
Chapter 16

THE ROLE OF THE BUSINESS CORPORATION IN AMERICAN LIFE

INTRODUCTION

Corporations cannot commit treason, nor be outlawed, nor excommunicated, for they have no souls.

EDWARD COKE

What is good for the country is good for General Motors, and what's good for General Motors is good for the country.

CHARLES E. WILSON

During the past fifty years, industry in corporate form has moved from the periphery to the very center of our social and economic existence. Indeed, it is not inaccurate to say that we live in a corporate society.

WILLIAM T. GOSSETT

THE BUSINESS CORPORATION is one of the pervasive facts of life in the United States today. Our various needs are largely supplied by corporations; our entertainment, through the medium of television, is to a great extent provided by corporations; and our future careers will depend on the corporations that we will be more and more likely to serve as time goes by. As William T. Gossett, former vice-president of the Ford Motor Company, said in 1957, the modern corporation "is a social and economic institution that touches every aspect of our lives; in many ways it is an institutionalized expression of our way of life.

During the past fifty years, industry in corporate form has moved from the periphery to the very center of our social and economic existence. Indeed, it is not inaccurate to say that we live in a corporate society."

There are many kinds of corporation; not all are business or economic corporations. All U.S. cities and most towns are corporations. Most charitable foundations are corporations, as are the majority of educational and scientific institutions. The church you attend is either a corporation in its own right or a member of a larger corporation; the social and fraternal organizations to which you belong are likely to be corpora-

tions, too. [Noneconomic or nonprofit organizations and associations are discussed in Ch. 10: PLURALISM.]

However, there is an important difference between the religious, charitable, educational, and social corporations that touch our lives at many points and the business corporations that are, as Gossett suggested, at the very center of our existence. The character of this difference it will be the purpose, among other purposes, of this chapter to examine. In so doing, we will have occasion to consider the corporation's past and future. The history of the institution as it has developed in America must be known if its nature and influence are to be understood. And speculation — it can be no more than that — regarding the future of the business corporation may help us to see with greater clarity the persistent issues and problems that demanded our attention in the past, that demand it now, and that will demand it more and more as the present century draws to a close.

The history of the business corporation in America may be roughly divided into five periods. There were not many such organizations in colonial times; nevertheless, the character of those that did exist was to some extent indicative of what was to come. After the Revolution the number of corporations increased greatly, but the majority continued to perform quasi-public functions; only at the end of this second period, during the administration of President Andrew Jackson, did the general business corporation in more or less its modern form come into being. The third period, from about 1840 to about 1890, saw business corporations performing essential services for a growing country; at the same time, some of the dangers inherent in increasing corporate power became apparent. The fourth period is that of the trusts and of the "trustbusters" — the era from 1890 to 1920, when corporations seemed to be in

fundamental opposition to the interests of the public at large. The fifth period, from 1920 to the present, covers two world wars, a great depression, and, since World War II, an unparalleled expansion of the great corporations, until some of them have greater assets and higher "budgets" than most of the nations of the world. Many of the old problems have persisted in this modern period, which has also seen the discussion of new questions. Some of these appear to gain more pressing importance with each passing day. Hence to the five periods of the corporation's history in America we should add consideration of its future. Where is the corporation headed? What old questions, perhaps in new forms, will seem to demand answers a generation hence? And will entirely new questions be raised by developments that we can now but dimly foresee? [For further discussion of many of the subjects treated in the following sections, see Ch. 15: FREEDOM OF ENTERPRISE.]

1. COLONIAL CORPORATIONS 1609-1789

THE MODERN BUSINESS CORPORATION has its roots in the European, especially the English, past. Medieval towns, colonies, churches, and universities usually were corporations, as were the great trading companies of the sixteenth and seventeenth centuries. These early corporations had two marked characteristics that strongly influenced the later development of the institution.

First, corporations existed long before they had any business function, in the modern sense. Instead, they performed essential social services: a town corporation established local government, a university not only educated young men but determined the criteria of professional accomplishment, a guild laid down rules for the craft it governed. When economic profit was a consid-

eration, it was a secondary one; but usually it was not a consideration at all.

Second, corporations were limited in scope and dependent on the existing political power. A town's domain was its corporate borders or limits; a guild laid down rules for one craft but not for others; a university might engage in intellectual disputes, but it did not wage war, conclude treaties, or perform other functions of independent states. Every English corporation required the sanction of King or Parliament; this was granted in a charter that defined its powers.

