

Abolish Corporate Personhood

The following talk was presented by Molly Morgan at a community meeting in Santa Cruz, California, on September 21, 2001. Anyone is free to use this talk, or any portion of it, in their outreach to educate people about corporate personhood. This talk is about 20 minutes long.

We're gathered together tonight to examine a phenomenon called "corporate personhood." Most people who hear that phrase for the first time scratch their heads, look at you funny, and maybe wonder what you've been smoking. The absurdity of corporate personhood has that effect on people — it just doesn't make sense! But corporate personhood is not only real under law, it has an enormous impact on all of us, so it behooves us to know what it is, how it got here, and why we need to get rid of it.

To understand what's going on, we're going to go back to the Constitution of the United States of America. This document was written by 55 gentlemen cleverly described by one historian as "the well-bred, the well-fed, the well-read, and the well-wed." As some of the wealthiest, most privileged people in the new country, they were highly aware that their power had everything to do with how much property they owned — land, crops, buildings, personal goods, and — for most of them — property in the form of human beings, their slaves. As some of the best-educated men in the world (by European standards, anyway), they also knew about democracy, and they understood what a threat the real thing represented to their personal power. The kind of democracy they prized and wrote about so eloquently could only be practiced by people like them — certainly not by the rabble, or, as Alexander Hamilton so fondly referred to us, "the mob at the gate."

So in the Constitution they created a republic and a system of government that is designed to protect property, not people. And not surprisingly, when folks in the new United States got their first look at the proposed Constitution, they howled! At least half of the population was very much opposed to the Constitution. They had just fought a long, bloody revolutionary war groovin' on words like "liberty" and "freedom," not "president" or "congress" or "supreme court." But the Federalists who proposed the Constitution had the finances and the unity to promote their ideas strongly, and after a lot of politicking they got the Constitution ratified — but only with the assurance that a Bill of Rights would be added to protect people from the excesses by the government that would be possible under the new system.

It's worth noting that nowhere in the Constitution does the word "democracy" appear; nor the word "corporation," nor "slave." But we'll come back to these in a minute. First let's look at the basic structure they created to protect property.

We start with the sacred words "We the People of the United States" who are sovereign and have individual rights.* And then we have a government to serve those people that is accountable and has specific duties. The People delegate some of their power to the government in order to perform its specific duties. In a representative democracy, this system should work just fine.

There's just one little problem. It's that word "People." At the time the Constitution was ratified, in order to be considered one of "We the People," you had to be an adult male, you had to be white, and you had to have a certain amount of property. At the time of the Constitution, this narrowed "People" down to about 10% of the population. Those who owned property, including human property, were very clear that this was rule by the minority — and that's the way they wanted it.

Now I mentioned earlier that the word "corporation" appears nowhere in the Constitution, and the reason is that the Founding Fathers had zero interest in using them to run their new government. In colonial times, corporations had been chartered by the king for the purpose of exploiting the so-called "New World" and shoveling wealth back into Europe. Corporations like the Hudson Bay Company and the British East India Company and the Massachusetts Bay Colony had a lot of autonomy to do this work — they could pass laws, levy taxes, and even raise

armies to manage and control property and commerce. They were *not* popular with the colonists. So when the Founding Fathers wrote the Constitution, they threw control of corporations to state legislatures where they would get the closest supervision by the people. Early corporate charters were very explicit about what a corporation could do, how, for how long, with whom, where, and when. Individual stockholders were held personally liable for any harms done in the name of the corporation, and most charters only lasted for 10 or 15 years. But most importantly, in order to receive the profit-making privileges they sought, corporations had to represent a clear benefit for the public good. And when corporations violated any of these terms, their charters were frequently revoked by the state legislatures.

Well, as time passed and memories of royal oppression faded, the wealthy folks increasingly started eyeing corporations as a convenient way to shield their personal fortunes. They could sniff the winds of change and see that their minority rule through property was under serious threat of being diluted. By 1848 uppity women had started publicly agitating for the right to vote. In 1865 the 13th Amendment was ratified, freeing the slaves. Three years later, the 14th Amendment was ratified, giving citizenship rights to all persons born or naturalized in the United States — the intended beneficiaries being the newly freed slaves. Change was afoot, and so the ruling class responded.

