

9 November 2011



What is the role of corporations in our society and what should it be? Is a company a person? Should it have the same rights and responsibilities as a person? What should be the relationships between corporations, 'natural persons' and governments?

If you read acts of parliament, you will find the term 'natural person' used from time to time. This is designed to distinguish between flesh-and-blood human beings and corporations. Why is this necessary? Who would consider the two to be equivalent?

Modern corporations can trace some of their origins to the European trading companies set up to exploit the wealth in spices to be found in Asia in the sixteenth century. They were the creations of the English and Dutch governments and monarchs and special laws and letters patent were created to give them extraordinary powers. In many regards they had the power of government itself and they ruled as such in places like the East Indies (now Indonesia), the Indian sub-continent, South-East Asia and China. They also traded in silk and cotton, tea and opium.

There were corporations as far back as ancient Rome and the first 'modern' trading company may have been in Sweden in the mid-fourteenth century. Corporations were typically formed by royal charter or act of parliament. It was not until well into the nineteenth century that England enacted laws allowing private individuals to form companies as we now know them. Other countries acted a little earlier or later.

A registered company allows a group of people to associate for the purpose of carrying on business or to facilitate charitable acts. It also allows those individuals to limit their liability if the business goes bad. The company bears the burden of losses to the extent of its assets and the individual shareholders typically lose no more than their investment.

Until fairly recently, directors of companies have not been held to account for mishandling the affairs of the company. The law now makes them liable but, in reality, few negligent directors are ever brought to book.

The company or corporation as a person is a myth. It is a legal construct. Although a company can own property, including patents and copyright, it cannot enter into interpersonal relationships as humans can. However, there has been amendment of the USA Constitution that confers 'corporate personhood' on companies. Searching on this term on the Internet will bring up many references to this and to the increasing call from some concerned people to not have this interpreted as conferring the same rights and privileges on companies as enjoyed by humans.

Companies often claim that they are 'good corporate citizens', though the use of the word 'citizen' is a nonsense. What they mean by this is that they donate money and/or services for good deeds. And, yes, there are companies that genuinely consider themselves as having an obligation to give back to the society that has allowed them to exist. Many individuals in the past, who formed companies in order to carry out business, had a sense of community

involvement. They gave generously to the community and also cared for the environment in which they operated.

Unfortunately, companies, by law, are required to produce for their shareholders the highest possible return on their investments. This used, in the past, to be tempered by a sense of proportion and a sense of reasonableness. These common senses seem to have been lost for most companies, so that the 'bottom line' of profit and dividend seems to be the only criterion. Such companies are totally exploitative – of society, the environment and their employees. We need to ask the question: can we continue to tolerate their existence?

It can be argued that, as companies are permitted in order to allow real people to carry on business more efficiently and with some protection, in return for their entrepreneurial skills and creativity, the company is an extension of the individuals who formed it. Logically, they company should behave with the same sensibilities and constraints that govern people. Whether it is because of greed or simply that the company can 'hide' the individuals that constitute it, it is more often than not the case that companies feel unconstrained.

Another factor that impacts on the relationship between many companies and the world in which they operate, is that they are trans-national. They appear to resist answerability to any government or society and certainly seem to ignore environmental stewardship. Some of these companies are so large that their wealth and turnover is greater than many of the countries in which they operate, giving them an inordinate level of power in those countries. They almost behave as if they were the government.

This brings us full circle. The English and Dutch East India Companies played the role of government in many of the territories in which they operated and local individuals had little protection from them. Do we?