These two characteristics of early corporations — that they performed social functions, often not for profit, and that they required governmental sanction in the form of a charter — persist, though in much altered form, to the present day. It goes without saying that a modern business corporation must do something that is useful, for somebody, if only its stockholders, otherwise it could not stay in business; but it is the usefulness for society in general of a corporation's activities, even if they are carried out primarily for profit, that is usually emphasized in its advertising and public relations. And it remains true that no corporation can exist without the sanction of government. General Motors, AT&T, and other giant corporations have charters granted by a state that define — though often very vaguely — the limits of their powers and operations. In theory, these charters can be revoked and the corporations disbanded. This is not likely, of course, and whether such revocation would be practically possible in our day is one of the questions to which we shall return.

Few business corporations existed in America before the Revolution, although many ecclesiastical, educational, and charitable organizations were incorporated. The reason for this was mainly England's attitude toward her colonies. Before 1776, only

internal matters were subject to the control of local governments; colonists had nothing to do with large-scale enterprises, the control of which was retained in London. The names of the handful of business firms that managed to obtain charters from colonial legislatures reveal their local and limited nature. The New York Company for Settling a Fishery in these Parts was founded in 1675; The Free Society of Traders in Pennsylvania received a charter in 1682; The New London Society United for Trade and Commerce, The Union Wharf Company of New Haven, and The Proprietors of Boston Pier, or the Long Wharf in the Towne of Boston in New England, were small companies set up in the eighteenth century to manage harbor traffic; The Philadelphia Contribution for the Insurance of Houses from Loss by Fire was established as a mutual company in 1768. Three or four small water companies come close to completing the list.

Not only were these early corporations limited in the scope of their operations; also implicit in their charters was the notion that they must serve a public function. James Wilson declared in 1790 that business corporations, though "moral persons," were "not in a state of natural liberty, because their actions are cognizable by the superior power of the state." Another jurist held that acts of incorporation ought never to be passed except "in consideration of services to be rendered to the public." Corporations could make a profit, but this should not be the main end in view.

2. THE RISE OF THE GENERAL CORPORATION 1789-1840

ENGLAND HAD DISCOURAGED westward expansion of her American colonies; such intercolonial commerce as there was occurred by sea; and most of the raw materials that

were brought from the interior and shipped to England for conversion into manufactured goods traveled down the navigable rivers of the Eastern seaboard. After the Revolution, the new republic began to look westward. A quarter of a million Americans settled beyond the Appalachians between 1776 and 1800, and these new citizens needed roads. Some 300 corporations were founded during the last decade of the century, more than two-thirds of them with the purpose of providing inland navigation, turnpikes, and toll bridges. The new nation began to trade with countries other than Great Britain; British companies were no longer inclined to insure American vessels, and the states chartered a number of domestic insurance companies between 1786 and 1800. The expanded trade created a need for banks, with the result that twenty-seven were incorporated between 1791 and 1801. The growing cities required public services; this led to the formation of numerous water and dock companies, as well as new mutual fire insurance companies.

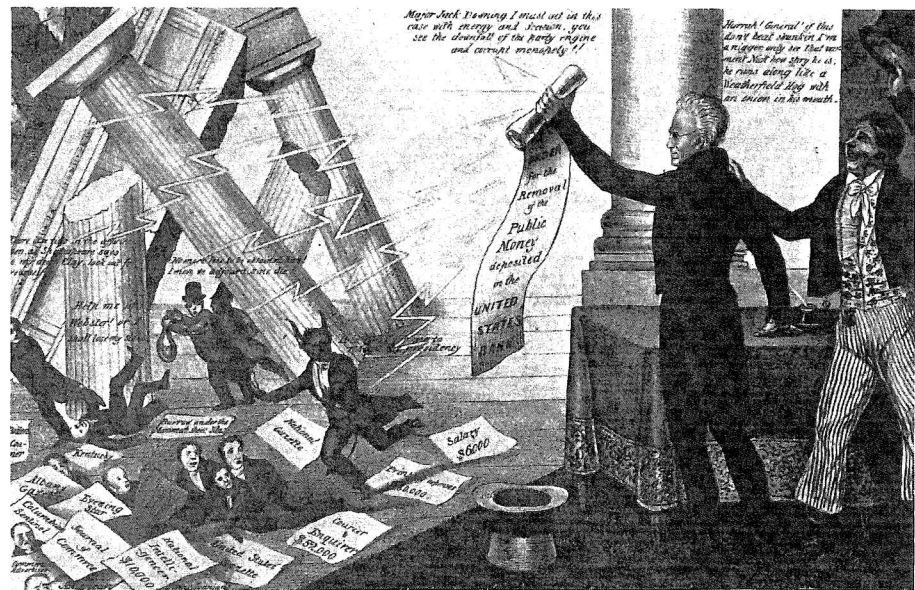
The advantages of incorporation became even more evident to businessmen after the turn of the century, when the privileges and immunities inherent in the practice were established by some far-reaching court decisions. A corporation is "an artificial being," Chief Justice John Marshall declared in the *Dartmouth College* case, in 1819, "invisible, intangible, and existing only in contemplation of law." "Immortality" and "individuality" were among a corporation's most important attributes because they meant that "a perpetual succession of many persons are considered as the same and may act as a single individual." This conception of the corporation had existed in older British law, but Marshall was the first American jurist to lay down such a definition. The definition distinguished a corporation from a partnership, which lapsed when one of the partners died. A corporation could thus survive its individual owners.

