

THE GOLEM, THE CORPORATION, AND PERSONHOOD
Companies are not Persons and neither is the Early Fetus

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Incorporated companies with proper limitations and guards, may in particular cases be useful; but they are at best a necessary evil only.

—James Madison, letter to J. K. Paulding (3/10/1827)

We shall crush in its birth the aristocracy of our monied corporations which dare already to challenge our government to a trail of strength and to bid defiance to the laws of our country.

—Thomas Jefferson, letter to George Logan (11/12/1816)

States laws, by combining larges masses of men under a corporate name, cannot repeal the Constitution.

—Marshall v. Baltimore and Ohio Railroad (1853)

It would be folly to prohibit them but also folly to leave them without thorough going control.

—Republican Theodore Roosevelt on corporations

It might reasonably be concluded that those properties of perpetual life and limited liability, so beneficial in the economic sphere, pose special dangers in the political sphere.

—William Rehnquist, former Supreme Court Chief Justice

Corporations are not themselves members of “We the People” by whom and for whom our Constitution was established.

—Justice John Paul Stevens, dissenting opinion in *Citizens United*

Corporations are not people. They are artificial entities that we the people create under state laws. They do not breathe. They do not have children. They do not go to war. Yet they now have far more say than we the people.

—Jeffrey Clements, former Massachusetts assistant attorney general

The Hebrew word *golem* is found in Psalms 139:16, which reads: “Your eyes have seen my unformed substance; and in your book were all written the days that were ordained for me” (*New American Bible*). In the Jewish tradition this unformed substance does not have a soul, so it is really ironic that today’s conservative Christians use this passage for their anti-abortion campaigns.

The unformed fetus also appears in another text, the 3rd Century BCE Greek version of Exodus 21:22-23, here in English: “And if two men strive and smite a woman with child, and her child be born imperfectly formed, he shall be forced to pay a penalty. But if it be perfectly formed, he shall give life for life, eye for eye, tooth for tooth.” The early church believed that this very imperfect translation was divinely inspired and inerrant. Taking the theory of fetal development from the Greek philosopher Aristotle, church fathers determined that the fetus was not properly formed until the second trimester. Canon Law was changed in 1917, but before then abortions were permitted for unformed fetuses during the first trimester.

The German silent film *Der Golem* (1915)—considered the first horror movie—was based on the legend of a monster that medieval Jews created to protect their ghettos from anti-Semitic attacks. Hatred against the Jews always intensified around Easter, because they, in addition to causing still-born children in Gentiles, were held responsible for the death of Christ.

One version of the story is set in 16th Century Prague where Rabbi Judah ben Bezalel created a golem from the mud of the Vltava River. He brought it to life by chanting certain sacred words over the clay body and inscribing the Hebrew word for truth (*emet*) on its forehead. The golem proved to be such a threat to the gentile community that Emperor Rudolf II begged the rabbi to restrain the monster. The emperor promised to stop all persecution, so the rabbi erased the first letter of the inscription, which changed the meaning of the word to “death” (*met*). Some claim that the lifeless body of the golem is still kept in the attic of the Prague Synagogue.

So far we can say this much about golems and corporations: they are artificial entities that have been brought into being by either sacred or legal incantations. At least the golem had an Adamic body (a “dust man” as the Apostle would say), but corporations (despite their etymology) are only metaphorically embodied in their buildings. Even the Jews were smart enough not to call their soulless protector a person.

Unlike the life-less golem in the attic, British Petroleum and other companies have “perpetual existence.” Human persons can be damned to Hell for their sins, but the laws of all the states grant limited liability to all stock holders. Even though both golems and the corporations are mute, the Robert’s Court argued, incredibly enough,

that Citizens United is a “speaker” with the full First Amendment rights of a natural person. More incredible still were earlier decisions that companies were protected even while mute, when they refused to agree to labels informing consumers of growth hormones in milk, the alcohol content in beer (I want ones with the most!), and the cancer causing agents in cigarettes.

In some versions of the legend the golem runs amok and starts killings Jews as well as Gentiles. I’m indebted to Jeffrey Cements for many insights, but I think he is wrong when he says that corporations “do not go to war.” In same way that the golem was created to protect the interests of the medieval Jewish community, the East India Company went to war in India to protect its investments. The United Fruit Company had its own private militia to suppress campesino revolts so that Americans could have cheap bananas on their morning cereal.

Initially most Republicans (except John McCain and those mentioned below) saw nothing wrong with allowing unlimited corporate contributions. But now that Mitt Romney’s Super PAC has destroyed conservatives more to their liking, perhaps they are having second thoughts about the monster the good justices have created. Again the Jews were smart enough to deactivate the golem when it starting killing fellow Jews. There is no “e” on corporate foreheads that we can remove, but we can amend the Constitution so that the founder’s original intent is restored.

