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The Railroad Barons Are Back - And This Time They'll Finish the Job

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The railroad barons first tried to infiltrate the halls of government in the early years after the Civil War.

The efforts of these men, particularly Jay Gould, brought the Ulysses Grant administration into such disrepute, as a result of what were then called "the railroad bribery scandals," that Grant's own Republican party refused to renominate him for the third term he wanted and ran Rutherford B. Hayes instead. As the [whitehouse.gov](http://www.whitehouse.gov) website says of Grant, "Looking to Congress for direction, he seemed bewildered. One visitor to the White House noted 'a puzzled pathos, as of a man with a problem before him of which he does not understand the terms.'"

Although their misbehaviors with the administration and Congress were exposed, the railroad barons of the era were successful in a coup against the Supreme Court. One of their own was the Reporter for the Supreme Court, and they courted Justice Stephen Field with, among other things, the possibility of support for a presidential run. In the National Archives, we also recently found letters from the railroads offering free trips and other benefits to the 1886 Court's Chief Justice, Morrison R. Waite.

Waite, however, didn't give in: he refused to rule the railroad corporations were persons in the same category as humans. Thus, the railroad barons resorted to plan B: they got human rights for corporations inserted in the Court Reporter's headnotes in the 1886 *Santa Clara County v. Southern Pacific Railroad* case, even though the court itself (over Field's strong objections) had chosen not to rule on the constitutionality of the railroad's corporate claims to human rights.

And, based on the Reporter's headnotes (and ignoring the actual ruling), subsequent Courts have expanded those human rights for corporations. These now include the First Amendment human right of free speech (including corporate "speech" to influence politics -- something that was a felony in most states prior to 1886), the Fourth Amendment human right to privacy (so a chemical company has successfully sued to prevent the EPA from performing surprise inspections -- while retaining the right to perform surprise inspections of its own employees' bodily fluids and phone conversations), and the 14th Amendment right to live free of discrimination (using the free-the-slaves 14th Amendment, corporations have claimed discrimination to block local community efforts to pass "bad boy laws" or keep out predatory retailers).

Interestingly, unions don't have these human rights. Neither do churches, or smaller, unincorporated businesses. Nor do partnerships or civic groups. Nor, even, do governments, be they local, state, or federal.

And, from the founding of the United States, neither did corporations. Rights were the sole province of humans.

As the father of the Constitution, President James Madison, wrote, "There is an evil which ought to be guarded against in the indefinite accumulation of property from the capacity of holding it in perpetuity by . . . corporations. The power of all corporations ought to be limited in this respect. The growing wealth acquired by them never fails to be a source of abuses." It's one of the reasons why the word "corporation" doesn't exist in the constitution -- they were to be chartered only by states, so local people could keep a close eye on them.

Early state laws (and, later, federal anti-trust laws) forbade corporations from owning other corporations, particularly in the media. In 1806, President Thomas Jefferson wrote, "Our liberty depends on the freedom of the press, and that cannot be limited without being lost." He was so strongly opposed to corporations owning other corporations or gaining monopolies of the media that, when the Constitution was submitted for ratification, he and Madison proposed an 11th Amendment to the Constitution that would "ban commercial monopolies." The Convention shot it down as unnecessary because state laws against corporate monopolies already existed.

But corporations grew, and began to flex their muscle. Politicians who believed in republican democracy were alarmed by the possibility of a new feudalism, a state run by and to the benefit of powerful private interests.

President Andrew Jackson, in a speech to Congress, said, "In this point of the case the question is distinctly presented whether the people of the United States are to govern through representatives chosen by their unbiased suffrages [votes] or whether the money and power of a great corporation are to be secretly exerted to influence their judgment and control their decisions."

And the president who followed him, Martin Van Buren, added in his annual address to Congress: "I am more than ever convinced of the dangers to which the free and unbiased exercise of political opinion -- the only sure foundation and safeguard of republican government -- would be exposed by any further increase of the already overgrown influence of corporate authorities."

Even Abraham Lincoln weighed in, writing, "We may congratulate ourselves that this cruel war is nearing its end. It has cost a vast amount of treasure and blood. The best blood of the flower of American youth has been freely offered upon our country's altar that the nation might live. It has indeed been a trying hour for the Republic; but I see in the near future a crisis approaching that unnerves me and causes me to tremble for the safety of my country.

"As a result of the war," Lincoln continued, "corporations have been enthroned and an era of corruption in high places will follow, and the money power of the country will endeavor to prolong its reign by working upon the prejudices of the people until all wealth is aggregated

in a few hands and the Republic is destroyed. I feel at this moment more anxiety than ever before, even in the midst of war. God grant that my suspicions may prove groundless." Lincoln held the largest corporations -- the railroads -- at bay until his assassination.

