights, corporations were granted "personhood" first with all the rights and privileges as a white man and additional rights that not even citizens of America could not obtain. America was formed to alleviate the control of corporations, escape from persecution, end the rule by sovereignty, and to expand the freedoms of the individual. Though America was no longer governed by sovereignty, through the judicial system, corporations have succeeded in restraining the individual and placing the citizens into economic slavery.

This paper will examination the birth of the American corporation, the United States constitution, and the issues regarding the excessive power corporations possess over government and the public. In addition, it will review the legal case that gave the corporation the inalienable rights of citizens, the role of these rights and how they have caused corporations to become virtually unaccountable for their actions, and, finally, what options there are to restore control over corporations to the government and the citizens of the United States.

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Introduction

At the birth of our nation, Thomas Jefferson said, "I hope we shall crush in its birth the aristocracy of our moneyed corporations which dare already to challenge our government in a trial of strength, and bid defiance to the laws of our country" (Redwood, 2000). Even in the beginning, the founding fathers and leaders of the United States prophesied the wrong corporations could inflict upon government and the public.

Since the ratification of the Bill of Rights, there have been many amendments further outlining and enabling the rights of individuals, most notably African-Americans and women. However, before even the African-Americans and women were recognized as "persons" with unalienable rights, corporations were granted "personhood" first with all the rights and privileges as a white man and additional rights that not even citizens of America could not obtain.

Corporations have been around for many centuries, and the earlier ones were chartered and controlled by sovereignty. America was formed to alleviate the control of these corporations, as well as escape from persecution, end the rule by sovereignty, and to expand the freedoms of the individual.

Even though America was no longer governed by sovereignty, through the judicial system, corporations have succeeded in

obtaining those rights citizens enjoyed, plus other benefits, effectively restraining the individual and placing United States citizens into an economic slavery.

This paper will examination the birth of the American corporation, the United States constitution, and the issues regarding the excessive power corporations possess over government and the public. In addition, it will review the legal case that gave the corporation the inalienable rights of citizens, the role of these rights and how they have caused corporations to become virtually unaccountable for their actions, and, finally, what options there are to restore control over corporations to the government and the citizens of the United States.

Evolution of the American Corporation

Before the United States was created, America was made up of colonies and within these colonies, King Charles I, in 1628, granted the Massachusetts Bay Company a corporate charter. As a vision of what was to come, years later the King sent his commissioner to determine whether the corporation was adhering to the charter. When visited by the commissioner, the leaders of the chartered corporation objected. They declared the investigation infringed upon their rights. The commissioner responded,

The King did not grant away his sovereignty over you when he made you a corporation. When His Majesty gave you power to make wholesome laws, and to administer justice by them, he parted not with his right of judging whether justice was administered accordingly or not. When His Majesty gave you authority over such subjects as live within your jurisdiction, he made them not YOUR subjects nor YOU their supreme authority (Hanson, n.d.).

From the earliest days where corporations were chartered by sovereignty, corporations already believed themselves to be beyond the authority of the charter granting governmental body. From this point forward, corporations continued throughout the centuries to challenge the very government that issued the charter. Sovereignty could simply dismiss them, but democracies had no choice but to listen. Sometimes they would obtain new rights, and at other times, they would not, but, regardless, they were persistent in their endeavors.

In 1776, when the United States severed ties with England, there were only a few corporations in colonial America. For example, the Dutch West India Company, which had founded New York, and other corporations that effectively governed Virginia, Maryland, and the Carolinas (Redwood, 2000).

After 1776 and fighting the revolution for freedom, the founding fathers maintained a fear of corporate power and

limited corporations exclusively to a business role. These new American charters were to serve explicitly as a tool to gather investment and disperse financial liability to provide public goods. The terms of an American charter would be:

- A charter was granted for a limited time.
- Corporations were explicitly chartered for the purpose of serving the public interest - profit for shareholders was the means to that end.
- Corporations could engage only in activities necessary to fulfill their chartered purpose.
- Corporations could be terminated if they exceeded their authority or if they caused public harm.
- Owners and managers were responsible for criminal acts they committed on the job.
- Corporation could not make any political contributions, nor spend money to influence legislation.
- A corporation could not purchase or own stock in other corporations, nor own any property other than that necessary to fulfill its charter purpose
(ReclaimDemocracy.org, 2000).