A second privilege was also inherent in earlier law, but it was not until the 1820s that it was explicitly recognized by American judges. The "rule of limited liability" made it impossible to hold a stockholder responsible for corporate debts beyond the extent of his investment in the company. A partnership — even a large one, such as the unincorporated joint-stock companies — existed on a different basis. Any of the partners — in practice, usually the richest — could be held legally responsible for *all* of the partnership's debts.

A third advantage of incorporation lay in the traditional practice of granting, along with a charter, a monopoly on trade or other business activity in a specified area. This was the reverse of the coin of governmental limitations on a corporation's scope.

As a result of these privileges and immunities, the corporation was a more desirable way of organizing industrial and manufacturing and utilities operations than a business partnership or a company owned by an individual. A small group of entrepreneurs could raise large sums of capital from many small investors; the funds could be pooled, an economist of the 1840s pointed out, for large-scale enterprise "usually beyond the reach of single persons"; the company need not fear competition because of its monopoly; and if it failed, no one stockholder would have to repay all of its debts or serve time in debtor's prison. The perhaps inevitable result was a great increase in the number of business corporations after 1820.

At the same time, however, strong opposition grew up to the practice of granting a monopoly along with a charter. President Andrew Jackson, for example, felt that monopolies were undemocratic. He proposed, in vetoing the act to reincorporate the Second Bank of the United States, that the government itself operate public utilities corporations. "If we must have such a corporation," he said, "why should not the government sell out the whole stock and



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"The downfall of Mother Bank"; engraving by Zek Downing depicting Andrew Jackson's refusal to renew the charter of the National Bank, 1832

thus secure to the people the full market value of the privileges granted?" Jackson's view was shared by many in his Democratic Party, notably Chief Justice Roger B. Taney. In the famous case of *Charles River Bridge v. Warren Bridge* (1837), in which the former brought suit against the latter on the grounds of an implicit monopoly in its contract with the state of Massachusetts, Taney decided against the plaintiff, holding that the competing Warren Bridge was not an impairment of vested rights. The decision substantially modified Marshall's earlier contract doctrines.

Others disagreed. Justice Joseph Story, dissenting in the same case, argued the conservative position that the primary function of government is to protect private property, and that property would be destroyed if the monopoly implied by a corporation charter were rescinded. The French visitor Alexis de Tocqueville viewed the situation in another light. He foresaw, in the early 1830s, that the time was not far off when no man would be able "to produce for himself alone the common necessities of life"; but he looked with disfavor on any

suggestion that these should be supplied not by private firms but by government-managed corporations. "The morals and intelligence of a democratic people would be as much endangered as its business and manufactures," Tocqueville declared, "if the government ever wholly usurped the place of private companies."

The resolution of the conflict led to unforeseen consequences. The tenor of judicial decisions turned against the granting of monopolies. At the same time, the character of corporate charters was significantly changed. Jacksonian hostility to corporations was democratic in the sense that it strove to make the advantages of the corporate form available to all and not just to a favored few. One way to do this was the adoption by most states of so-called general incorporation laws. Previously, each corporate charter had been granted by a special act of a state legislature; now, any group could obtain a charter by meeting certain requirements specified by the legislature in advance. The result was that no longer were the purposes and functions of a new company so carefully defined; once it had ob-



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"And he asks for more!"; Halrymple lithograph for "Puck"

tained its charter, a corporation could engage in business activity that was only remotely connected with its original purpose. The practice persists to the present day and is the legal basis for the diversification of corporate activities that is such a marked feature of our time.

