



Corporate Personhood and American Democracy: A Natural Remedy

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Abstract.

Recent court cases such as “Citizens United” have ignited the debate about whether or not corporations are “persons.” The issue of personhood reveals the rights and responsibilities the corporation does and should have in our society. This essay looks at legal precedence to address whether or not corporations should have personhood, and if so, what the consequences of such a designation would be.

In March of 2009, The Supreme Court heard oral arguments in *Citizens United v. Federal Election Commission*.¹ On January 21st of 2010, Supreme Court Justice Anthony Kennedy authored the majority opinion of the court. According to Kennedy, “If the First Amendment has any force, it prohibits Congress from fining or jailing citizens, or associations of citizens, for simply engaging in political speech.”² The Court’s response to the *Citizens United* case reignited a debate almost as old as the United States itself: “Is a corporation a person under the law and can it, as an artificial person, expect the same Constitutional protections as a real person?” As an act of protest against the 2008 government bailout of Wall Street, several protesters began congregating in New York’s Zuccotti Park in September of

¹ *Citizens United v. Federal Election Commission*. <http://www.law.cornell.edu/supct/cert/08-205>

² *Citizens United v. Federal Election Commission*. <http://www.law.cornell.edu/supct/html/08-205.ZO.html>

2011.³ While some have argued that the Wall Street protesters do not have a coherent message,⁴ the repeal of “corporate personhood” is one of the main goals of the movement.⁵ In fact, one of the most ubiquitous signs at the protests was “I’ll believe corporations are people when Texas executes one.”⁶ For some, the emergence of global capitalism and the “too big to fail” corporations that come along with it, makes it difficult, if not impossible, for democracy and capitalism to coexist and that we Americans are eventually going to have to choose whether we want capitalism or democracy because we can’t have both. These assertions and the reemerging arguments about “corporate personhood” provoke many questions: “What is a corporation and how did it come into being in its current form?” “How did these corporations get the same rights as people and should they be able to maintain those rights?” and “If corporations are not legal persons under the law, then what are they or better yet, what should they be?”

One would think that it would be easy to define what a corporation is and what a corporation does, however, that is simply not the case. The simplest definition of a corporation is “an association of individuals, created by law or under authority of law, having a continuous existence independent of the existences of its members, and powers and liabilities distinct from those of its members.”⁷ However, defining a corporation is not that simple. According to Joel Bakan, professor of law at the University of British Columbia and author of *The Corporation: The Pathological Pursuit of Profit and Power*, the corporation is “like the Church, the Monarchy, and the Communist Party in other times and places, the corporation is

³ *Occupy Wall Street: A Protest Timeline*. <http://theweek.com/article/index/220100/occupy-wall-street-a-protest-timeline>

⁴ Chun, Janean. “Occupy Wall Street’s Marketing Problem: Can Experts Help Solve An Identity Crisis.” http://www.huffingtonpost.com/2011/11/17/occupy-wall-streets-marketing-problem_n_1098422.html

⁵ Lazar, Sira. “Occupy Wall Street: Interview With Micah White From Adbusters.” *Huffington Post*. October 7th, 2011. http://www.huffingtonpost.com/shira-lazar/micah-white-adbusters-b_996931.html

⁶ Times-Dispatch Staff. “Corporations: people, power.” *Richmond Times-Dispatch*. December 12, 2011. <http://www2.timesdispatch.com/news/rtd-opinion/2011/dec/12/tdopin01-people-power-ar-1536703/>