In the early American Republic only human beings and God were held to be persons. If the founders had chosen to include abortion in the Constitution, they would have followed English Common Law. Instead they would have written that the fetus was not a person until it has “quickened in the womb”—sometime during the second trimester. In *Roe v. Wade* the justices chose “viability”—having independent life outside the world—which comes several weeks later in the second trimester. Over 90 percent of all abortions occur during the first trimester.

The conservative justices on the Supreme Court call themselves “originalists,” but in early America corporations were considered legal persons only, not natural, or as I prefer to say, moral persons. Only natural persons have unalienable rights based on what Jefferson phrased as the “Laws of Nature and Nature’s God.” In one of his famous dissents about corporate rights former Chief Justice William Rehnquist said that only natural persons “owe their existence to a higher sovereign than the Commonwealth.” The rights of corporations are granted by the various states and they can be “alienated” from them by legislative fiat. Please note that one does not have to be a theist to claim natural personhood: atheists, deists, and pagans could claim that they have inalienable rights from nature itself.

Corporations were actually viewed with much suspicion by our founders. James Madison once said that “incorporated companies with proper limitations and guards, may in particular cases be useful; but they are at best a necessary evil only.” Thomas Jefferson, considered by many to be a libertarian and champion of limited government, was even more critical: “We shall crush in its birth the aristocracy of our monied corporations which dare already to challenge our government to a trail of strength and to bid defiance to the laws of our country.” The Founders would be shocked learn that 220 years later the Supreme Court would declare that corporate money is protected speech under the First Amendment.

In 1886 the Southern Pacific Railroad argued it was a natural person under the 14th Amendment, which states that no person shall be deprived of “life, liberty, or property without due process of law.” Even though the Supreme Court ruled in favor of the railroad’s claim about property tax payments, it did not, as many jurists believe, conclude that the Southern Pacific was a moral person like human beings or God.

In the Gilded Age courts frequently used this decision to give constitutional rights to corporations that the framers would never have countenanced. Jeffrey Clements facetiously remarks that these judges gave “the divine gift of life” to entities that did not deserve such high privilege. It is curious that Rabbi ben Bezalel was not struck down by God when he presumed to make a creature by his own hand and words. Humans and animals were ensouled by the divine breath (*neshamah*) and only God is capable of doing this. Returning to the abortion question, ancient rabbis held that a fetus was not a person until it takes its first breath.

According to right-wing slogans today, Gilded Age jurists were “activist” judges “legislating from the bench” and “creating rights out of thin air.” So were the five justices who ruled last year that corporations would become a “disadvantaged class,” if they did not have the right to express their political opinions with massive unregulated campaign contributions.

While granting the value of corporations as economic entities, philosopher Gary Gutting argues that they, especially those that are for profit and privately owned, “have no core dedication to fundamental human values. Such corporations exist as instruments of profit for their shareholders. This does not mean that they do not make essential economic contributions to society. But left to themselves they can be serious threats to human values that conflict with the goal of corporate profit.”

One core human value that is jeopardized is truth, because, as Professor Gutting says, advertising “explicitly aims at convincing us to prefer a product regardless of its actual merit.” In his book on corporate rights Jeffrey Clements notes that Nike’s own

attorneys placed “truth” in quotation marks in a brief defending their outsourcing. This served as an open confession that it could not say that it had not defrauded its customers. Corporations are not only too big to fail but also too big to tell the truth.

Dale Robertson, a founder of the Tea Party, has weighed in against *Citizens United*: “I have a problem with that. It just allows corporations to feed the machine. It puts the people at a tremendous disadvantage.” (A quick survey of Tea Party sites, however, did not find any support for Robertson’s views.) The 70,000 business affiliated with the American Sustainable Business Council has come out against the decision, as well as the Transpartisan Alliance, an organization of conservatives concerned about the political power of large corporations. Chuck Baldwin, the presidential nominee of the very conservative Constitution Party, has warned that “America has more to fear from today’s Chamber of Commerce than it does from Al Qaida.”

Congressman Jim McGovern has introduced the People's Rights Amendment, which is the best means to reverse *Citizens United*. Similar measures have already passed in California, New Mexico, Montana, Hawaii, Massachusetts, and dozens of local jurisdictions. A Hart Research poll in 2011 found that 80 percent of those surveyed did not approve of the Supreme Court decision. Perhaps this overwhelming response coupled with the broad range of groups mentioned above could provide enough political support to overturn the greatest threat to American democracy.

Without the divine breath the soulless golem caused great destruction, and without proper legislative restraints the modern corporation has wreaked just as much havoc. *Citizens United* has unleashed a monster that must be legally sedated and placed in history’s dusty attic.

Nick Gier taught philosophy at the University of Idaho for 31 years. Read his other articles on the middle way between unfettered capitalism and communism at www.NickGier.com/ThirdWay.htm.