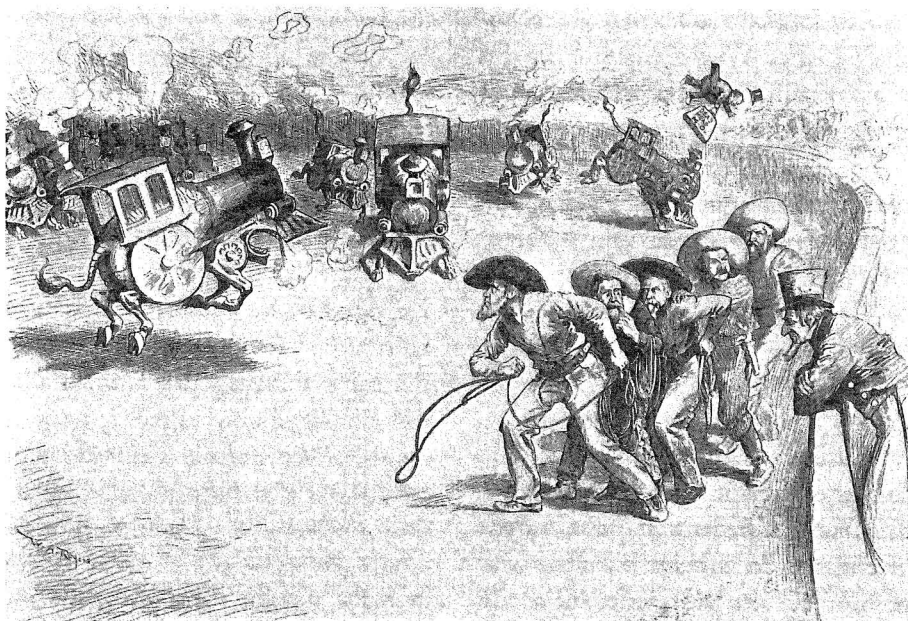
Thus the general, as opposed to the special, corporation had come into being. It was an extraordinarily ingenious device — indeed, it has been called one of the greatest of man's inventions — for serving widely diverse social needs and for overcoming (through its legal "immortality") the uncertainty of human life. However, it was to create political problems of tremendous importance that became apparent only during the next period of our history.

3. GOVERNMENT SUPPORT OF BUSINESS CORPORATIONS 1840-1890

EXPANSION WAS THE CRY in the last decades before the Civil War; this was even more pronounced after the war, which had guar-

anteed the existence of the Union and allowed men's minds to turn from the troublesome South to the undeveloped West. The great rivers of America flow north and south; the problem was to develop a transportation system that would carry passengers and freight across the mountains and rivers that divide our land. The means of such a system were well known; they were the railways. But the construction of railroad lines that would span the continent required accumulations of capital hardly imaginable before.

Government aid was obviously necessary, and it was freely given. Federal land grants to railroads began in 1850, the first grant going to the Illinois Central. In those early years, the national government would make a grant to a state, and the state would turn over the land to the railroad. By 1860, 28 million acres of public land had been disposed of in this way — land that the railroads would then sell to settlers in order to finance construction and operation. After the Civil War, the federal government extended its largess directly to the great trans-



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"Uncle Sam's 'Wild West' Show — the interstate commissioners moving on the animals," 1887

continental lines. By 1890, twenty-nine railroads had received more than 130 million acres of land along their rights of way — the usual practice was to grant alternate "sections," or mile-square plots — and in 1869 a loan of \$65 million enabled the Union Pacific and the Central Pacific to complete the transcontinental link at Promontory, Utah.

Government aid was accompanied by increased emphasis on the public responsibility of business corporations. In one of the so-called Granger cases, decided in 1876, the validity of an act of the Illinois legislature providing for the fixing of maximum grain storage charges was questioned by several grain storage firms. Chief Justice Morrison Waite delivered the opinion of the Supreme Court. He declared that property becomes "clothed with a public interest when used in a manner to make it of public consequence, and affect the community at large. When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to

be controlled by the public for the common good, to the extent of the interest he has thus created."