⁷ Dictionary definition. <http://dictionary.reference.com/browse/corporation>

today's dominant institution.”⁸ For Mary Zepernick, Director of the Program on Corporations, Law and Democracy (POCLAD), the corporation is “Dr. Frankenstein’s monster” that “overwhelmed and overpowered him, as the corporate form has done to us.”⁹ These depictions of the corporation are not quite as innocuous as the dictionary definition. Even Sir Mark Moody-Stuart, former chairman of Royal Dutch Shell and director of HSBC sees the corporation as being somewhat ominous when he says that he sees “the corporation as part of a jigsaw in society as a whole, which if you remove it, the picture’s incomplete. But equally, if it’s the only part, it’s not going to work.”¹⁰ Moody-Stuart seems concerned that the corporation is becoming the only part of the jigsaw puzzle. This concern is echoed by Bakan when he writes that “150 years ago, the business corporation was a relatively insignificant institution” implying that the corporation was a benign part of American society. However, Bakan claims that “today, it is all-pervasive” and therefore, no longer benign.¹¹ Essentially, many of today’s academics and some business leaders agree that the corporation has gone from being something on the periphery of society to, arguably, society itself in a very short historical time.

Ray Anderson, founder and chairman of Interface Inc. explains that “the modern corporation has grown out of the industrial age. The industrial age began in 1712 when an Englishman named Thomas Newcumen invented a steam driven pump to pump water out of the English coalmine, so the English coalminers could get more coal to mine rather than hauling buckets of water.”¹² Mary Zepernick provides readers with an example of law regarding corporations early in the 19th century. According to Zepernick, the Pennsylvania legislature declared in 1834 that

⁸ Bakan, Joel. *The Corporation: The Pathological Pursuit of Profit and Power*. (Free Press. New York. 2005). p.5.

⁹ Zepernick, Mary. *The Corporation* (film). (Transcript). http://hellocoolworld.com/files/TheCorporation/Transcript_finalpt1%20copy.pdf

¹⁰ Moody-Stuart, Mark. *The Corporation* (film). (Transcript). http://hellocoolworld.com/files/TheCorporation/Transcript_finalpt1%20copy.pdf

¹¹ Bakan, Joel. *The Corporation: The Pathological Pursuit of Profit and Power*. (Free Press. New York. 2005). p.5.

¹² Anderson, Ray. *The Corporation* (film). (Transcript). http://hellocoolworld.com/files/TheCorporation/Transcript_finalpt1%20copy.pdf

“a corporation in law is just what the incorporating act makes it. It is the creature of the law and may be moulded to any shape or for any purpose that the Legislature may deem conducive for the general good.”¹³ According to Zepernick, at this time, the corporation was in an appropriate subordinate relationship with the government. In the film, *The Corporation*, Zepernick claims that “there were very few chartered corporations in the early United States history. And the ones that existed had clear stipulations in their state issued charters. How long they could operate? The amount of capitalization. What they made or did or maintained... And so on.”¹⁴ Noam Chomsky, professor of Linguistics and Philosophy at MIT claims that “the dominant role of corporations in our lives is essentially a product of roughly the past century” and that “corporations were originally associations of people who were chartered by a state to perform some particular function.”¹⁵ Richard Grossman, former co-director of the Program on Corporations Law and Democracy and author of the book, *Taking Care of Business: Citizenship and the Charter of Incorporation* explains that “in both law and culture, the corporation was considered a subordinate entity that was a gift from the people in order to serve the public good.”¹⁶ All of these scholars and businessmen agree that corporations served very limited functions prior to the late 19th century and that beginning in the late 19th century, corporations became something other than “a gift from the people to serve the public good” and moved toward becoming the dominant institution of our time.

Students of philosophy and political science will recognize that the English philosopher, Thomas Hobbes, discusses the “artificial person” in his great magnum

¹³ Zepernick, Mary. “On the history of corporate personhood and a strategy for overturning it.” <http://movetoamend.org/publications-talks/zepernick-history-corporate-personhood-and-strategy-overturning-it>

¹⁴ Zepernick, Mary. *The Corporation* (film). (Transcript). http://hellocoolworld.com/files/TheCorporation/Transcript_finalpt1%20copy.pdf

¹⁵ Chomsky, Noam. *The Corporation* (film). (Transcript). http://hellocoolworld.com/files/TheCorporation/Transcript_finalpt1%20copy.pdf

