



## Corporations, Animals, and Legal Personhood

**Jon Garthoff**, The University of Tennessee, Knoxville

Critics of the United States Supreme Court's decision in *Citizens United v. Federal Election Commission* often declare that "corporations are not people." There is something clearly correct about this declaration: It is apparent in both moral understanding and legal practice that there is no general requirement to treat corporations like ordinary people. A corporation may be denied the right to marry, for example, or forbidden to vote or to run for public office.

But there is also something incorrect about the declaration that corporations are not people. The legal practice of treating certain groups as persons can be traced all the way to Roman law in the time of Emperor Justinian in the 6th century C.E. This practice grew during the medieval period, and expanded further with the rise of joint stock companies in the 17th and 18th centuries. The contemporary corporate form developed amid 19th-century industrialization, as corporate law came to limit shareholders' liability for corporate actions to the extent of their investment in the corporation. Neither Justice John Paul Stevens's dissent in *Citizens United* nor Justice Thurgood Marshall's majority opinion in *Austin v. Michigan Chamber of Commerce*, which *Citizens United* overturned, departs from this long legal tradition that treats many groups, including limited liability corporations, as legal persons.

How can we reconcile the sense in which corporations are persons with the sense in which they are not? As this brief spells out, this reconciliation is best accomplished through a fundamental revision to the doctrine of legal personhood.

### Standing, Liability, and Personhood

"Standing" refers, roughly speaking, to rights. In legal contexts, the paradigm form of standing is the right to sue. "Liability" refers, roughly, to obligations. In legal contexts, the paradigm form of liability is vulnerability to being sued. The doctrine of legal personhood standardly maintains that a being has standing just in case it has liability. This doctrine captures both the deep role of cooperation in human life and the appealing idea that no one is above or beneath the law.

Important problems with the standard understanding of legal personhood stem from the fact that the capacities needed to possess rights (standing) are not the same as the capacities needed to possess obligations (liability), even though standing and liability are standardly bundled together. Legal personhood should instead be divided into its two core elements, standing and liability, and we should reject the view that a being has standing just in case it has liability.

People have obligations because they can think about reasons and justifications and regulate their actions accordingly. Humans may be the only animals with these capacities of critical reasoning; if so, then we are the

only animals who have moral or legal obligations. But many non-human animals are conscious, with aversions and attractions. This class of conscious but non-rational animals also includes some humans: fetuses, infants, and those with the very most debilitating cognitive disabilities. Non-rational beings with conscious experiences have moral standing. Because of this moral standing, society cannot disregard them without moral fault. In recognition of these facts, these individuals should have legal standing even when they lack legal obligations.

There are also rational but non-conscious beings, such as groups of people acting in a unified fashion. The clearest cases occur when there are explicit procedures, such as voting systems, that constitute group deliberations about what to do. Corporations and unions, the central examples discussed in *Citizens United*, are like this. These entities act for reasons. They are able to think about reasons explicitly and to pose questions about justification. Accordingly, it is appropriate to hold these groups legally responsible for their actions. This is why the slogan “corporations are not people” may mislead: Corporations and unions are legal persons and should remain such.

But even if corporations and unions are in this sense legal persons, *Citizens United* is a travesty of moral and jurisprudential judgment. Corporations and unions lack consciousness – and so lack moral standing. Whatever legal rights they enjoy are thus wholly conferred by law. Corporations and unions have neither natural rights nor any rights deserving special constitutional protection.

### **A Different Critique of *Citizens United***

In light of this reasoning, it is best not to denounce *Citizens United* with the simple slogan that “corporations are not people.” Corporations justifiably exist because they contribute to economic efficiency; unions justifiably exist to provide an effective counterweight to business interests. And if these entities exist, they must be vulnerable to lawsuits. Their liability is a crucial check on their irresponsible activity, and irresponsible corporate activity is of course rampant.

The deepest problem with *Citizens United* is that corporations and unions have no moral standing of their own, as ordinary people and many other animals do. Appreciating this opens space for a different view of *Citizens United*, where corporate and union political speech and expenditures are permitted, but only to the extent that this enhances the political liberties of individuals. The legal rights of both corporations and unions (rights to own property, for example, or to enter into and enforce contracts) do not reflect natural rights and should enjoy no special constitutional status. Accordingly, these rights do not bring with them rights to free political speech or rights to make political expenditures. Nor do they bring with them rights against discrimination. There should be no principled barrier, apart from concern about discrimination among individuals, to treating large corporations differently from small, for-profit corporations differently from non-profits, or corporations differently from unions.

### **Next Steps in Legal Reasoning**

Separating legal standing from legal liability – allowing that each may be possessed without the other – sets the stage for a more straightforward, complete, and enduring diagnosis of the errors in legal reasoning made by the Supreme Court majority in the *Citizens United* case. Although the popular slogan that “corporations are not people” is too simple and has potential to mislead, that case can and should be revisited with the preceding distinctions in mind. And when that happens, the necessary and fundamental revision of the doctrine of legal personhood can also clarify the legal status of conscious non-rational beings, such as fetuses

and many nonhuman animals. Thus a single innovation may help to rectify two defects in contemporary legal practice.

**Read more in Jonathan Garthoff "Decomposing Legal Personhood" *Journal of Business Ethics* (forthcoming).**