

Reflection on the Constitutional Personhood of Private Juridical Persons

Chung-Lin Chen*

Abstract

Is a juridical person a person under the Constitution? Does it enjoy constitutional rights? These are old questions that have attracted rich discussion. Both in Taiwan and the United States, the judicial practices maintain that private juridical persons enjoy constitutional rights. The majority of the scholarly opinions in Taiwan also supports the constitutional personhood of private juridical persons, arguing that private juridical persons enjoy the same constitutional rights as natural persons where the rights suits them in nature. However, in the United States, after the U.S. Supreme Court decision *Citizens United v. Federal Election Commission* in 2010, a strong wave of reflection in the academic community emerges, questioning the wisdom of allowing commercial corporations to appeal to constitutional rights such as the freedom of speech to expel valuable regulation. The same reflection should be made under Taiwan's constitutional context.

This article intends to explore the theoretical basis of and the potential approaches to the constitutional protection of private juridical persons, and offer the option that rejects the constitutional personhood of private juridical persons while leaves no protection loophole. This article argues that the approach based on the rights of individuals leads to more convincing reasoning and a more adequate answer on the constitutional status of private juridical persons. This article also suggests that allowing private juridical persons to represent individuals to claim constitutional rights, while rejecting the constitutional rights of private

* Professor, Institute of Law for Science and Technology, National Tsing Hua University.
E-mail: clchen@mx.nthu.edu.tw

juridical persons themselves, could reach a more adequate balance between pursuing public interests and protecting individual rights. The arguments above are grounded in not only theoretical analysis but also case studies. By exploring the application of the suggested approach to many Taiwan's Constitutional Court Interpretations that were petitioned by juridical persons or unincorporated groups and several U.S. Supreme Court decisions related to the rights of corporations, this article shows the similarities and differences between the suggested approach and the current practices, and reveals significant implications for future regulation.

Keywords: constitutional personhood, constitutional status, juridical person, corporation, freedom of speech