¹⁶ Grossman, Richard. *The Corporation* (film). (Transcript). http://hellocoolworld.com/files/TheCorporation/Transcript_finalpt1%20copy.pdf

opus, *Leviathan*. In chapter sixteen, titled, “Of Persons, Authors, and Things Personated,” Hobbes reminds his readers that when the words and actions of a man “are considered his own” then the man is a “natural person.” However, if these words and actions are “considered as representing the words and actions of another” then he is an “artificial person.”¹⁷ In its infancy, America’s courts saw the corporation in much the same way that the English courts did. For example, in *The Case of Sutton’s Hospital*, Sir Edward Coke defined the corporation as being something “onely *in abstracto*” and “invisible, immortal and resteth only in intendment and consideration of the Law.”¹⁸ Coke goes on to add that “they may not commit treason,” “they have no souls” and they have an “invisible body” that “cannot be in person.”¹⁹ William Blackstone also defined the corporation in similar terms in his *Commentaries on the Laws of England*. For Blackstone, the corporation was an “artificial person” that enjoyed “a kind of legal immortality.” Blackstone also claims that the king’s permission is absolutely needed for the erection of any corporation and routinely cites Coke in his explication of the corporation.²⁰ It is important to see that in each of these predecessors to American law, the corporation was defined as being an “artificial” or “invisible” person and that each of these commentaries distinguished between the “invisible” or “artificial” person and the “natural” person.

In 1809, twenty years after the Constitution was adopted and six years after Justice Marshall established the practice of judicial review in *Marbury v. Madison*, the Supreme Court ruled on a case involving a corporation. While the case was about diversity of citizenship jurisdiction and not corporate personhood specifically, *The Bank of United States v. Deveaux* illustrates how the corporation was viewed in

¹⁷ Hobbes, Thomas. *Leviathan*. <http://oregonstate.edu/instruct/phl302/texts/hobbes/leviathan-c.html#CHAPTERXVI>

¹⁸ Coke, Edward. *The Case of Sutton’s Hospital*. http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=911&chapter=106352&layout=html&Itemid=27

¹⁹ Ibid.

²⁰ Blackstone, William. *Commentaries on the Laws of England*. Book 1. Chapter 18. “Of Corporations.” <http://www.lonang.com/exlibris/blackstone/bla-118.htm>

the very early republic. Chief Justice Marshall, writing the opinion for a unanimous court, described the corporation in language borrowed from Coke and Blackstone: A corporation is a “mere creature of law, invisible, intangible, and incorporeal” and went on to say that a corporation that is an “invisible, intangible, and artificial being... is certainly not a citizen.”²¹ However, in terms of jurisdiction, the courts ruled that the case was controlled by the citizenship of the shareholders. It is important to note that while the justices relied very heavily on the common laws of England for guidance, America had fought a war against the British primarily over the application of the laws of citizenship. *The Declaration of Independence* talked of rights that were natural rights “endowed by our creator.” These natural rights applied to natural persons because they came from nature and not from government. A corporation could not make these same claims about its rights because the rights of these “artificial persons” were derived from the governments that chartered the corporations in the first place.

The first significant case that the United States Supreme Court heard regarding corporate personhood was *Dartmouth College v. Woodward* in 1819. The court ruled in favor of Dartmouth College because, in the majority opinion of Justice John Marshall, “a corporation is an artificial being, invisible, intangible, and existing only in contemplation of law.” This opinion is very close to the way in which the corporation was seen by those who preceded Marshall in England. However, Marshall also added that “being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it, either expressly, or as incidental to its very existence.”²² In a special concurrence, Justice Story writes that “rights legally vested in a corporation, cannot be controlled or destroyed by any subsequent statute, unless a power for that purpose be reserved to the legislature in the act of incorporation.”²³ Story was invoking the Contract

²¹ Marshall, John. *Bank of United States v. Deveaux* <http://supreme.justia.com/us/9/61/case.html>