However, even then not every charter actually possessed a revocation clause. Not until 1784 were revocation clauses written into all Pennsylvania charters, 1809 saw the first

revocation clauses added to insurance charters, and 1814 for banking charters (Grossman, 1993).

In 1809 the Supreme Court of Virginia reasoned, "if the applicants' object is merely private or selfish; if it is detrimental to, or not promotive, of public good, they have no adequate claim upon the legislature for the privileges" (Grossman, 1993).

Though the government knew the detriments that corporations could cause, they continued to issue corporate charters, but they would also keep a constant eye on the corporations' activities often wavering back and forth as to the legitimacy of them. At the time, they used what is called *quo warranto* (by what authority) to revoke charters of corporations (Grossman, 1993). In 1814, Massachusetts Justice Joseph Story ruled in *Terrett v. Taylor*, "A private corporation created by the legislature may lose its franchises by a misuser or nonuser of them. . . This is the common law of the land, and is a tacit condition annexed to the creation of every such corporation" (Grossman, 1993).

In 1819, when the Supreme Court attempted to revoke a charter issued by King George III in 1769, which contained no revocation clause, it was stated that, "it is aristocracy and despotism, to have a body of officers, whose decisions are for a long time, beyond the control of the people. The freemen of

America ought not to rest contented, so long as their Supreme Court is a body of that character" (Grossman, 1993). After 1819, governments returned to those charters not containing clauses and amended what they could in order to secure the right of revoking charters.

The Pennsylvania legislature, in 1834, stated, "A corporation in law is just what the incorporating act makes it. It is the creation of the law and may be moulded to any shape or for any purpose that the Legislature may deem most conducive for the general good" (Hanson, n.d.).

New Hampshire Governor Henry Hubbard argued in 1842, "there is no good reason against this principle. In transactions which occur between man and man there exists a direct responsibility - and when capital is concentrated . . . beyond the means of single individuals, the liability is continued" (Grossman, 1993).

Over several decades starting in 1844, nineteen states amended their constitutions to make corporate charters subject to the legislation. Rhode Island stated in 1857, "the charter or acts of association of every corporation hereafter created may be amendable or repealed at the will of the general assembly" (Grossman, 1993). Pennsylvanians adopted a constitutional amendment in 1857 instructing legislators to, "alter, revoke, or annul any charter of a corporation hereafter conferred . . .

whenever in their opinion it may be injurious to citizens of the community . . ." (Grossman, 1993).

As late as 1855, citizens had support from the United States Supreme Court when in *Dodge v. Woolsey* it was stated that the people have not,

Released their powers over the artificial bodies which originate under the legislation of their representatives . . . Combinations of classes in society . . . united by the bond of a corporate spirit . . . unquestionably desire limitations upon the sovereignty of the people. . . But the framers of the Constitution were imbued with no desire to call into existence such combination (Grossman, 1993).

In response to the corporations becoming very wealthy and powerful after the Civil War, the California Constitution of 1879 revised the language to combat the corporation's expansion:

Article I, section 2: All power is inherent in the people . . .

Article I, section 10: The people shall have the right freely to assemble together to consult for the common good, to instruct their representatives . . .

Article XII, section 8: The exercise of the right of eminent domain shall never be so abridged or construed as to prevent the Legislature from taking the property and franchises of incorporated companies and subjecting them to

public use the same as property of individuals, and the exercise of the police power of the State shall never be so abridged or construed as to permit corporations to conduct their business in such manner as to infringe the rights of individuals or the general well-being of the State (Hanson, n.d.).

