

## Oldest Person in the U.S. Turns 129!

by Mike Ferner and Virginia Rasmussen

*PNS (POCLAD News Service) – U.S. Health and Human Services director, Sylvia Mathews Burwell, today announced plans for a National Day of Observance to mark the birthday of the oldest person in the United States.*

*“May 10, 1886 is a day we simply cannot overlook,” Burwell noted. “On that little-noted day, without fanfare, an American was born who has surpassed all others in longevity, changed the very direction of our nation and the character of our culture. We’re celebrating, of course, the birth of Corporate P. Hood.”*

Well...maybe not celebrate exactly, but certainly remember. For that was the day on which the U.S. Supreme Court’s Santa Clara County v Southern Pacific Railroad decision marked the formal beginning of the concept we now call “corporate personhood.”

**Corporate P. Hood was a long time a-borning, its gestation taking place in the womb of the U.S. judicial system. As this artificial “person” has had a most profound influence, we would do well to know the story of its birth.**

Before the 1886 Santa Clara case, corporate attorneys had tried any number of times to shoehorn their

clients into constitutional protections intended for actual human beings only to be rebuffed by the courts.

- 1873, Slaughterhouse Cases: the court said, “...the main purpose of the last three Amendments [13, 14, 15] was the freedom of the

African race, the security and perpetuation of that freedom and their protection from the oppression of the white men who had formerly held them in slavery.” Corporations were not included in these protections.

- 1877, Munn v Illinois: the court ruled that the 14th Amendment cannot be used to protect corporations from state law.
- 1882, San Mateo County v Southern Pacific Railroad: the court argued that corporations were persons and that the committee drafting the 14th Amendment had intended the word person to mean corporations as well as natural persons. The court did not rule on corporate personhood, but this is the case in which they heard the argument.
- 1886, Santa Clara County v Southern Pacific Railroad Corp.: the court offers a fine example of why law is not some revealed truth inscribed in stone, but an opinion made real by those with the power to do so. A headnote, written by the Court’s clerk, J.C. Bancroft Davis, former president of the Newburgh and NY Railway Co., stated: “One of the points made and discussed at length in the brief of counsel for defendants in error was that ‘corporations are persons within the meaning of the Fourteenth Amendment to

the Constitution of the United States.’ Before argument, Mr. Chief Justice Waite said the court does not wish to hear argument on the question whether the provision in the Fourteenth Amendment to the Constitution, which forbids a State to deny to any person within its jurisdiction the equal protection of the laws, applies to these corporations. We are all of the opinion that it does.” Davis even wrote Waite a memo to make sure his note agreed with Waite’s thinking. Waite replied that it did and let Davis decide whether to mention anything about it in his report!

- 1889, Minneapolis & St. Louis Railroad v Beckwith: the Court removed any remaining doubt by ruling that “corporations are persons within the meaning of the clause in question (14th Amendment).”

You may have noticed that several of these cases involve railroads, which is not surprising since they were by far the most politically powerful industry of that period. In 1886, the Supreme Court’s Chief Justice, Morrison Waite, was a former railroad attorney from Toledo, Ohio. As Gustavas Myers noted in *The History of the Supreme Court of the United States*, “All except two of the Justices now constituting the (Waite) Supreme Court of the United States had been active railroad attorneys or railroad stockholders, directors or legislative railroad lobbyists.”

The following quote by Justice Hugo Black will be familiar to many of our readers:

***"Of the cases in this court in which the Fourteenth Amendment was applied during the first fifty years after its adoption, less than one-half of one percent invoked it in protection of the Negro race, and more than fifty percent asked that its benefits be extended to corporations."***

These words affirm that POCLAD and Move to Amend are not just pursuing an obscure, intellectual exercise. We are engaged in a life and death struggle of great consequence, a struggle for the rights of human beings and indeed all life on the planet.

Consider just these few examples of how corporate power now rules our lives. You can make up your own list from this [timeline](#):

- The Occupational Safety and Health Administration (OSHA) was created in 1970. Eight years later, in [Marshall v Barlow](#), corporate lawyers successfully claimed 4th Amendment protections against undue searches. From then on, companies could demand warrants before inspectors come onto company property, even though in the single year of 2012, over 50,000 U.S. workers died from occupational diseases, 4600 were killed outright on the job and 3,800,000 were injured.
- In 1967, the [See v City of Seattle](#) ruling established that municipal fire departments must have a search warrant to perform a fire code inspection of a private warehouse.
- A Vermont "right to know" law required dairy products produced with bovine growth hormone be so labeled. Industry groups sued,

claiming that their 1st Amendment right *not* to speak was violated. The Court agreed in [International Dairy Foods v Amestoy](#) that "the right not to speak inheres in political and commercial speech alike."

And of course, Buckley v Valeo (1976), First National Bank of Boston v Bellotti (1977) and Citizens United (2010) decreed that money is the same thing as constitutionally protected speech, regardless of the effect on elections.

**Every birthday celebration obviously involves parents, and Corporate P. Hood's progenitors can be found in [Trustees of Dartmouth College v Woodward](#) (1819).**

This Supreme Court case related to an educational institution, but more importantly for our purposes, the Court used it to grant constitutional protections to corporations!

