

The Root Problem

Chapter Four

CORPORATE PERSONHOOD

In 1886, according to the official case record, Supreme Court Justice Morrison Remick Waite simply pronounced before the beginning of argument in the case of Santa Clara County v. Southern Pacific Railroad Company that:

The court does not wish to hear argument on the question whether the provision in the 14th Amendment to the Constitution, which forbids a State to deny to any person within its jurisdiction the equal protection of the laws, applies to these corporations. We are all of opinion that it does.

Thus the concept and doctrine of Corporate Personhood was born.

The intent of the 14th Amendment was to essentially confer the Bill of Rights to the newly freed slaves. Ironically, of the 307 14th Amendment cases brought before the Supreme Court in the years between Waite's proclamation and 1910, only 19 dealt with African Americans: 288 were suits brought by corporations seeking the rights of natural persons.

Supreme Court Justice Hugo Black pointed out 50 years later, "I do not believe the word *person* in the Fourteenth Amendment includes corporations ... Neither the history nor the language of the 14th Amendment justifies the belief that corporations are included within its protection."

Sixty years later, Supreme Court Justice William O. Douglas made the same point, writing that, "There was no history, logic or reason given to support that view [that corporations are legally persons]."

Five hundred years ago the "corporation" was invented as a legal form to provide for the development of public works such as bridge or road building. Over the years, corporations gained the right to engage in any kind of business although their basic nature remained unchanged. That is, until 1886, when they became a "person" in the legal sense and were entitled to all the rights of human beings as accorded in the Constitution with the exception of the right to vote.

Consequently, they have the right to "freedom of speech," something which our founding fathers never envisioned. And, their financing of political candidates for office has been determined to be an exercise of freedom of speech. Simply put, their financial resources permit them to have massive undue influence in our electoral and political process and as a result, government often acts to benefit corporations at the expense of We the People.

Over the years, giant corporations have continued to consolidate their power and control of our political system, our media, our educational system, our economy, our public institutions and more. This has not been good for our society, for our livelihoods, or for our government. If a special interest offered bags of cash in return for a politician's vote, it would be a criminal felony and yet, our system is designed to legalize essentially that. Witness the 2010 Supreme Court decision re: Citizens United and the tons of money that was poured by corporations into the 2010 mid-term elections. Do you think that all that money was spent on behalf of We the People?

Regardless, just how did corporations become so powerful? Consider that the Founding Fathers of America had supposedly established a system of government that protected individual rights. Abusive corporate monopolies (British crown-chartered corporations) were one of the key issues in the Revolutionary War, and the writings of Thomas Jefferson and others make this clear. Jefferson considered *freedom from monopolies* a basic right and insisted on a "no monopolies in commerce" clause to the Bill of Rights. Due to arguments and pressure brought by Alexander Hamilton and others, this particular "right" was not included. Thomas Hobbes (a philosopher popular among many of America's Founding Fathers) stated that corporations had the potential to be "worms on the body politic." In 1817, James Madison wrote:

“Incorporated Companies, with proper limitations and guards, may in particular cases, be useful, but they are at best a necessary evil only. Monopolies and perpetuities are objects of just abhorrence. The former are unjust to the existing, the latter usurpations on the rights of future generations. Is it not strange that the Law which will not permit an individual to bequeath his property to the descendants of his own loins for more than a short and strictly defined term should authorize an associated few, to entail perpetual and inalienable appropriations. . .”

According to Buckminster Fuller:

"Corporations are neither physical nor metaphysical phenomena. They are socio-economic ploys, legally enacted game-playing, agreed upon only between overwhelmingly powerful socio-economic individuals and by them imposed upon human society and all its unwitting members."

Interestingly, the definition of fascism which appeared in the 1963 edition of the American Collegiate Dictionary illustrates the close relationship between fascism and corporate monopolies:

Fascism: a governmental system with strong centralized power, permitting no opposition or criticism, controlling all affairs of the nation (industrial, commercial, etc.) emphasizing an aggressive nationalism, and (often) anticommunist.

Recent editions of many American dictionaries define fascism merely as a form of tyranny. Could this be merely one more indicator of the general trend toward enforced illiteracy and the intentional "dumbing down" of the American public? Similarly, legal commentators have observed that, whereas the 6th edition of Black's Law Dictionary is generally clear and concise, many definitions of the 7th edition have been reworded to be more obscure, circular, ambiguous, or confusing to the lay reader.

The following table summarizes the changed status of corporations over two centuries of American history, as documented in Thom Hartmann's book, *Unequal Protection*:

	Corporate constraints and privileges	
	Early 19th century	Late 20th century
Revocability of corporate charters, duration	Revocable if fails to fulfill chartered purpose.	Not generally revocable.
	Revocable in cases of misbehavior, damage to the public.	Not revocable without overcoming current statutory and case law, and granting due process to the corporation as person under the 14th Amendment.