In response, after the Civil War, corporations paid "borers" to infiltrate Congress and state capitals, bribing elected and appointed officials alike in order to obtain limited liability, decreased citizen authority, and perpetual charters (ReclaimDemocracy.org, 2000).

Though somewhat rare at the time when corporations were growing in influence, the highest court in New York State revoked the charter of the North River Sugar Refining Corporation:

The judgment sought against the defendant is one of corporate death. The State which created, asks us to destroy, and the penalty invoked represents the extreme rigor of the law. The life of a corporation is, indeed, less than that of the humblest citizen, and yet it envelopes great accumulative of property, moves and carries in large volume the business and enterprise of the people, and may not be destroyed without clear and abundant reason . . . corporations may, and often do, exceed their

authority only where private rights are affected. When these are adjusted, all mischief ends and all harm is averted. But where the transgression has a wider scope, and threatens the welfare of the people, they may summon the offender to answer for the abuse of its franchise and the violation of its corporate duty. . . The abstract idea of a corporation, the legal entity, the impalpable and intangible creation of human thought, is itself a fiction, and has been appropriately described as a figure of speech . . . The State permits in many ways an aggregation of capital, but, mindful of the possible dangers to the people, overbalancing the benefits, keeps upon it a restraining hand, and maintains over it a prudent supervision, where such aggregation depends upon its permission and grows out of its corporate grants . . . the State, by the creation of the artificial persons constituting the elements of the combination and failing to limit and restrain their powers, becomes itself the responsible creator, the voluntary cause, of an aggregation of capital. . . The defendant corporation has violated its charter, and failed in the performance of its corporate duties, and that in respect so material and important as to justify a judgment of dissolution . . . Unanimous (Hanson, n.d.).

Regardless of the known problems individuals and government had with corporate entities, and, furthermore, with action constantly taken to restrict corporations, corporations still continued to grow and become dominate in the with the business and government arenas. From the creation of this country to the present, there has been an acknowledged and constant threat of corporate influence.

The United States Constitution & The People

Corporations were ultimately afforded the same protections as citizens of the United States. However, the United States Constitution never actually identified corporations as having rights. As former Supreme Court Justice Felix Frankfurter said, "the history of the impact of the modern corporations upon the American scene, is the history of constitutional law" (Grossman, 1993).

Chief Justice Marshall spoke out against automatically granting corporation's constitutional rights,

A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties, which the charter of creation confers upon it, either expressly, or as incidental to its very existence (Danetz, 2003).

Even though corporations were not provided for within the Constitution, corporations pursued the same rights as individuals in the courts. The original purpose of the corporation was of no issue to anyone, but what was an issue is when the corporation became an instrument of management. In the beginning, government managed to keep the corporation as a legal instrument, but as time passed and through numerous court challenges, corporations eventually became "artificial" beings.

The issue became that corporations, and their management, wanted to be able to speak out, protect itself, and continue in perpetuity just like that of a person. In a recent first amendment case, Chief Justice Rehnquist stated, "To ascribe to such artificial entities [as corporations] an 'intellect' or 'mind' for freedom of conscience purposes is to confuse metaphor with reality" (Danetz, 2003). In other words, a corporation has no need to self-expression or self-fulfillment (Danetz, 2003).

Fundamentally, investors do not buy shares expecting to promote a message, but instead they invest to make money. The first amendment, therefore, was not being challenged by the shareholders, but by corporate management. Because corporate management had the power and money of the corporation at their disposal, they could speak out for or against anything, they wished, whereas the individual typically does not possess a

fraction of the resources a corporation does and is ultimately muted in the process.

Beyond the First Amendment, over time, corporations would pursue numerous protections through the Bill of Rights and its subsequent amendments, most notably the Fourth & Fourteenth Amendments. With persistence, they were eventually deemed persons and were afforded many of the same rights as citizens.