But then came the railroad barons, vastly enriched by the Civil War.

They began bringing case after case before the Supreme Court, asserting that the 14th Amendment -- passed after the war to free the slaves -- should also free them.

For example, in 1873, one of the first Supreme Court rulings on the Fourteenth Amendment, which had passed only five years earlier, involved not slaves but the railroads. Justice Samuel F. Miller minced no words in chastising corporations for trying to claim the rights of human beings.

The fourteenth amendment's "one pervading purpose," he wrote in the majority opinion, "was the freedom of the slave race, the security and firm establishment of that freedom, and the protection of the newly-made freeman and citizen from the oppression of those who had formerly exercised unlimited dominion over him."

But the railroad barons represented the most powerful corporations in America, and they were incredibly tenacious. They mounted challenge after challenge before the Court, claiming the 14th Amendment should grant them human rights under the Bill of Rights (but not grant such rights to unions, churches, small companies, or governments). Finally, in 1886, the Court's reporter defied his own Chief Justice and improperly wrote a headnote that moved corporations out of the privileges category and gave them rights -- an equal status with humans. (Last year we found the correspondence between the two in the National Archives and put it on the web. By the time the Reporter's headnotes were published, the Chief Justice was dead.)

On December 3, 1888, President Grover Cleveland delivered his annual address to Congress. Apparently Cleveland had taken notice of the *Santa Clara County* Supreme Court headnote, its politics, and its consequences, for he said in his speech to the nation, delivered before a joint session of Congress: "As we view the achievements of aggregated capital, we discover the existence of trusts, combinations, and monopolies, while the citizen is struggling far in the rear or is trampled to death beneath an iron heel. Corporations, which should be the carefully restrained creatures of the law and the servants of the people, are fast becoming the people's masters."

The Founders of America were clear when they wrote the Bill of Rights that *humans* had *rights*, and when humans got together to form any sort of group -- including corporations, churches, unions, fraternal organizations, and even governments themselves -- that those forms of human association had only *privileges* which were determined and granted by the very human "We, The People."

But, as if by magic, even though in the *Santa Clara* case the Supreme Court did *not* rule on any constitutional issues (read the case!), the Court's reporter rewrote the American Constitution at the behest of the railroad barons and moved a single form of human association -- corporations -- from the *privileges* category into the *rights* category. All

others, to this day, still only have privileges. But individual citizen voters must now politically compete with corporations on an equal footing -- even though a corporation can live forever, doesn't need to breathe clean air, doesn't fear jail, can change its citizenship in an hour, and can own others of its own kind.

Theodore Roosevelt looked at this situation and bluntly said, in April of 1906, "Behind the ostensible government sits enthroned an invisible government owing no allegiance and acknowledging no responsibility to the people. To destroy this invisible government, to befool the unholy alliance between corrupt business and corrupt politics is the first task of the statesmanship of the day."

And so now, corporate-friendly Michael Powell's FCC is moving toward lifting the last tattered restrictions on media ownership, allowing absolute concentration of the voices we hear into a tiny number of corporate hands.

Any day now a case involving a multinational corporation claiming the right to deceive people in its PR -- its 1st Amendment right of free speech -- may be coming before the Supreme Court. (The *New York Times* corporation editorialized on December 10th that corporations must have free speech rights: the lines are being drawn.)

As much as half the federal workforce is slated to be replaced by corporate workers under a new Bush edict. Government (which doesn't have constitutional human rights of privacy, and so is answerable to We, The People) will then be able to use corporate-4th-Amendment-human-rights of privacy to hide what those workers do and how they do it from the prying eyes of citizens and voters. In a similar fashion, corporate-owned and thus unaccountable-to-the-people voting machines are being installed nationwide; in the last election these machines often produced vote results so different from the polls that pollsters who have been successfully calling elections for over 50 years threw up their hands and closed shop.

This administration is set to complete what the railroad barons pushed the Grant administration to start: to take democracy and its institutions of governance from the hands of the human citizen/voters the Founders fought and died for, and give it to the very types of monopolistic corporations the Founders fought against when they led the Tea Party revolt against the East India Company in Boston Harbor in 1773.

And, in the ultimate irony, the new man in charge of economic policy as Secretary of the Treasury will be a multi-millionaire Bush campaign contributor, chairman of The Business Roundtable (an elite corps of 100 of the nation's most powerful corporate CEOs), and, himself, a railroad baron.

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