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The NRA Gets It Wrong **by Sheldon Richman**

The concept of individual rights really isn't complicated, but even some of its defenders get it wrong. Take, for example, the National Rifle Association (NRA). The NRA, of course, concentrates exclusively on the individual's right to keep and bear arms, but that is no excuse for failing to relate that right to the wider context of individual freedom. By failing to do so, the NRA actually undercuts our rights and endangers the very right it seeks to defend.

The NRA has called for a boycott of ConocoPhillips, the oil company, because it is trying to overturn an Oklahoma law that would require employers to let their workers keep firearms in their cars when parked on company parking lots. The law was passed by the state legislature after Weyerhaeuser fired a dozen employees three years ago for having guns in their cars in violation of company policy. Conoco-Phillips is the largest of a handful of companies that is challenging the law in federal court. Hence the boycott.

Before getting to the details, let's stipulate the following:

- Rights cannot conflict. Indeed, the purpose of rights is to avert social conflict and to enable people to pursue their interests in peace, cooperate with one another when suitable, and prosper. Whenever we detect an apparent conflict of rights, at least one of the claimed "rights" is counterfeit. Just as a contradiction in a chain of reasoning is the sign of error, so a conflict of alleged rights is a sign of error.
- The NRA has the right to boycott anyone it wants. That is simply the freedom to abstain from association, which is entailed by freedom of association.
- Barring employees from keeping guns in their vehicles is a silly rule because only law-abiding people will observe it. Anyone intending to shoot someone else will be undeterred.

That said, the Oklahoma statute is bad law. The owner of property has a natural right to set the rules for its use. That's what ownership means. When a company says you may not park on its lot if you keep a gun in your vehicle, then the owner's wishes should be respected. This is no different from being asked not to bring a gun into someone's home. If you don't like the owner's rule, you are free to go elsewhere. An employee can park somewhere else or find another job.

If the NRA wants to urge its members to boycott Conoco-Phillips in order to pressure the company into reversing its policy, it is free to do so. But the NRA goes further: It supports the Oklahoma law. In fact, Wayne LaPierre, the executive director, says the NRA will lobby for similar laws in all states. The Second Amendment Foundation and the Citizens Committee for the Right to Keep and Bear Arms both support the NRA's efforts.

The danger of such a move lies in the fact that an attack on one right is an attack on all rights. The rights of gun owners will not be secure if the rights of other kinds of owners are insecure. It is ownership per se that needs a consistent defense.

"Across the country, we're going to make ConocoPhillips the example of what happens when a corporation takes away your Second Amendment rights," says LaPierre. "ConocoPhillips went to federal court to attack your freedom." Alan Gottlieb, founder of the Second Amendment Foundation, says, "If ConocoPhillips thinks it is okay to act against the civil rights of gunowners, then gunowners can take action against the profits of that company, and its stockholders."

But this matter has nothing to do with the Second Amendment or individual rights. The Constitution governs relations between the government and individuals, not relations among individuals. Weyerhaeuser did not forbid employees from keeping and bearing arms. It could not possibly do that. It merely said that employees may not bring firearms onto its property, and if they do so they may not work for the company. However stupid that policy, the company was within its rights. There is no natural, civil, or constitutional right to use property against the owner's wishes.

Unfortunately, many gun enthusiasts are so set on justifying their position that they undertake remarkable mental contortions. The most common response to my argument is that since corporations are not persons they do not have rights. Libertarians who make this argument don't realize that they have adopted Ralph Nader's position. Is there any merit to it?

Corporations and the state

In his classic 1979 book, *In Defense of the Corporation*, free-market historian Robert Hessen rebuts the claim that corporations are creatures of the state. It is certainly true that a corporation per se is not a real person. No group is. But that does not stop us from conveniently referring to a group's rights. This is acceptable as long as we remember that a group has only the rights that the individuals composing it have.