Former POCLAD principal, Peter Kellman, writing in the March, 2000 issue of [By What Authority](#), picks up the story in the political context of that day and New Hampshire's new governor, William Plumer, an ally of Thomas Jefferson.

According to Plumer, "...a republican form of government requires an educated populace." These republicans wanted to provide a college education for their children and believed the content of that education should be determined by a public process, not a private one.

However, colleges during that period were mainly private schools such as Yale, Harvard and Dartmouth -- holdovers from colonial days. Their purpose was to perpetuate the monarchy and class structure of the British Empire, impose Christianity on Native populations, train local clergy to keep the new converts in line, and educate the children of the elite.

Dartmouth College had been chartered by the King of England in

1769 as an Indian Charity School "with a view to spreading the knowledge of the great Redeemer among their savage tribes." The college soon evolved into a school "to promote learning among the English, and be a means to supply a great number of churches... with a learned and orthodox ministry."

**In 1816, Plumer introduced legislation to change Dartmouth from a private college run by a board of self-perpetuating trustees to a public university, stating: "Whereas knowledge and learning generally diffused through a Community are essential to the preservation of free Government...extending the opportunities and advantages of education is highly conducive to promote this end..."**

The legislation passed, and renamed Dartmouth University was now under new, publicly appointed trustees mandated to set up public colleges around the state.

Plumer argued that the royal charter given to Dartmouth College in pre-revolutionary, colonial times "emanated from royalty and contained principles...hostile to the spirit and genius of free government."

The old trustees sued, losing the first round in the New Hampshire Supreme Court which ruled the legislature was correct, stating:

"...because it is a matter of too great moment, too intimately connected with the public welfare and prosperity, to be thus entrusted in the hands of a few. The education of the rising generation is a matter of the highest public concern, and is worthy of the best attention of every legislature."

**The former trustees did not want to see the purpose of their college redirected and sought to protect the investment they had made in establishing the college. Therefore, represented by Dartmouth alum, Daniel Webster, they appealed to**

**the U.S. Supreme Court, which reversed the New Hampshire ruling.**

“As a result,” Kellman wrote, “the corporate form was given Constitutional protection ...”

Beyond the effects on education in a period still fired by the revolution, the justices in the Dartmouth case **“found” corporations in the constitution by equating the Dartmouth College charter (royally-bestowed in this case, but after 1787 granted by state legislatures) to mere contracts between equal parties. Formerly, in New Hampshire or any state, the chartering of a corporation did not result in that corporation becoming an equal partner to the state. To the contrary, the state remained sovereign over that corporate entity it created.**

It was Justice Joseph Story who did most of the “finding” of a contract within the charter of a corporation. He considered that even though a “corporation is established by the government and its objects and operations partake of a public nature (insurance, canals, banks, turnpikes...) they are private, as much so as if the franchise were vested in a single person.

“In the case of Dartmouth College, the mere act of incorporation by New Hampshire should not change the charity from a private to a public one. The lands and property were held not for use and benefit of all the people of the state, but, as the royal charter declared, “for the use of Dartmouth College... for the promotion of piety and learning, not at large, but in that college.”

Story went on to signal that state legislatures had no prerogative to use

the vague notion of “general welfare” as a justification for regulating corporations. General welfare, the common good, was the cumulative product of individual effort and the contractual relationships between those individuals. Story put business corporations under the banner of individualism and, as such, they received the many protections of private property rights.

He also held that judges who are trained in the science of law and not self-interested politicians should shape corporate law. Story and the Court therefore joined forces in the struggle over regulation of business corporations.

**So, sure enough, the Supreme Court concluded that “after mature deliberation” the charter was, in fact, a contract, the obligations of which cannot be impaired without violating the Constitution of the U.S (Article 1, Section 10).**

And to this day, the corporate charter is viewed as a mere contract and the rights legally invested in it cannot be changed or withdrawn by any later statute unless the legislature has previously reserved that power for itself.

If the ins and outs of this story are enough to make you say, “My head hurts, Brian...,” don’t despair. “Dartmouth” still makes two things perfectly clear: 1) the conflict between public and private interests has been ongoing since the nation was founded and 2) “The law” is not something handed to us on stone tablets, but evolves in service to the interests of those who have the power to make it stick.

That’s why this democracy business is so damn important.

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**By What Authority** (ISSN: 524-1106) is published by the Program on Corporations, Law & Democracy. The title is English for *quo warranto*, a legal phrase that questions illegitimate exercise of privilege and power. We the people and our federal and state officials have long been giving giant business corporations illegitimate authority. Today, a minority directing giant corporations and backed by police, courts, and the military, define our culture, govern our nation and plunder the earth. **By What Authority** reflects an unabashed assertion of the right of the sovereign people to govern themselves.

POCLAD is a group of 10 people instigating democratic conversations and actions that contest the authority of corporations to govern. Our analysis evolves through historical and legal research, writing, public speaking and working with organizations to develop new strategies that assert people’s rights over property interests.

**BWA** is a tool for democracy proponents to rethink and reframe their work. To that end we encourage readers to engage us with comments, questions and suggestions.

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