

Human Rights

Corporate 'human' rights

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By Dan Bennett

THE concept of what are rights and who is entitled to their protection against whom has changed over time. Human rights are popularly considered first to have arisen in the Magna Carta, signed by King John in 1215.

This is claimed to be the first legal document that sought to restrain the power of monarchs over their subjects. Rights were awarded only to property owning English men (ie, the Barons) and consisted mainly of restrictions on the King's interference with the Barons' land, produce, capital and servants. However, it did also protect the Baron's 'civil' rights to life, liberty and freedom from detention without speedy trial.

In 1788 and 1789, the USA and France took this concept much further, drafting constitutions professing to guarantee the protection of individual people (citizens) from abuse of the state's powers. Initially these rights were restricted by gender, religion, and nationality. But, what was important was that these new expressions of rights protected 'political' freedoms. The constitutions sought to restrict the state in preventing (and required the promotion of), for example, freedom of speech, association, movement and access to participation in public office.

In law there are only two entities, the State and People. Everything is either a part of the state (eg ministries, hospital trusts and councils) or a person or group of people (eg members clubs, partnerships and cooperatives). The whole concept of rights aimed to protect people from the abuse of state power. Accordingly, it could only be used by people against the state.

Corporations are treated as people under the law. This has two distinct and important effects. The Courts must allow a corporation, as a matter of law, to claim entitlement to 'human' rights when in dispute with the state.

Second, as a corporation is considered a person, a real person cannot object that a corporation's action breaches their human rights as only the actions of a state (or part of it) can, by definition, be in breach of human rights.

In Norman times, due to their intended

longevity, monasteries, universities and hospitals created practical problems if those entities were to continue to be considered as partnerships or cooperatives between people. If land must be held in the name of people, it might be deemed to pass to their relatives on their death rather than to the monastery or university to whom it really belonged.

Accordingly, those not-for-profit entities were entitled to apply to the monarch to be made into people in their own right in the eyes of the law. This entitled a monastery to own land and buildings in its own name, even to sue or be sued in its own name. This process was called 'incorporation' and was expressly reserved for not-for-profit bodies, being later extended to schools, municipal councils and, by the 17th Century, guilds and trade associations.

During the course of the 17th Century, merchant traders abused this concept. The East India Company, a not-for-profit trade association intended to regulate trade with the 'Indies', was used by its members to carry out actual trade for a profit. Carrying out trade in the name of a fictional person enabled greater risks to be taken, greater profits to be made and greater capital to be accumulated. It allowed directors and shareholders to act without responsibility for debts, as the 'corporation' was the person who legally carried out the actions. It enabled corporations to buy and rule overseas colonies. It also enabled easy frauds and pyramid schemes.

Following the collapse of the South Sea Company in 1720, the large 'colonial' corporations were nationalised and speculative share trading was banned. From then on, the only profit-making entities allowed to be made into corporations were those building the canals, waterworks and railways or otherwise creating schemes specifically approved by government.

It should be noted that corporations such as these (the corporations that built the Channel Tunnel, Docklands and the Millennium Dome are examples), are generally considered to be part of the state and subject to human rights law and not as people entitled to its protection.

The concept of incorporation for general

business was resurrected by Gladstone in 1825. By 1855 he had created the modern format of easy incorporation of businesses by registration. This allowed the creation of hundreds of thousands of fictional people, existing only to create profits, who are considered by the courts to be walking, talking, living people.

It is farcical to attribute many of the human rights to corporations. The civil rights of freedom from torture, slavery, imprisonment require a physical, living body to be in danger in the first place. However, the political rights of freedom of thought, expression, association and access to justice can be, and are, used to defend corporate funding of political parties; lobbying and influence of governmental licensing and safety bodies; and use of the court system for essentially political purposes such as putting a SLAPP (Strategic Lawsuit Against Public Participation) on human opponents.

But, the most feared of all rights by radical lawyers is the right to peaceful enjoyment of possessions — in essence, a human property right and considered a civil right. It is this right which is already used by corporations to prevent (or threaten) planning committees seeking to intervene in building and development plans. With cash-strapped local councils, the threat of litigation with a large corporation is often as decisive as a court victory.

It is this right that the Court of Appeal in UK referred to when giving Monsanto judgment without trial against campaigners who peacefully decontaminated fields of GM crops, stating that the right suggested that there could never be any legal justification for direct action against property.

Anticipate use of this right when any patent or invention is up for discussion and the government is considering 'interfering' in the corporation's freedom to use its ownership; when toxic or hazardous industries are proposed on corporate-owned land; when regulation of private utilities is suggested; when deforestation or chemical treatment of or experimentation on land is taking place.

— CorpWatch ■