²² Marshall, John. *Dartmouth College v. Woodward*. http://www.oyez.org/cases/1792-1850/1818/1818_0/

²³ Story, Joseph. *Dartmouth College v. Woodward*. http://www.oyez.org/cases/1792-1850/1818/1818_0/

Clause of the United States Constitution in this special concurrence holding that Dartmouth's charter was a contract and the state of New Hampshire tried to alter that contract *ex post facto*.²⁴ This is precisely why most states have a provision in their incorporating statutes that provides a loophole for these *ex post facto* provisions. Essentially, the states reserve "a power for that purpose" as Justice Story suggested. This also suggests that there is a marked difference between the "natural rights" of a "natural person" and the rights granted to a corporation under the corporate charter.

One must remember that the newly formed United States of America knew very little about corporations in its infancy. At the time that the Constitution was adopted, there were very few corporations. Philip Blumberg writes in *The Multinational Challenge to Corporation Law*, that "as late as 1801, there were only 317 corporations in the entire country."²⁵ For the most part, these corporations were concentrated in banking, insurance and public works. Very few were involved in manufacturing.²⁶ Determining the meaning of the Constitution in terms of corporate law was a daunting task. The Constitution doesn't specifically mention corporations at all and the only extension of the various clauses that make up the Constitution that could be applied to corporations at this point in time was the Contract Clause that Justice Story used to help him decide *Dartmouth v. Woodward*. While the traditional English concept of the corporation as an "invisible person" appears to have been embraced by the Supreme Court in *Dartmouth v. Woodward*, the corporation was still an "invisible person" with only the rights that were granted by the political entity that chartered the corporation.

Like the Marshall Court, the idea that a corporation was an artificial person created by law was reinforced by the Taney Court. In 1839, Chief Justice Taney wrote for the court in the case *Bank of Augusta v Earle* that "whenever a corporation makes a contract, it is the contract of the legal entity; of the artificial

²⁴ United States Constitution. http://www.usconstitution.net/xconst_A1Sec10.html

²⁵ Blumberg, Philip. *The Search for a New Corporate Personality*. (Oxford Univ. Press, 1993). p.6.

²⁶ *Ibid*.

being created by the charter; and not the contract of the individual members.”²⁷ Like his predecessors, Taney concluded that a corporation was a “mere creature” of law without any “legal existence out of the boundaries of the sovereignty by which it was created.”²⁸ While Taney is probably best remembered as the Chief Justice who ruled that African-Americans were not people in the *Dred Scott Case*, his rulings in terms of corporations are both abundantly clear and consistent with the rulings that came before him dating all the way back to Edward Coke’s rulings in England: A corporation is not a natural person. It is an artificial person created by law.

The Taney Court reinforced this position with few alterations in *Louisville, Cincinnati & Charleston Railroad v Letson* in 1844. Writing the opinion for the majority, Justice James Moore Wayne states that “a corporation has not the qualities of a person” but instead “acts by the agency of natural persons.” Instead of using the term “artificial persons,” Wayne used the term “a juridical person” that is a “creature of law.” Wayne goes on to add that the corporation is “a personification of certain legal rights under a description imposed upon it by the power that created it” and that this “creature of law” was a “standing fiction.”²⁹ The court rendered a similar verdict in *Marshall v. Baltimore & Ohio* in 1855. Justice Robert Cooper Grier wrote the majority opinion. Like all of the cases that had come before the courts, Grier reiterated that a corporation is “an artificial person, a mere legal entity, invisible and intangible.” Grier goes on to say that it is “metaphysically true” that an artificial person “cannot be a citizen”; however, Grier adds that “a citizen who has made a contract and has a controversy with a corporation may also say with equal truth that he did not deal with a mere metaphysical abstraction, but with natural persons.” This appears to be somewhat contradictory, however, Grier adds that a “corporation can have no legal existence out of the bounds of the sovereignty by which it is created. It exists only in contemplation of law and by

²⁷ Taney, Roger. *Bank of Augusta v Earle*. <http://supreme.justia.com/us/38/519/case.html>

²⁸ Ibid.

