

On the Failure of Corporate Law

by Rebecca Wolfe

“No corporate political campaigns without shareholder votes; no corporate political ads without putting their names on them; no corporate political ads if they have government contracts...these [are] the early ideas or ‘pushbacks’ by the Administration against the Supreme Court’s decision to let the corporations spend all the money they can find to buy our political elections,” according to Keith Olbermann on MSNBC.

Kent Greenfield in *The Failure of Corporate Law: Fundamental Flaws and Progressive Possibilities* suggests other ways to reverse the corporate abuse that has increased steadily over the past century and a half. Greenfield points out that:

Large corporations are the most dominant economic institutions in the world today, with power that rivals that of nations. In the United States, corporations gained this power through laws that have provided them an unlimited lifespan, limited liability for their shareholders, legal personhood, and a long list of other benefits. Traditionally, corporations were asked to take account of the public interest. This is no longer the case. Today, corporate law even prohibits managers of corporations from caring about the public interest—or employees, the environment, or communities—if the shareholders of the company will be harmed.

Greenfield also reminds us that Chief Justice John Marshall wrote, “the objects for which a corporation is created are universally such as the government wishes to promote.” He also highlights the importance of changes in The American Law Institute’s Principles of Corporate Governance

between the first draft in 1982 and the final publication in 1994. The Business Roundtable insisted upon the deletion of controls on corporate power outlined in the 1982 draft before the Principles appeared in 1994. Consequently, the final guidelines created irreconcilable differences between the obligations of the corporation to obey the law and the absence of enforceable duties of individuals within corporations to comply with the law.

To correct the inconsistency at the heart of corporate abuse, Greenfield suggests that the *ultra vires* doctrine, which has been viewed as either unimportant or defunct, is actually neither. Under the *ultra vires* doctrine, any powers exerted that are “beyond the powers” of the corporation are restricted. This was once a way to prevent large aggregations of economic power. A return to policies and laws based upon *ultra vires* could be a strong tool in reforming corporate practices, particularly in light of the recent US Supreme Court ruling that allows unlimited corporate spending on political campaigns.

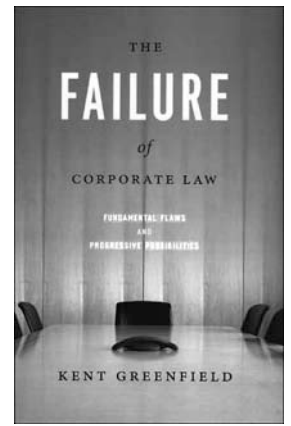
Greenfield explores three principles in depth:

Principle 1: The ultimate purpose of corporations should be to serve the interests of society as a whole;

Principle 2: Corporations are distinctively able to contribute to the societal good by creating financial prosperity;

Principle 3: Corporate law should further principles 1 and 2.

Kent Greenfield’s perspectives and recommendations around *ultra vires* are a useful contribution to this important policy discussion.



Rebecca Wolfe is a career educator. She established and led The Language School of Spokane (1985-1990). She earned a Ph. D. in Leadership Studies from Gonzaga University (1997), teaches for Western Washington University, and volunteers in environmental work and progressive politics.



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