Corporations Versus The Humans

According to Conacher & Freeman, there are distinct differences between the corporation and humans. Corporations have always been granted charters by the government and given the role to create for public benefit. However, humans are born. They have their opinions and individual personalities. Humans have inalienable rights as provided for in the Constitution. Corporations have special abilities such as merger and acquisition. Corporations are bought, sold, close, and open. Corporations cannot be questioned or go to prison, and corporations can use bankruptcy to avoid financial obligations, with little penalty. Corporations, because of the financial and legal resources they possess, can greatly influence government. Unlike humans, corporations can negotiate tax breaks, spend money to influence government, and corporations often have more access to legislators. Because of the merging of the individual's rights with the corporate legal status, governments

have created "Frankensteins" with power that makes them accountable to almost no one (Conacher, 1995). The courts, journalists, laborers, and individuals agreed.

Soon after the birth of our nation, in *Richardson v. Buhl*, the Nebraska Supreme Court ruled in the late 19th Century,

Indeed, it is doubtful if free government can long exist in a country where such enormous amounts of money are . . . accumulated in the vaults of corporations, to be used at the discretion in controlling the property and business of the country against the interest of the public and that of the people, for the personal gain and aggrandizement of a few individuals (Hanson, n.d.).

The Illinois Supreme Court, in *People ex. Rel. Peabody v. Chicago Gas Trust Co.*, stated in 1889,

When a corporation is formed under the general incorporation act, for the purpose of carrying on a lawful business, the law and not the statement or the license of the certificate must determine what powers can be exercised as incidents of such business . . . To create one corporation that it may destroy the energies of all other corporations of a given kind, and suck their life blood out of them, is not a 'lawful purpose' (Hanson, n.d.).

A newspaper in New Jersey wrote in the 1830s, "the Legislature ought cautiously to refrain from increasing the

irresponsible power of any existing corporation, or from chartering new ones, else people would become mere hewers of wood and drawers of water to jobbers, banks and stockbrokers" (Grossman, 1993).

In 1838, Massachusetts mechanics that were opposing a charter forming the Amherst Carriage Company said to the legislature,

We . . . do look forward with anticipation to a time when we shall be able to conduct the business upon our own responsibility and receive the profits of our labor . . . we believe that incorporated bodies tend to crush all feable enterprise and compel us to work out our dayes in the Service of others (Grossman, 1993).

Finally, a factory worker named Julianna in Lowell, Massachusetts wrote,

Incarcerated within the wall of a factory, while as yet mere children - drilled there from five till seven o'clock, year after year . . . what, we would ask, are we to expect, the same system of labor prevailing, will the mental and intellectual characters of the future generations . . . A race fit only for corporation tools and time-serving slaves? . . Shall we not hear the response from every hill and vale EQUAL RIGHTS, or death to the corporations (Grossman, 1993)?

From the first corporations and continuing through the years, justices, journalists, laborers, and individuals had a similar opinion of corporations. Nevertheless, moving from how corporations work to the fact they obtained rights before many of our citizens shows how corporate influence changed the landscape for civil rights.

Before the case of Santa Clare v. Southern Railroad, the case that gave corporations their "personhood," women tried to access the Fourth Amendment to obtain their own rights. In *Minor v. Happersett*, the courts ruled that "women" were not persons for the purposes of the Fourteenth Amendment (Redwood, 2000).

In the case *Plessy v. Ferguson*, regardless of the Fourteenth Amendment, the Supreme Court ruled that a man who was 7/8 white/free, but one part slave could be forced to sit in a "separate but equal" section of a passenger train. This saying all non-European ancestors to be non-persons without Constitutional rights (Redwood, 2000). This would not be overturned until 1954 with *Brown v. Board of Education*.

Fact is, of the civil rights cases tied to the Fourteenth Amendment between 1890 and 1910, only 19 dealt with humans. However, there were 288 brought by corporations challenging government regulations (Conacher, 1995).

When corporations firmly obtained the same rights as individuals, in 1886, natural persons became a "second-class

person in the eyes of the law" (Rosewood, 2000). "Individuals who have to work for wages as corporate employees lose their constitutional rights (such as free speech) when they step onto corporate property" (Rosewood, 2000).