²⁹ Wayne, James Moore. *Louisville, Cincinnati & Charleston Railroad v Letson*. <http://supreme.justia.com/us/43/497/case.html>

force of the law, and where that law ceases to operate, the corporation can have no existence.” Therefore, “it must dwell in the place of its creation.”³⁰ It is important to note that the opinion of the court in *Marshall v. Baltimore & Ohio* is the first time that the word “citizen” is used in conjunction with any discussion of corporate personhood. In addition, it is the first time that a corporation has been described as a “natural person” in its dealings with “natural persons.”

After the Civil War and the adoption of the Fourteenth Amendment, the courts began hearing cases where lawyers who argued on behalf of corporations claimed that the corporations had the rights of persons under the Fourteenth Amendment. At first, the decisions in these cases were substantially similar to those cases that were decided prior to the Civil War. In *Paul v. Virginia* (1869), the Supreme Court held that a corporation was not a citizen in terms of the application of the Privileges and Immunities Clause. Writing for the Court, Justice Stephen Johnson Field, wrote that “corporations are not citizens” and that the term “citizen” applies “only to natural persons, members of the body politic, owing allegiance to the State, not to artificial persons created by the legislature, and possessing only the attributes which the legislature has prescribed.”³¹ Justice Field reiterated the claim of the court in the courts opinion in *Pembina Consolidated Silver Mining and Milling Co. v Pennsylvania* when he wrote: “Corporations are not citizens.”³²

Oddly enough, in 1886, the Court was trying NOT to make a decision regarding corporate personhood in the very case that ingrained corporate personhood into the lexicon of case law - *Santa Clara County v Southern Pacific Railroad*. Justice John Marshall Harlan summed up the court’s ruling in his opinion. Justice Harlan writes that the “assessment upon which the action is based was void” because the state had “no jurisdiction under any circumstances to

³⁰ Grier, Robert Cooper. *Marshall v. Baltimore & Ohio*. <http://supreme.justia.com/us/57/314/case.html>

³¹ Field, Stephen Johnson. *Paul v Virginia*. <http://supreme.justia.com/us/75/168/case.html>

³² Field, Stephen Johnson. *Pembina Consolidated Silver Mining and Milling Co. v Pennsylvania*. <http://supreme.justia.com/us/125/181/case.html>

assess.”³³ However, it was not Justice Harlan’s argument that corporate lawyers have used as legal arguments to claim the rights of “natural persons” for the “artificial persons” that they often represent. Early in the case, Chief Justice Morrison Remick Waite said “The Court does not wish to hear argument on the question whether the provision in the Fourteenth 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.”³⁴ What is interesting about this claim is that it is not part of the Court’s opinion on the case and there is no reasoned argument citing precedent to argue this point. All there is in the Court’s record is this simple statement by the Chief Justice. Had this been a part of the opinion of the court, it is likely that there would have an explanation of the differences between “artificial persons” that were “creatures of law” and “natural persons” as there had been in every other case prior to *Santa Clara County v Southern Pacific Railroad*.

Santa Clara County v Southern Pacific Railroad served as the legal precedent for what we now call “corporate personhood.” It was because of this case that corporations are able to claim rights under the 14th Amendment. Howard Zinn, the historian and author of *A People’s History of the United States*, writes: “the Supreme Court had accepted the argument that corporations were ‘persons’ and their money was property protected by the due process clause of the Fourteenth Amendment. Supposedly, the Amendment had been passed to protect Negro rights, but of the Fourteenth Amendment cases brought before the Supreme Court between 1890 and 1910, nineteen dealt with the Negro, 288 dealt with corporations.”³⁵ Mary Zepernick explains that “the Civil War and the Industrial Revolution created enormous growth in corporations... And corporate lawyers, a century and a half ago,

