

Corporate rights and the constitution

Corporations are legal fictions. That is the actual legal term. Forming a corporation is as easy as filing some paperwork with the state government. Yet, once this legal fiction is created, it is endowed with all sorts of rights. This corporation can grow to any size. It can live forever. And if the corporation breaks the law, commits any harm, or assumes mounds of debt, the individual owners and managers are not personally responsible. Yet this corporation, this legal fiction created out of paperwork for the purpose of making money, also enjoys the same full constitutional privileges as living, breathing people. The corporation's right to free speech is protected. So is its right to privacy and its freedom from discrimination. But it wasn't always this way. As a consequence of the 1886 *Santa Clara County v. Southern Pacific Railroad* case (basically a tax dispute), corporations became "persons" under the law and thus entitled to constitutional protections, overturning an established precedent that had stood up to repeated challenges. Although author Thom Hartmann has documented that although this opinion was only part of the case's head notes — not the actual binding ruling — it became the legal standard nonetheless, elevating corporations to a new position of power.

Freedom of speech

Perhaps you'd like to see a ban on tobacco or alcohol advertising. Perhaps you think a truth-in-advertising law would be a good thing. Good luck. Corporations will challenge such a law in court, saying it is restricting their First Amendment right to free speech. And, chances are, they will win. Courts have held that "commercial speech" is constitutionally protected since 1978.

Freedom of speech protections also extend to political donations, since the Supreme Court has affirmed that money is speech (*Buckley v. Valeo*, 1976). This means that any attempt to outlaw corporate political spending and lobbying would be considered unconstitutional.

But what about your freedom of speech? Unlike large corporations, you probably don't own a television station or a newspaper, so your freedom of speech won't register nearly as loudly. Nor can you probably afford a highway billboard or a full-page newspaper ad to register your opinions. And when you're at work and on corporate property, you don't get any freedom of speech protections.

Privacy Protections

The Fourth Amendment protects against illegal searches and seizures. This is why the police need a search warrant to break into your home. But because corporations claim these same constitutional protections, it means that if OSHA wants to see if workers are safe or if the EPA wants to inspect plant emissions, they have to schedule an appointment. Such privacy protections make it very difficult for regulatory agencies to do their jobs. Yet, corporations regularly violate the privacy of their workers, monitoring their phone calls and e-mails and even installing secret cameras.

Equal Rights

Imagine if a city passed a law saying that Wal-Mart was not allowed to open up a store within city limits. "Unconstitutional!" Wal-Mart would scream, and as long as the 14th Amendment applies to corporations, Wal-Mart would be right — a law that banned Wal-Mart would be discriminatory. The 14th Amendment also protects corporations from a variety of other challenges to their

power: taxing corporations more heavily than other businesses, preventing corporate mergers, prohibiting corporations from owning stock in other corporations, even revoking corporate charters by popular referenda. All of these are considered unconstitutional. Though the 14th Amendment was enacted to end slavery and racial discrimination, it has been used overwhelmingly to protect corporations



Cartoon by Matt Wuerker

Due Process

The Fifth Amendment promises that private property won't be taken away without just compensation. But corporations have successfully argued that "takings" of property rights extend to government regulations that reduce potential profits. So any law that cuts into corporate profits could be considered unconstitutional. Try that logic if you get a pay cut!

Resources

The Women's International League for Peace and Freedom:
www.wilpf.org

Program on Corporations, Law, and Democracy:
www.poclاد.org

Reclaim Democracy: www.reclaimdemocracy.org

Unequal Protection, by Thom Hartmann