When America was founded and the United States adopted democracy, the citizens of the country saw the problems with corporations, and these problems became issues that would continue for as long as there was a democracy to protect. As the revolutionary Thomas Allen said, "It concerned the People to see to it that whilst we are fighting against oppression from the King and Parliament that we did not suffer it to rise up our bowels . . . [and to have] Usurpers rising up amongst ourselves" (Grossman, 1993).

In 1976, Justices White, Brennan and Marshall, dissented in *Buckley v. Valeo* stating,

It has long been recognized, however, that the special status of corporations has placed them in a position to control vast amounts of economic power which may, if not regulated, dominate not only the economy but also the very heart of our democracy, the electoral process . . . the State need not permit its own creation to consume it (Hanson, n.d.).

In the same case Chief Justice Rehnquist, stated ". . . the blessing of potentially perpetual life and limited liability . .

. so beneficial in the economic sphere [sic -RG], pose special dangers in the political sphere" (Hanson, n.d.)

Even up to the present, the issues that were once feared became reality and while corporations become larger than many countries, their influence upon government, and the individual became ever more dangerous.

Santa Clara v. Southern Pacific

Leading up to the Santa Clara v. Southern Pacific case, from 1877 to 1886, there had already been in place a national campaign to have corporations recognized as persons. With Santa Clara v. Southern Pacific, corporations were deemed persons, and this legal case has been the foundation for every case since allowing corporations to use the rights of citizens (Redwood, 2000).

The Supreme Court said, in 1886, that it did "not wish to hear argument" on whether corporations were "persons" protected by the Fourteenth Amendment, the amendment originally designed to protect freed slaves, it simply decreed that corporations were persons (Nader, 1988). To elaborate, Chief Justice Waite announced, "The court does not wish to hear argument on the questions whether the provision in the Fourteenth Amendment to the Constitution, which forbids a State to deny any person within its jurisdiction the equal protection of the laws, applies to these corporations. We are all of the opinion that it

does" (Redwood, 2000). This opinion, without explanation, became the law of the United States of America when it was improperly cited as a precedent in a later case in 1889 (Redwood, 2000).

"There was no history, logic or reason given to support that view," Supreme Court Justice William O. Douglas was to write sixty years later (Grossman, 1993).

When the ruling came and the Fourteenth Amendment was enforced for the benefit of corporations, the ruling ultimately voided hundreds of local, state, and federal laws originally created to protect the public from corporate wrongdoing (Grossman, 1993).

The Corporation Obtains Personhood

Personhood, "in regards to corporations is an idea (legal fiction, currently with force of law) that corporations have the same inalienable rights just like real, natural, human persons" (Redwood, 2000).

As early as the 16th century England referred to corporations as "artificial persons." In the 1870s, American lawyers began identifying corporations as "artificial persons" because of the similarities between corporations and people, i.e., both could be part of a lawsuit, both were taxed, and both were restrained by law (Redwood, 2000). The "artificial entity" theory viewed corporations as nothing more than an artificial creature of the state, subject to governmental restrictions

(Mayer, 1990). The other possibility was the "natural entity" theory. This natural entity theory regarded corporation not as artificial, but instead as real entities and with a separate existence and independent rights (Mayer, 1990). The "natural entity" theory prevailed in *Santa Clara v. Southern Pacific*.

In 1886, the Supreme Court justices were Samuel F. Miller, Stephen J. Field, Joseph P. Bradley, John M. Harlan, Stanley Matthews, William B. Woods, Samuel Blatchford, Horace Gray, and Chief Justice Morrison R. Waite. These justices were those responsible for the Jim Crow discrimination laws and allowed corporations to obtain personhood, while they also expanded the Supreme Courts power over elected officials (Redwood, 2000). These justices and their actions were not perceived to be advocating the same democracy as the founding fathers.