	Granted for a limited time, i.e., 20 or 30 years.	Granted in perpetuity.
Liability	Incorporation did not relieve management or shareholders of responsibility or liability for corporate acts.	Limited liability extends to all matters.
	Corporate officers were held criminally liable for actions in violation of the law - "just doing my job" no excuse.	"Just following orders" a common defense against personal or criminal liability.
Jurisdiction of corporate law	State, not federal, courts heard cases involving alleged corporate legal disputes and violations of law.	Most cases of corporate law are now heard in federal court due to 14th Amendment requiring due process and equal protection to all "persons".
Corporate governance	Directors required to be stockholders.	Directors not required to be stockholders.
	Corporate meetings required to be in the state of principal place of business.	Corporate meetings may be anywhere.
Limitations on corporate assets	Prohibited from owning stock in other corporations.	May hold controlling interests in other corporations, allowing for complex and interlocking chains of control.
	Real estate holdings limited to that necessary to carry out their chartered purposes.	Real estate holdings not limited by law.
Limitations on corporate activities vs. corporate "rights" under the modern personhood doctrine	Prohibited from making any political contributions, either directly or indirectly.	Corporations lobby politicians heavily, to the point that many politicians are known to be virtually "owned" by certain corporate interests. (1st Amendment "rights")
	Prohibited from making charitable or civic donations outside chartered purposes.	May establish charitable foundations, which are now used widely to shield income from taxation and to influence public policy through foundation grants.
	State legislatures could set the rates that monopoly corporations could charge.	Anti-trust laws have largely been ignored or made ineffective.
	All records and documents open to inspection by the legislature or attorney general at any time.	Privacy rights under the 4th Amendment and corporate personhood now require court orders and search warrants.
	Could be prosecuted multiple times for criminal violations.	Under the 5th Amendment, retrial for the same corporate crime is barred.

Most of these acquired corporate privileges are a result of "corporate personhood" for which the solution is not complex.

Revoking corporate "personhood" and enforcing existing laws would be a good start. Thom Hartmann ends his book with a simple legislative strategy for revoking excessive corporate power: municipalities, counties, and state governments should pass ordinances, statutes, and, ideally, constitutional amendments explicitly outlawing and revoking the doctrine of corporate personhood. I couldn't agree more and I would add that at the federal and state levels it is way past time for a constitutional amendment that provides for freedom from monopolies, especially in the commercial realm.

Why is it important to do all this? It is important because the interests of corporations are frequently at odds with the public interest, and often are entirely contrary to the public health and the public good. The recommended transformation of our current capitalist system described in Book II, Part 3, chapter on Capitalism will greatly ameliorate if not eliminate these concerns. Many, if not most, of these corporations are not even based in the U.S., so their interests have little or nothing to do with the national interest, and their actions may, in fact, benefit other nations while harming our interests. Also, although they are legally perceived to be people, corporations do not get old and die, rather, they merge and become stronger, they do not need to breathe clean air or drink clean water, they commit crimes yet cannot be imprisoned, they have no children to care about and focus all of their attention upon maximizing profits for the short-term. These are not the forces that should be controlling our government, and we need to insure against just that. Jefferson, Jackson, Lincoln, and Teddy Roosevelt all warned us about the democratically destructive power of corporations and we have yet to heed their wisdom. We cannot afford to wait any longer. We need to end corporate meddling in our political system NOW and the elimination of Corporate Personhood is the simplest answer.

Witness our Too Big to Fail banking oligopoly in their new rigged markets and the bonuses and profits they rake in.

Witness the war profiteering of the Military Industrial Complex and the never ending wars they have created.

Witness the Health Insurance Cartels and their ongoing Murder by Spreadsheet business system.

Witness the deaths and health violations caused by the coal industry in their relentless search for greater and greater profits.

Witness the greed and recklessness of the Oil Industry. BP is just one face of a heartless oligopoly that drives nations to war and destroys the environment for their own profit.

One could go on and on and on. Rest assured that all of the aforementioned will be dealt with later in this document.

We unfortunately live in a nation of Corporate Personhood, a nation where Corporations have limited liability and full freedom of speech, a nation where money equals speech and Corporations have an unlimited right to both. A nation where unfettered free trade outsources our jobs, a nation where national deficits caused by wars of aggression and tax cuts for the rich can only be solved by taxing the non rich and slashing government services, a nation where our trade deficit is entirely ignored, and where anything less than free market corporatism is considered socialism by many.

“I see in the near future a crisis approaching that unnerves me and causes me to tremble for the safety of my country. As a result of the war, corporations have been enthroned and an era of corruption in high places will follow, and the money power of the country will endeavor to prolong its reign by working upon the prejudices of the people until all wealth is aggregated in a few hands and the Republic is destroyed. I feel at this moment more anxiety for the safety of my country than ever before, even in the midst of war. God grant that my suspicions may prove groundless.”

-President Abraham Lincoln, Nov. 21, 1864

Unfortunately, President Lincoln’s suspicions were on the money. The concept of Corporate Personhood must be struck down forever. There is no law declaring such nor was it ever argued before the Supreme Court. It is simply disingenuous to consider a Corporation to be as a person in the legal sense, or in any sense for that matter.

Such doctrine though does create an interesting legal contradiction for academic discussion. A corporation is owned by its shareholders and is therefore their property. If it is also a legal person, then it is a person owned by others and thus exists in a condition of slavery, a status explicitly forbidden by the 13th Amendment to the Constitution. So, is a corporation a person illegally held in servitude by its shareholders? Or is it a person who enjoys the rights of personhood that take precedence over the presumed ownership rights of its shareholders?

The bottom line is that when Congress finally passes such clarification rendering Corporate Personhood moot, then, should the Supreme Court actually deny such clarification, We the People must then evict, by whatever means necessary, those justices who voted to deny such clarification. We the People not only want our country back, but under such obstinate and nefarious conditions, we will take our country back by whatever means necessary!

What that means, simply put, is that We the People are not politicians. We don’t have to reach a compromise with the government We created in order to accomplish what We want. The abolition of corporate personhood will be done in one fell swoop. It will not be phased out over time. The Supreme Court was created by the very constitution that We created and We the sovereign People of the United States have every right to overrule that Court should it become necessary to do so. This will all become a moot point if We the People support the new constitutional amendment that is described in the chapter on The Crux of It All.

As long as we have been dealing with corporations, the next chapter, Chapter 5 - The Shadow begins the process of turning our focus laser like on the one type of corporation that has long been the root of most of our problems; the banks, individually and severally.