However, Justice Stephen Field, in dissent, attacked the majority opinion as giving less than adequate protection to property rights. And it was his view, on the whole, that prevailed, especially when it came to the question of controlling the railroads. The country's business depended on them, and they not only charged as much as the traffic would bear but also made use of discriminatory rates, long and short haul differentials, rebates, and other practices that seemed equally greedy and unfair. The states passed laws to control railroad activity within their borders, but the Supreme Court largely invalidated such attempts in 1886. In one case, *Wabash, St. Louis & Pacific R.R. Co. v. Illinois*, the Court ruled that such laws did not apply in interstate commerce; and in another, even more important, *Santa Clara County v. Southern Pacific R.R. Co.*, it ruled that the word "person" in the Fourteenth Amendment extended the protection of the due process clause of the

Constitution to legal persons, that is, corporations. Chief Justice Waite's dictum to this effect was a powerful protection for corporate rights during the next twenty or thirty years.

The Interstate Commerce Act was passed in 1887, ostensibly to make the railroads toe the line; it also established an Interstate Commerce Commission of five members to administer the law, investigate complaints, and secure redress of abuses through the courts. But the courts would not cooperate, and by 1900 the ICC had been reduced to little more than a fact-finding agency.

The advantages inherent in government support of and aid to private business ventures were not lost on the corporations. In order to insure that state and federal legislators would continue to favor their lines, and at the same time to make certain that their rivals would not receive similar treatment, the great railroad magnates tried to exercise political pressure by means of bribes, campaign donations, and other devices. The danger was seen by the reformer Henry George. "We have simple citizens who control thousands of miles of railroad, millions of acres of land, the means of livelihood of great numbers of men," he declared in 1879; "who name the governors of sovereign states as they name their clerks, choose senators as they choose attorneys, and [their] will is as supreme with legislatures as that of a French king."

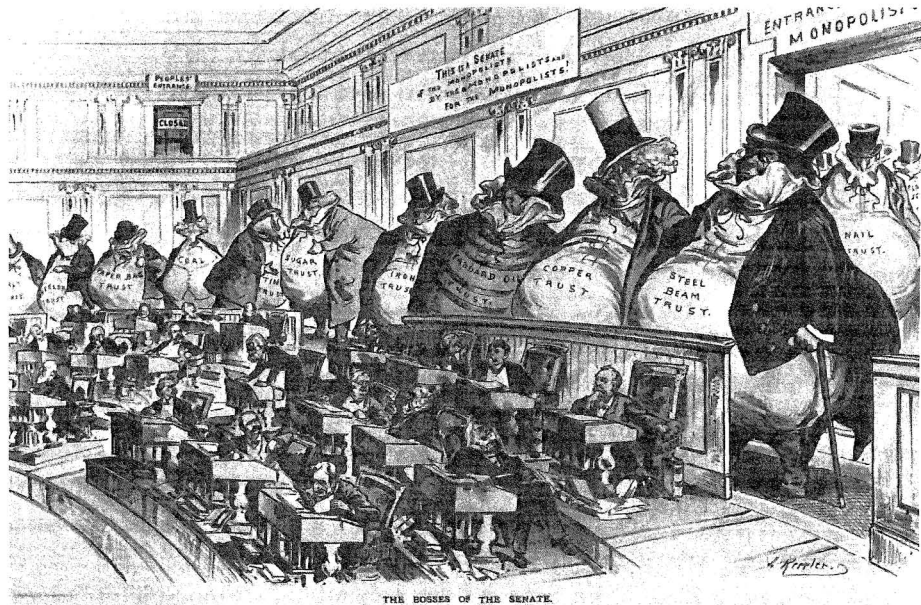
Others held similar views, and not only regarding the leaders of the railway industry. A famous cartoon — Joseph Keppler's "Bosses of the Senate" (1889) — portrayed twelve huge moneybags with shrewd, hard, human faces, wearing silk top hats and cut-away coats, overlooking and dominating a lilliputian U.S. Senate. Across the bulging vest of each moneybag was inscribed a name: Steel Beam Trust, Standard Oil Trust, Sugar Trust, Coal Trust, and so on. Not only were the senators dwarfed by the

moneybags but the cartoon also conveyed the sinister impression that no bill would become law without first receiving their consent.