The big question is: are the corporation's distinctive features derivable from the common law and contract, or do they depend on a grant of government privilege? As Hessen notes in his chapter "Are Corporations Creatures of the State?" three features are said to result from privilege: "entity status, perpetual life, and limited liability." How could these features arise in any other way but through government grants?

By being treated as an entity, a corporation (Hessen writes) "can sue (and be sued) as a unit, instead of having to specify the name of every shareholder." It can also own property "despite changes in the ranks of its shareholders." The benefits to the entire society of the corporate form should be obvious. It permits the amassing of the huge amounts of capital required for large productive undertakings. As economic historian Stephen Davies wrote in the April 2005 issue of *The Freeman*, the corporation made possible a form and degree of economic growth never seen before. But is entity status a privilege? No, Hessen says, since it in itself provides no immunity. If it can sue as a unit, it can also *be sued* as a unit. He adds, "Being a legal entity ... is clearly not a feature unique to corporations." It is available as well to unincorporated firms through the designation of trustees.

What's more, the entity idea is unnecessary. "The proper alternative is the inherence theory of corporations — the idea that men have a natural right to form a corporation by contract for their own benefit, welfare, and mutual self-interest," Hessen writes. "It is the only theory of corporations that is faithful to the facts and philosophically consistent with the moral and legal principles of a free society."

What of perpetual life? As Hessen points out,

Perpetual duration simply means that the articles of incorporation need not be renewed.... The privilege of perpetuity certainly does not guarantee that a corporation will continue in business forever.... On the other hand, although partnerships are not automatically immortal, many firms — of attorneys, accountants, architects, and stockbrokers, to mention a few — have been in continuous existence for a century or more.

The "most controversial and least understood corporate feature," Hessen writes, is limited liability, which is the principle that the shareholders are not liable for legal damages beyond what they invested in the corporation; personal assets are beyond reach. This must surely constitute a grant of government privilege. Perhaps not.

Two kinds of liability must be distinguished: in debt (contract) and in torts. The issue is clear-cut in debt: "Limited liability actually is the result of an implied contract between the corporate owners and their creditors." As Hessen notes, the same objective could be accomplished by adding a limited-liability clause to every contract. Moreover, he writes, creditors can reject the limitation and "insist that one or more of the shareholders become personal

guarantors or sureties for the debt.” There is nothing to stop a prospective creditor from asking to see the corporation’s books in order to determine the extent of its exposure. Limited liability in contracts is no privilege.

What about torts, or actions that harm people who are not parties to any contract? (We’re primarily concerned with unintentional torts here.) Partners in an unincorporated firm can personally be sued by someone, say injured by a company vehicle, but not so a shareholder. This seems to confirm that corporate status is a privilege.

Hessen explains that in England long ago the “principle of vicarious liability” was established, holding that a master was liable for the torts of his servant. This was reasonable because the master hired, trained, and supervised the servant. Later the same principle, reasonably, was “extended to sole proprietorships and general partners.” However, he says, it doesn’t follow that it should be applied to *all* holders of corporate stock. Hessen writes,

Vicarious liability should only apply to those shareholders who play an active role in managing an enterprise or in selecting and supervising its employees and agents. The tort liability of inactive shareholders should be the same as that of limited partners — that is, limited to the amount invested — and for the same reason; namely, inactive shareholders and limited partners contribute capital but do not participate actively in management and control.

Hessen condemns an abuse of limited liability, namely, “the so-called one-man corporation and close corporation.” This, he says, is an outgrowth of the defective and unnecessary entity principle. “It is an abuse long-noted and vigorously condemned in the legal literature, but one which is inevitable and ineradicable as long as the idea persists that a corporation is legally a distinct entity.”

He adds, “The proper principle of liability should be that whoever controls a business, *regardless of its legal form*, should be personally liable for the torts of agents and employees.” Hessen concludes by noting that the issue is essentially moot with large corporations, since they typically have ample liability insurance or net assets.

The upshot is that, first, corporations are not creations of the state but networks of contracts among individuals, and, second, as a consequence they have the same rights as those individuals, including the right to set the rules on their parking lots.

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