³³ Harlan, John Marshall. *Santa Clara County v Southern Pacific Railroad*. <http://supreme.justia.com/us/118/394/case.html>

³⁴ Waite, Morrison Remick. *Santa Clara County v Southern Pacific Railroad*. <http://supreme.justia.com/us/118/394/case.html>

³⁵ Zinn, Howard. *A People’s History of the United States*. <http://www.historyisaweapon.com/defcon1/zinnbaron11.html>

realized that they needed more power to operate, and wanted to remove some of the constraints that had historically been placed on the corporate form.”³⁶ Richard Grossman reminds us that during the Civil War “six hundred thousand people were killed to get rights for people, and then with strokes of the pen over the next thirty years, judges applied those rights to capital and property while stripping them from people.”³⁷ It does seem somewhat ironic that while the Supreme Court was extending the rights provided to citizens under the 14th Amendment to corporations, it was also stripping away the rights of African-Americans by ruling that “separate was equal” in *Plessy v Ferguson*.

Throughout the 20th Century, Supreme Court Justices have written dissenting opinions when the Supreme Court ruled that corporations were “persons” under the 14th Amendment. In *Connecticut General Life Insurance Company v Johnson*, Supreme Court Justice Hugo Black dissented, writing that “If the people of this nation wish to deprive the states of their sovereign rights to determine what is a fair and just tax upon corporations... there is a way provided by the Constitution to accomplish this purpose.” However, Black did not believe that “the Fourteenth Amendment had that purpose,” nor did he believe that “the people believed it had that purpose” or that “it should be construed as having that purpose.”³⁸ In addition to Justice Hugo Black’s dissent in *Connecticut General Life Insurance v Johnson*, Justice William O. Douglas, also questioned the legitimacy of corporations being “persons” under the 14th Amendment in his dissent in *Wheeling Steel Corp. v Glander*. Justice Douglas writes “It has been implicit in all of our decisions since 1886 that a corporation is a ‘person’ within the meaning of the Equal Protection Clause of the Fourteenth Amendment.” However, according to Justice Douglas, “the Court was cryptic in its decision” and wrote “no

³⁶ Zepernick, Mary. *The Corporation* (film). (Transcript). http://hellocoolworld.com/files/TheCorporation/Transcript_finalpt1%20copy.pdf

³⁷ Grossman, Richard. *The Corporation* (film). (Transcript). http://hellocoolworld.com/files/TheCorporation/Transcript_finalpt1%20copy.pdf

³⁸ Black, Hugo. *Connecticut General Life Insurance Company v Johnson*. <http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=us&vol=303&invol=77>

opinion on the point.”³⁹ Justice Douglas recites Chief Justice Waite’s announcement from the bench in the head notes from *Santa Clara County v Southern Pacific Railroad* and then reminds the readers that “there was no history, logic, or reason given to support that view. Nor was the result so obvious that exposition was unnecessary.”

Justice Douglas also cites *Insurance Co v. New Orleans* reminding the reader that the 14th Amendment became part of the Constitution in 1868 and that in *Insurance Co v New Orleans*, Justice Woods held that a corporation was not a “person” and that “this construction of the section is strengthened by the history of the submission by Congress and the adoption by the States, of the 14th amendment, so fresh in all minds of as to need no rehearsal.”⁴⁰ Justice Douglas goes on to add that “what was obvious to Mr. Justice Woods in 1871 was still plain to the Court in 1873” when “Mr. Justice Miller in the Slaughter House Cases adverted to events ‘almost too recent to be called history’ to show that the purpose of the Amendment was to protect human rights – primarily the rights of a race which had just won its freedom.”⁴¹ As far as the Equal Protection Clause in the 14 Amendment being applied to corporations, Justice Douglas states, “The existence of laws in the States where the newly emancipated negroes resided, which discriminated with gross injustice and hardship against them as a class, was the evil to be remedied by this clause, and by it such laws are forbidden.”⁴² Citing Arthur Twining Hadley in his dissent, Justice Douglas reminds the reader that “The Fourteenth Amendment was framed to protect negroes from oppression by the whites, not to protect corporations from oppression by the legislature. It is doubtful whether a single one of the members of a Congress who voted for it had any idea that it would touch the question of corporate regulation at all.”⁴³ Justice Douglas points out that “persons’