During and after the Civil War there was a rapid increase in the number and size of corporations, and this form of business was starting to become a more important way of holding and protecting property and power. Increasingly through their corporations, the ruling class started influencing legislators, bribing public officials, and employing lawyers to write new laws and file court cases challenging the existing laws that restricted corporate behavior. Bit by bit state legislatures increased corporate charter length while they decreased corporate liability and citizen authority over corporate structure, governance, production, and labor. But they were only going to be able to go just so far with this strategy. Because corporations are a creation of the government — chartered by the state legislatures — they still fell on this side of the line with *duties accountable to the people*. If minority rule by property was going to be accomplished through corporations, they had to cross this line and become entitled to *rights* instead. And their tool to do this was the 14th Amendment, which was passed in 1868. From then it took the ruling class less than 20 years to shift corporations from the duty side to the rights side.

After a series of lower court cases, the watershed moment came in 1886 when the Supreme Court heard a case called *Santa Clara County v. Southern Pacific Railroad*. Citing the 14th Amendment, and without hearing any arguments, the Supremes declared unanimously that corporations are persons deserving the law's protection. There was no public debate about this and no law passed in Congress — corporations received the status of persons by simple judicial fiat. And they did this at a time when all women, all Native Americans, and even most African American men were still denied the right to vote.

Ten years later, in *Plessy v. Ferguson*, the Supreme Court established the “separate but equal” doctrine that legalized racial segregation through what became known as “Jim Crow” laws. In less than 30 years, African-Americans had effectively lost their legal personhood rights while corporations had acquired them. And in case you're still wondering whether the primary purpose of the Constitution and the body of law it spawned is about protecting property rather than people, listen to this. Of the 14th Amendment cases heard in the Supreme Court in the first 50 years after its adoption, less than one-half of one percent invoked it in protection of African-Americans, and more than 50% asked that its benefits be extended to corporations. When you look at two-plus centuries of US legal history, the pattern is that people acquire rights by amendment to the Constitution — a long, drawn-out, difficult process — and corporations acquire them by Supreme Court decisions. Rights for corporations, because they're about property, is about who is *excluded*; rights for human beings is about who is *included*.

Once corporations had jumped the line, they proceeded to pursue the Bill of Rights through more Supreme Court cases. In 1893 they were assured 5th Amendment protection of due process. In 1906 they got 4th Amendment search and seizure protection. In 1925 it was freedom of the press and speech. In 1976 the Supremes determined that money is equal to speech, and since corporate

persons have First Amendment rights, they can basically contribute as much money as they want to political parties and candidates. And so we find ourselves in a time when corporations have amassed enormous power and wealth, and control nearly every aspect of our lives, because they masquerade — under the law at least — as one of us. But most of us don't know it.

A key reason for that is that the whole thing is pretty esoteric. A corporation is a legal fiction, an abstraction. You can't see or hear or touch or smell a corporation — it's just an idea that people agree to and put into writing. But because they have legal personhood status, corporations are like superhumans with all the advantages and none of the disadvantages that we mere mortals have. Corporations now have infinite lifespans so they can continue to accumulate wealth and power forever. You can cut off the figurative arm or leg or even head of a corporation and it can still continue to exist. Furthermore, corporate lawyers invoke their personhood status or not at their convenience, allowing them to be whatever they want according to their needs.

Along with this abstract existence, corporations have acquired a lot more abstract property. Ownership of land and buildings is still important, but now corporate property also includes concepts like mineral rights, drilling rights, air pollution credits, intellectual property, and even — under NAFTA — rights to future profits. All this abstraction fits in to the ways property is used to maintain minority rule. When corporations were over on the duties side of the line, the primary technique for enforcing minority rule was to establish that only a tiny percentage could qualify as "We the People" — in other words, that most people were subhuman. As different groups of people struggled to be included in those first three words of the Constitution and eventually succeeded, the corporation crossed over to the rights side and ultimately became superhuman, still maintaining an artificially elevated status for a small number of people.

