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The progressives' itch to regulate speech

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Bernie Sanders, greedy for power to punish people he considers greedy, has occasioned 2016's best joke (reported in Bloomberg Businessweek): "In the Bernie Sanders drinking game, every time he mentions a free government program, you drink someone else's beer." But neither Sanders' nor Hillary Clinton's hostility to the First Amendment is amusing.

Both have voted to do something never done before -- make the Bill of Rights less protective. They favor amending the First Amendment to permit government regulation of political campaign speech. Hence they embrace progressivism's logic, as it has been explained separately, and disapprovingly, by two eminent economists, Ronald Coase and Aaron Director:

There is no reason the regulatory, redistributive state should distinguish between various markets. So, government that is competent and duty-bound to regulate markets for goods and services to promote social justice is competent and duty-bound to regulate the marketplace of ideas for the same purpose.

Sanders and Clinton detest the Supreme Court's 2010 Citizens United decision, which they say their court nominees will promise to reverse. It held that unions and corporations -- especially incorporated advocacy groups, from the National Rifle Association to the Sierra Club -- can engage in unregulated spending on political advocacy that is not coordinated with candidates or campaigns. The decision simply recognized that Americans do not forfeit their First Amendment rights when they come together in incorporated entities to magnify their voices by speaking collectively.

Opposition to Citizens United is frequently distilled into the slogan that "corporations are not people," to which Sen. Elizabeth Warren, D-Mass., adds this example of progressive insight: "People have hearts. They have kids. They get jobs. They get sick. They cry. They dance. They live. They love. And they die." And a few teach at Harvard Law School, as Warren was able to do only because Harvard did not die: It is descended from the first corporation chartered in colonial America.

Surely she learned in law school something she can relearn by reading "Are Corporations People?" in National Affairs quarterly by Carson Holloway of the University of Nebraska, Omaha. The concept of corporate personhood, he says, is not an invention of today's

conservatives. It derives from English common law and is “deeply rooted in our legal and constitutional tradition.”

William Blackstone, the English jurist who richly influenced America’s Founders, said corporations are “artificial persons” created to encourage socially useful cooperation among individuals and are accorded certain rights so that they can hold property and have lives, identities and missions that span multiple generations. Early in America’s history, many for-profit corporations were less important than the nonprofit educational and religious corporations that still produce America’s robust civil society of freely cooperating citizens.

If corporations had no rights of personhood, they would have no constitutional protections against, for example, the arbitrary search and seizure by government of their property without just compensation. And there would be no principled reason for denying the right of free speech (the First Amendment does not use the word “person” in guaranteeing it) to for-profit (e.g., The New York Times) or nonprofit (e.g., the NAACP) corporations.

In his attack on the Bill of Rights, Sanders voted to exempt for-profit media corporations from government regulation of corporate speech. Why? Because such corporations, alone among for-profit and nonprofit corporations, are uniquely altruistic and disinterested? Please.

In 2007, in a Cato Institute lecture, Judge Janice Rogers Brown of the U.S. Court of Appeals for the D.C. Circuit warned us: People who are eager to weaken protection of private property in order to enable government to redistribute wealth will also want to weaken constitutional protections of free speech in order to empower government to redistribute ideas.

Since then, college campuses have been responsive to people eager to regulate what others say, hear and see. Now, in the name of campaign finance reform, progressives like Sanders and Clinton want to expand government’s regulatory reach to political speech.

Both are ardent for equality and, as Brown foresaw, the argument for economic equality easily becomes an argument for equalizing political influence. The argument is: Government regulates or seizes property in the name of equity, so why not also, for the same reason, regulate the quantity, content and timing of speech intended to “influence elections”?

Progressives, with their collectivist itch, are ever eager to break private institutions to the saddle of the state, and to fill private spaces with regulations. Do they consider government uniquely altruistic and disinterested? Please.