³⁹ Douglas, William O. *Wheeling Steel Corp v Glander*.
<http://supreme.justia.com/us/337/562/case.html>

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Ibid.

in the first sentence plainly include only human beings, for corporations are not 'born or naturalized" and that it "requires distortion to read 'person' as meaning one thing, then another within the same clause and from clause to clause."⁴⁴

Throughout the 20th century, the extent to which the rights granted to persons under the 14th Amendment apply to corporations has remained controversial. The Supreme Court decision in *Citizens United v Federal Election Commission* has just been one of many decisions rendered by the Supreme Court that reinforced corporate personhood over the last century. Because *Citizens United* has created some exigence in terms of public discourse, there is renewed interest in the idea of corporate personhood and a vibrant movement of people who are trying to stop it. For example, the Occupy Wall Street Movement and Dr. Cornell West proposed "occupying the courts" on January 20, 2012 as a means of protesting corporate personhood.⁴⁵ Vermont Senator, Bernie Sanders, proposed a Constitutional Amendment with Congressman Ted Deutch called the "Saving American Democracy Amendment." One of the things that this amendment will do is affirm that "corporations are not people with constitutional rights."⁴⁶

While Senator Bernie Sanders and the Occupy Movement have righteous anger in terms of the *Citizens United* case, a Constitutional Amendment that strips corporations of its personhood is not a prudent measure that will solve this perceived problem. What both Sanders and those from the Occupy Movement have failed to consider is that if a corporation is not a person, then what is it? Specifically, how do you undo hundreds of years of case law that treat a corporation as a person? The fact that a corporation is treated as a person under the law is not nearly as problematic as the kind of person that a corporation is under the law. Before there was a United States, Sir Edward Coke and William Blackstone defined

⁴⁴ Ibid.

⁴⁵ Smith, Don. *Washington Liberals*. <http://waliberals.org/occupy-the-courts-jan-12-2012/2011/11/14/>

⁴⁶ Sanders, Bernie. *Saving American Democracy Amendment*. <http://sanders.senate.gov/petition/?uid=f1c2660f-54b9-4193-86a4-ec2c39342c6c>

corporations as being “artificial persons” and distinguished between “artificial persons” and “natural persons.” That distinction made up a significant part of the case law pertaining to corporations from the birth of the American republic through the Civil War. This distinction was not lost in terms of the legal history of corporate law until *Santa Clara County v Southern Pacific Railroad* where Chief Justice Waite provided no history, logic or reason to support that view.

While the doctrine of *stare decisis* is typically applied to settled legal cases, even Chief Justice John Roberts, one of the more conservative justices on the Supreme Court claimed that “obviously if the decision is wrong, it should be overruled.”⁴⁷ It is clear that the application of the head note in the case of *Santa Clara County v Southern Pacific Railroad* is a judicial error in that the premise that a corporation is a person, having the same rights as a “natural person” under the 14th Amendment, has never been tried in the Supreme Court. While it may seem that getting the court to hear a case on “corporate personhood” would be more difficult than getting the legislature to pass a Constitutional Amendment and getting the states to ratify that amendment, it may not be the case. Irregardless, it is difficult to see how the courts would apply that Constitutional Amendment if passed (after all, isn’t it the application of the 14th Amendment that has caused this problem to emerge in the first place?) and passing a constitutional amendment to right a perceived wrong that occurred as a result of the judicial application of a previous amendment doesn’t seem to be the proper way to fix this perceived problem.