Today the work of corporatists is to take this system global. Having acquired the ability to govern in the United States, the corporation is the ideal instrument to gain control of the rest of the world. The concepts, laws, and techniques perfected by the ruling minority here are now being forced down the throats of people everywhere. First, a complicit ruling elite is co-opted, installed, or propped up by the US military and the government. Then, just as slavery and immigrant status once kept wages nonexistent or at poverty levels, now sweatshops, maquiladoras, and the prison-industrial complex provide ultra-cheap labor with little or no regulation. Just as sharecropping and company store scrip once kept people trapped in permanently subservient production roles, now the International Monetary Fund and World Bank's structural adjustment programs keep entire countries in permanent debt, the world's poorest people forced to feed interest payments to the world's richest while their own families go hungry. Just as genocide was waged against native populations that lived sustainably on the land, now wars are instigated against peoples and regimes that resist the so-called "free trade" mantra because they have the audacity to hold their own ideas about governance and resource distribution. Racism, sexism, classism, homophobia, and divisive religious, ethnic, ideological, and cultural distrust were all intentionally instituted to prevent people from making common cause against the ruling minority, and those systems continue their destructive work today.

These systems of oppression that I've been talking about weren't established overnight; they were gradually and sometimes surreptitiously introduced and refined in ways that made them acceptable. At the time of the Constitution, corporations were widely reviled, but a century later they were a commonplace business institution, and a century after that they've become our invisible government! They accomplished this over decades, changing a little piece of law here and incorporating a throw-away comment in a judicial decision there.

Resistance to these oppressions evolved in a similar way. Those who wished to end slavery, for example, worked for many years collecting information, refining their analysis, and debating among themselves. They came to understand the issue as one of human rights and that the whole institution of slavery was fundamentally wrong. They didn't come up with a Slavery Regulatory Agency or voluntary codes of conduct for slave owners. They called themselves Abolitionists — the whole thing had to go.

We look at corporate personhood the same way. We see that corporate personhood was **wrongly given** — not by We the People, but by nine Supreme Court judges. We further see that corporate personhood is a **bad thing**, because it was the pivotal achievement that allowed an artificial entity to obtain the rights of people, thus relegating us to subhuman status. And finally, because of the way corporate personhood has enabled corporations to govern us, we see that it is *so* bad, we must eradicate it.

Slavery is the legal fiction that a person is property. Corporate personhood is the legal fiction that property is a person. Like abolishing slavery, the work of eradicating corporate personhood takes us to the deepest questions of what it means to be human. And if we are to live in a democracy, what does it mean to be sovereign? The hardest part of eliminating corporate personhood is believing that We the People have the sovereign right to do this. It comes down to us being clear about who's in charge.

What would change if corporations did not have personhood? Well, here are a few examples. If corporate persons no longer had first amendment right of free speech, we could prohibit all corporate political activity — no more contributions to candidates or parties, no more lobbying. Just think of the ripple effect on our political process if no corporate money could contaminate it!

Corporate persons are now protected against search without a warrant under the 4th Amendment. This means that OSHA and the EPA have to schedule their inspections at a time convenient to corporate managers. If you think the air, land, or water in your community is being polluted, or the workers mistreated, neither you nor the government can go on corporate property to get information without legal permission. Just think of the consequences if corporate polluters were no longer shielded by the Constitution!

Without their protections under the 5th and 14th Amendments, corporations could be prevented from merging and owning stock in other corporations. We could leaflet in malls, we could pass laws against chain stores and cell phone towers, we could organize openly at work. If corporate personhood is eradicated, a floodgate of possibilities opens for citizen sovereignty to replace corporate governance.

We think the campaign to end corporate personhood is like applying a massive crowbar at the most pivotal point against a stuck door holding back democracy. No more trying the key in the rusted lock; no more poking with a coat hanger here and kicking at a corner there. By focusing on the crucial block — corporate personhood — and applying enough force to pry the door open, the whole concept of what's politically and humanly possible shifts in profound and exciting ways. We hope you'll join us in this work and we look forward to creative collaboration as we reconnect with our sovereignty. Thank you!

**The following simple diagram helps to illustrate the talk:*

