



## THE ECONOMIC PAMPHLETEER JOHN IKERD

### Agri-food corporations are not real people; why does it matter?

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Corporations are not *real* people. This may seem obvious, but for more than a hundred years the U.S. Supreme Court has recognized corporations as legal persons with many of the same constitutional rights as real people (Torres-Spelliscy, 2014). Why does it matter? Because corporations can do things that real people can't and yet are immune to legal liabilities that real people must consider. The lack of economic competitiveness in agri-food markets is one consequence of treating corporations as real people. So is the lack of government protection of farm and food workers

from exploitation and the natural environment from extraction and pollution. Recent examples include concerns about corporate price gouging following the COVID-19 pandemic (Reich, 2022) and the weakening of the Environmental Protection Agency's authority to restrict corporate pollution (Feldscher, 2022).

Corporate charters granted by state governments allow groups or people to act as single entities rather than as individuals. The most common example is for-profit corporations that allow hundreds or thousands of people to combine their

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*Why an **Economic Pamphleteer**? In his historic pamphlet Common Sense, written in 1775–1776, Thomas Paine wrote of the necessity of people to form governments to moderate their individual self-interest. In our government today, the pursuit of economic self-interest reigns supreme. Rural America has been recolonized, economically, by corporate industrial agriculture. I hope my “pamphlets” will help awaken Americans to a new revolution—to create a sustainable agri-food economy, revitalize rural communities, and reclaim our democracy. The collected Economic Pamphleteer columns (2010–2017) are at <https://bit.ly/ikerd-collection>*

investments to form a single corporation. In the absence of a corporate charter, this would be considered collusion. Historically, corporations were authorized by governments for the expressed purpose of serving specific public interests more effectively than real persons acting individually (Wells, 2021).

Even though their primary responsibility was to their shareholders, corporations historically were required to conduct business in ways that served the public interest more effectively than would investors acting individually. For example, consumers and society, in general, supposedly benefit from the economics of scale made possible by large agri-food corporations—as explained in previous columns (Ikerd, 2023a, 2023b). Historically, corporations that failed to serve public interests were restrained by government regulations or restructured through the enforcement of anti-trust laws (Halloran, 2018).

The legal responsibilities of corporations to serve both public and private interests were consistently upheld by court decisions through the 1950s (Wells, 2021). It's only since the 1980s that serving the public interest has been minimized or omitted from the legal responsibilities of for-profit corporations. The interests of other corporate stakeholders—employees, customers, suppliers, and communities—are considered only to the extent that doing so contributes to shareholders' economic interests (Lipton et al., 2020). The primary purpose of for-profit corporations today is generally accepted as serving the common or collective interests of their shareholders.

The legal precedent for corporate personhood dates back to a declaration by Chief Justice Waite of the U.S. Supreme Court in 1886. Before formal proceedings began, the Chief Justice 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 [the] opinion that it does" (*Santa Clara County v. Southern Pacific Railroad Co.*, 1886, "Syllabus," para. 7). This was not a part of the court's official opinion but simply a statement by the chief justice that was made prior to the presentation of arguments. Regardless, the declaration has since been used consistently as a precedent by courts in corporate-related decisions.

The precedent has been challenged periodically but has nonetheless prevailed. In a dissenting opinion in 1949, Justices Douglas and Black pointed out that the Fourteenth Amendment was clearly meant to protect the civil rights of real people, specifically recently freed enslaved people, not to protect the economic rights of corporations (*Wheeling Steel Corp. v. Glander*, 1949). In a 1978 dissenting opinion, Justice Rehnquist questioned the wisdom of extending political rights to corporations. He pointed out that the Fourteenth Amendment was intended to

apply to real people, not legally created entities, and that there were real dangers in extending the political rights of people to corporations (*First Nat'l Bank of Boston v. Bellotti*, 1978).

Over the years, the legal rights of corporate personhood have been expanded by the courts, while the legal responsibilities of corporations to serve the public interest have been contracted. Perhaps the most prominent recent example is the 2009 Supreme Court case *Citizens United v. the Federal Election Commission*. The Court held that "limiting independent expenditures on political campaigns by groups such as corporations, labor unions, or other collective entities violates the First Amendment because limitations constitute a prior restraint on speech" (*Citizens United v. FEC*, 2010). This ruling allows corporations to have a far greater influence on elections and other political decisions than do the ordinary real persons who are supposedly granted equal political rights by the U.S. Constitution. A 2014 Supreme Court ruling went even further, granting for-profit corporations the same

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constitutional freedom of religion as real people (*Burwell v. Hobby Lobby Stores, Inc.*, 2014).

But why shouldn't corporations have the same political rights as real people? As currently defined, for-profit corporations are purely economic entities organized and managed for the purpose of maximizing economic returns for their investors/shareholders. Whenever corporations are allowed to participate in political activities, whether by influencing elections or public policies and government regulations, their logical motivation is to increase their competitive advantages in markets and to remove any legal restraints to maximizing the economic interest of their shareholders—regardless of the social or ecological consequences. There are no social or ethical *incentives* for the actions of corporations, other than those that also serve the economic interests of their shareholders. There are no social or ethical *restraints* on their actions either, other than those imposed by the government.

Real people are motivated and restrained by the economic, social, and ethical consequences of their actions. A real person is an economic, social, and ethical being who pursues a multidimensional quality of life. The real people who are shareholders in corporations have the same social and ethical capacity as other real people. However, in the large, impersonal, publicly owned corporations that dominate the economy, there is no way of knowing what the mix of social and ethical values may be among the thousands of shareholders from many parts of the world. Most investors with stock in pension funds and mutual funds don't even know how many of which shares they own at any given time. Some investors own individual stocks for only a few days, hours, or minutes. The only interest corporate investors have in common is their desire to increase the economic value of their investments.

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Corporate managers who do not understand this are soon replaced by managers who do. The for-profit corporation of today is a purely economic being—not a real human being.

Admittedly, some real people hold the same political views as corporations, in that they give private economic interest priority over ethical and social responsibilities. The difference is that a for-profit corporation has no capacity to develop or express a social conscience or set of purely ethical values. Real people suffer the social and ethical consequences of their irresponsible actions; corporations do not and cannot. While corporate officers and executives may suffer social or ethical consequences for their actions, the only penalties a corporation can be assessed or can suffer are purely economic. Corporations also limit the liability of investors for the adverse economic consequences of their actions. When the Supreme Court ruled to allow unlimited campaign contributions by corporations, they failed to recognize the inherent lack of social or ethical capacity of for-profit corporations—or other corporations that are not legally obligated to charitable causes or public service. When the government weakens the enforcement of antitrust regulations, it leaves consumers vulnerable to economic exploitation. When the courts weaken the EPA and other government regulatory agencies, they leave fragile natural ecosystems and scarce natural resources vulnerable to corporate pollution and exploitation.

The fundamental *economic* purpose of government is to ensure that the economy serves the public interest of society in general. This purpose is expressed in the preamble to the U.S. Constitution: “to establish justice ... [and] promote the general welfare ... for ourselves and our posterity.” While corporations in general benefit from effective governance, individual corporations have no economic incentive to contribute to or support the effective-

ness of government. The only power greater than corporate power is the political power of the people—working together. Only real people, acting together through government, can ensure that for-

profit corporations serve the public interest of society as well as the private interests of shareholders.



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