Irregardless of how the American people feel about corporations, there is some public good that can (and has) come out of them being in existence. Sir Mark Moody-Stewart of HSBC reminds us that “there’s no organization on this planet that can neglect its economic foundation. Even someone living under a banyan tree is dependent on support from someone. Economic lack has to be addressed by

⁴⁷ Roberts, John. *United States Senate Committee on the Judiciary*. http://judiciary.senate.gov/hearings/testimony.cfm?id=1611&wit_id=4609.

everyone – it’s not just a business issue.”⁴⁸ The major problem with passing a Constitutional Amendment (or any law for that matter) that strips corporations of its right to personhood is that the American courts would have no way of dealing with them in terms of justice, taxes, or fees. Corporations have been persons under the law for the duration of the country and even in the common law of England. If Americans were to create another category for corporations other than “person,” who’s to say that America wouldn’t wind up in the same place that it is right now? Essentially, this problem needs a better and more enduring solution than a Constitutional Amendment.

If there is one premise in American political discourse that is *stare decisis*, it is the self-evident premise that “all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.”⁴⁹ Thomas Jefferson’s proclamation in *The Declaration of Independence* has been the document that America’s oppressed people (and the oppressed people of the world for that matter) have turned to for inspiration and comfort. Jefferson’s work emerged from a very particular social, cultural, and historical context in which Thomas Hobbes’ social contract theory from *Leviathan* and John Locke’s *Second Treatise on Government* served as the philosophical foundation that informed their ideas of government. Both Locke and Hobbes claim that man existed before government and that in this existence, man had freedoms that came from nature and not from government. John Locke called these freedoms “natural rights.”⁵⁰ It only stands to reason that only “natural persons” can have these “natural rights.” Because these rights come from nature and not government, then government cannot infringe upon these rights without due process of law. However, a corporation does not exist in a state of nature. It has no natural rights because there is no way that a corporation can be a natural

⁴⁸ Moody-Stuart, Mark. *The Corporation (film)*. (Transcript). http://thelocoolworld.com/files/TheCorporation/Transcript_finalpt1%20copy.pdf

⁴⁹ Jefferson, Thomas. *The Declaration of Independence*. <http://www.ushistory.org/declaration/document/>

⁵⁰ Locke, John. *Two Treatises on Government*. <http://www.lonang.com/exlibris/locke/>

person. Because a corporation is “a creature of law” that depends upon the governing body that created it for its existence, then a corporation has no natural rights at all. It only has the privileges granted it by the governing body that created its charter. Both the courts of England and the early courts of the American republic understood corporations in a substantially similar way and the contemporary courts should understand corporations as a creature of law again.

It is dangerous for Americans to continue allowing the courts to appropriate the rights of a natural person and apply them to a corporation. If the Supreme Court can ignore two hundred years of case law from the United States and another hundred years of common law from England, then does the doctrine of *stare decisis* really exist? Or are the courts just another politicized wing of government that can ebb and flow with the political tides of its time? In addition, if the courts continue to apply the rights of a “natural person” to corporations, then at what point will the courts rule that rights do not come from nature but instead come from government? At that point, neither man nor corporations will have any rights. All of our rights will be reduced to privileges granted by the state. The courts are obligated to protect those rights. It is because of those rights that we have government in the first place. In order to secure those rights, we have a government that has been “instituted among men” (not corporations) that derives its just power from the consent of the governed (not corporations) and we must reign in the power of corporations by reminding them (and the Court) that they are “artificial persons” and may be molded to “any shape or for any purpose that the Legislature may deem conducive for the general good” so that we can “ensure the survival of America’s representative democracy” and ensure that a “government of the people, by the people, for the people, shall not perish from the earth.”⁵¹

⁵¹ Lincoln, Abraham. *Gettysburg Address*. Library of Congress. http://myloc.gov/Exhibitions/gettysburgaddress/Pages/default.aspx?sc_id=wikipedia

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