

USA: The fundamental human rights of corporate power

Corporate Control of Our Democracy: Citizens United v. Federal Election Commission

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This January the U.S. Supreme Court issued a shattering ruling that will intensify corporate influence in our democracy to an unprecedented degree. In Citizens United v. Federal Election Commission, the Court ruled that government restrictions on corporate election spending are unconstitutional because such restrictions violated corporations' right to free speech as set out in the first amendment of the Bill of Rights. In effect, the Court was evoking a core civil right to advance corporate power. This is a dangerous precedent, one that will undermine the obligation of the government to respect and protect human rights by giving corporations full reign to advance their own interests in the democratic - yet increasingly plutocratic - United States.

The idea that corporations have the same rights as you and me comes from a Supreme Court decision over 120 years ago - Santa Clara County v. Southern Pacific Railroad (1886) - the focus of which was whether railroads could deduct their debts from the value of their property for tax purposes. The Supreme Court laid down a much broader ruling, effectively stating that corporations should enjoy the same equal protections under the law as individuals. Equal protection under the law was spelled out in the 14th Amendment which was adopted following the Civil War. The original motivation for the amendment had little to do with advancing corporate influence. It overturned the Dred Scott decision (in which slaves were denied citizenship) and laid the groundwork for ending segregation in the U.S. and subsequent civil rights laws.

The Santa Clara County v. Southern Pacific Railroad decision extended the individual human rights of real people, including those in the Bill of Rights, to corporations whose personhood is simply a legal contrivance. The current Court has now decided that such protections guarantee the right of corporations to use their substantial economic clout to influence election outcomes.

None of this would matter of course if money played no role in politics. But in the U.S., campaign spending is of paramount importance. The Center for Responsive Politics, which tracks campaign spending over election cycles, found that in 2008, winners of Senate races spent an average of \$8,531,267 on their campaigns, while losers spent less than half this amount, \$4,130,078. In election contests for seats in the House, the ratio approached three to one - winners spent an average of \$1,372,539 while losers were able to muster only \$492,928.

In addition, a recent report from the International Monetary Fund found that there was a direct link between the political contributions of companies and the risky behavior behind the financial crisis. They show that "lenders that lobby more intensively on these specific issues have (i) more lax lending standards measured by loan-to-income ratio, (ii) greater tendency to securitize, and (iii) faster growing mortgage loan portfolios." The increasing influence of campaign contributions dilutes the ability of the government to set up regulations that stabilize the economy and ensure economic and social rights.

Corporations do not act with impunity and cannot always claim first amendment protections. An important legal distinction is made between 'free speech' and 'commercial speech'. What's the difference? Commercial speech is done on behalf of a business in order to help that business make a profit. Therefore, it has a different legal standing than other categories of speech. Commercial speech can be regulated if there are potentially harmful consequences of such speech. For example, pharmaceutical companies are not free to make false (and possibly life-threatening) claims about their products simply to boost their market share. The Food and Drug Administration still regulates such 'speech'.

Not everyone agrees that commercial speech should be regulated differently - let alone the current Supreme Court justices. Justice Thomas, in an opinion on the 1996 case *44 Liquormart, Inc. v. Rhode Island*, said that "I do not see a philosophical or historical basis for asserting that 'commercial' speech is of 'lower value' than 'noncommercial' speech." Thomas is an adamant supporter of the ruling that first amendment protections should be extended to corporate campaign contributions.

The lines between commercial speech and free speech have always been blurry and have become increasingly so in recent years. This is not a trivial development. The government cannot regulate corporate activities which have been judged to constitute free speech.

Consider the role of the credit ratings agencies in the economic crisis. These companies are meant to assess the risks of financial products and to provide accurate information to investors. Three large U.S. corporations dominate the ratings industry globally - Standard & Poors, Moody's, and Fitch. These firms gave excessively favorable ratings to the mortgage-back securities behind the current economic crisis. Many of the securities received the highest possible rating - triple-A - even though the risks underlying these assets were far greater. The ratings agencies were only too glad to give high marks, since they were paid by the people requesting the ratings, a fundamental conflict of interest. Corporate profits soared, at least until the financial markets crashed - causing people to lose their homes, their jobs, and much of the value of their pensions. With an accurate assessment of the risk associated with these securities, the financial crisis would probably not have happened at all.

The ratings industry has claimed that it should be sheltered from liability and future regulation, since their credit ratings represent mere 'public opinions' which should enjoy first amendment protections. Federal Judge Shira Scheindlin disagreed last year, opening the way for the ratings agencies to be sued for their actions. However, the 'free speech' argument has been used in the past to stave off efforts to regulate the industry and will likely resurface again as the issue makes its way through the courts.

Those who think corporations should enjoy free speech protections often argue that corporations just represent groups of people, shareholders, and any group of people is entitled to its opinion. 'Freedom of association' guarantees the right to form groups in order to advance particular viewpoints. The proponents of first amendment protections for corporations argue that corporations simply represent one way of forming a group among like-minded people.

But corporations are institutions with significant economic power. That's why laws exist to prevent people from coming together with the purpose of exploiting their collective economic might in ways that impose costs on society. Anti-trust laws prevent collusive action and price setting behavior. Adam Smith, who is frequently evoked to support a free-market doctrine, famously wrote, "People of the same trade seldom meet together even for merriment and diversion, but the conversation ends in a conspiracy against the public or some contrivance to raise prices." It is the very real possibility of conspiracies against the public which justify different rules for corporations.

But the Supreme Court ruling would have us believe differently. It is not okay for corporations to exert undue influence on market prices, but it is fine for them to exert undue influence in democratic elections. Once in office, representatives whose campaigns depended on corporate donations would be loathe to enact legislation which goes against their supporter's interest. Policies will mirror the corporate agenda even more than they do today. The role of insurance companies in determining our healthcare choices will be harder to question, the labor protections that currently exist will be increasingly difficult to maintain, and struggles to hold corporations liable for their actions will become more challenging. Such issues are of enormous concern as we reflect on the aftermath of the financial crisis, the slow progress on climate change, or BP's disastrous oil spillage in the Gulf of Mexico.

Supreme Court decisions have held a prominent place in the history of human rights in the U.S. Progress has been achieved when unjust decisions have been overturned. We only have to think of the watershed case, Brown v. the Board of Education, to understand the importance of overturning an earlier injustice. The ruling on corporate campaign contributions represents an historic step backwards for the country. If human rights are to stand a chance against corporate rights, this decision must be overturned.

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P.S.

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http://www.huffingtonpost.com/radhika-balakrishnan/corporate-control-of-our_b_643095.html