With the case of *Santa Clara v. Southern Pacific* and the granting of these new rights, corporations became numerous. New Jersey and Delaware began issuing numerous corporate charters, and the legislations weakened or removed much of the authority citizens had over corporate charters (Hanson, n.d.). Furthermore, legislations limited the liability of corporate management, created charters that lasted in perpetuity, and corporations were given the right to operate in any business, so long as it was legal without regard to public benefit (Grossman, 1993).

Unaccountability with the Corporations

Corporations have often been labeled as unaccountable, since, regardless of the wrongs that were committed, corporations cannot be jailed and corporations do not ultimately pay fines - the shareholder does (Hanson, n.d.).

Governmental agencies have often performed as if corporate entities have the right to do as they please without regard to labor, investment, and production. Laws and regulations allow the corporations to treat labor as a disposable resource, damage the environment, and hurt consumers (Grossman, 1993). "Chartered corporations have been determined to be the cause of political, economic, and ecological injury around the globe" (Grossman, 1993). Thomas Paine said, "Beneath the shade of our own vines are we attacked; in our own house, and on our own lands, is the violence committed against us" (Grossman 1993).

Though there have been attempts at restricting corporations, as in the case of *National Bank of Boston v. Bellotti*, the courts ruled that because of the corporate personhood, corporations could spend unlimited sums of money "speaking" in the form of ads and campaign contributions for referenda (Rosewood, 2000). Thus again effectively muting the individual's voice.

Efforts to Repeal Corporate Rights

With all the rights and privileges that corporations have obtained throughout the centuries coupled with the fact that from the very beginning, we have known corporations to exploit government and the public, what is there to do to rectify these issues?

One way to bring the civil rights exclusively back to the citizens of the United States is to reverse the Santa Clara v. Southern Railroad ruling of 1886. Almost all subsequent "personhood" cases are linked to this first case. Therefore, without the Bill of Rights, corporations would only have the rights they were entitled to as provided for by government or within the charter (Rosewood, 2000). However, because government, and especially politics, is so in tune with the corporate world and vice versa, it would be extremely difficult for a vote or referendum to make it to legislation or to the Supreme Court for a ruling.

Another option to reduce the amount of wrongs conducted by corporations is to repeal part of the personhood status via exclusion of the Fourth Amendment. This would allow government to better inspect workplaces for safety and health violations.

More generally, however, corporate personhood could be weakened or eliminated through grassroots approaches. Unfortunately, because most media outlets are already controlled

by corporations, this effort would need to be made on a personal level and not through mass media.

Finally, another viable approach is through the legislators. Only by withholding votes until a vote or referendum is passed on this issue, will movement be made towards reducing corporate personhood.

Conclusion

Since the birth of our nation, many races and women have long sought to be recognized with the inalienable rights that the United States Constitution provided the white man. However, before either African-Americans or women were recognized as "persons," corporations were first granted "personhood" with all the rights and privileges. In fact because of the structure of the corporations and its creation within the legal system, the benefits they possess, coupled with the constitution, makes them "Frankensteins" with inhuman power and potential.

Dating back to sovereignty, corporations believed themselves to be beyond the control of government. When America was born, the founding fathers foresaw the problems that corporations could, and eventually would, cause. Each year, corporations increase their funding and influence government, and each year corporations are granted more and more benefits and protections.

Even though the public and government recognize the wrongs corporations undertake, both still allow corporations to dictate how they are governed, permit them to use their vast resources to influence the public and government, and when they break the law or do wrong, they corporation still knows that the corporation will continue indefinitely.

In 2002, with the passing of the corporate governance-based Sarbanes-Oxley Act, individuals and government have created a new tool in which to begin correcting the wrongs corporations inflict upon the public. We have a long way to go, but with persistence, corporations will perhaps lose their "personhood" status and return to being what it was designed for, a legal instrument in which to collect investments and share profits.

Let us remember the words of President Theodore Roosevelt in 1910, "There can be no effective control of corporations while their political activity remains. To put an end to it will be neither a short nor an easy task, but it can be done"

(Reclaimdemocracy.org, 2000).

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