4. TRUSTS AND TRUSTBUSTERS 1890-1920

IT HAD BECOME COMMON during the 1870s and 1880s for several firms competing in the same industry to combine under a central management, called a trust, whose directors were drawn from the merging corporations. The purpose of such a combination, declared the Populist presidential candidate James Baird Weaver in 1892, "is to increase profits through reduction of cost, limitation of product, and increase of the price to the consumer" — in short, monopoly, now revived in a more potent shape. For example, according to Weaver, the Oatmeal Trust decided in 1887 that more profits could be reaped if some of its mills were shut down, a large number of laborers discharged, and the price of oatmeal increased. Consumers would have to pay the higher price because every oatmeal manufacturer belonged to the trust. Another trust was mordantly described by Henry Demarest Lloyd in 1884. "The men who make our shrouds and coffins have formed a close corporation known as the National Burial Case Association," he wrote, "and held their national convention in Chicago last year. Their action to keep up prices and keep down the number of coffins was kept secret, lest mortality should be discouraged."

There were other reasons for secrecy. Attacks on the trusts were launched from all sides. Trusts that dominated industries like dairying, ironworking, or lumbering appeared to be "voluntary," Lloyd charged, "but if the milk farmer of Orange County, the iron molder of Troy, the lumber dealer of San Francisco, the Lackawanna Railroad,



The Granger Collection

"The Bosses of the Senate"; lithograph by Joseph Keppler from "Puck," 1889

or any other individual or corporate producer show any backwardness about accepting the invitation to join 'the pool,' they are whipped in with all the competitive weapons at command, from assault and battery to boycotting and conspiracy."

In 1894, Samuel Gompers, head of the American Federation of Labor, charged that the monopolies were "wreckers of people's lives"; another labor leader, John W. Hayes, accused them of turning the worker into a "piece of dumb machinery." Cardinal Gibbons of Baltimore asserted in 1887 that trusts were "mail-clad" war lords that denied the workingman "the simple rights of humanity and justice." Brutal working conditions in Chicago's meat-packing industry were depicted by the young Socialist Upton Sinclair in his novel *The Jungle* (1906), in which the Beef Trust was denounced as "the incarnation of blind and insensate greed. It was a monster devouring with a thousand mouths, trampling with a thousand hoofs; it was the Great Butcher. . . ." The most widely read of all the assaults on the trusts appeared, in the form of articles

by outspoken journalists such as Lincoln Steffens, Ida Tarbell, and Ray Stannard Baker, in *McClure's Monthly* magazine. In exposés like Miss Tarbell's "The History of the Standard Oil Company" and Steffens' "The Shame of Minneapolis," the public learned how the trusts had grown financially and politically powerful, and how trust "bosses" had corrupted the democratic political process.

Outright defenders of the trusts were few in the years around 1900. Indeed, the defense was largely pragmatic; it rested on the fact of the enormous amounts of the "common necessities" supplied by industries like sugar, wheat, beef, coal, lumber, and iron, and of the undeniable service to the nation performed by the railroads and telegraph combines. Of the articulate defenders of monopoly, only James B. Dill, a corporation lawyer of the era, boldly used the word "trust." "Trusts are natural, inevitable growths out of our social and economic conditions," Dill told Lincoln Steffens in 1893. "You cannot stop them by force, with laws. They will sweep down like gla-

ciers upon your police, courts, and states and wash them into flowing rivers."

The idea that trusts represented the workings of fundamental natural laws appealed also to the Social Darwinists, who held that the fittest survived in the economic as in the biological jungle. William Graham Sumner, for instance, declared that no group of Americans rendered greater service to "the whole industrial body" than the so-called captains of industry. The young John D. Rockefeller, Jr., as a sophomore at Brown University, viewed the matter in the same way. Against the charge that monopolies swallowed or destroyed small companies, he argued that this was a natural law. "The American Beauty Rose," he told a Sunday-school class, "can be produced in the splendor and fragrance which brings cheer to its beholder only by sacrificing the early buds which grow up around it. This is not an evil tendency in business. It is merely the working out of a law of nature and a law of God."

The conflict between these two positions concerning the trusts became more heated as the century drew to a close. Its resolution was effected, as is usually the case, by a compromise — one that had far-reaching implications for the future of the business corporation in America. President Theodore Roosevelt was the leading representative of this middle position. On the one hand, he referred to journalists like Steffens and Baker as "muckrakers," and charged them with bias in their indictments of corruption and graft. On the other hand, Roosevelt recognized the need to protect society from the worst excesses of the trusts. He urged in 1901 that government regulate trusts "if they are found to exercise a license working to the public injury. It should be as much the aim of those who seek for social betterment to rid the business world of crimes of cunning," he declared, "as to rid the entire body politic of crimes of violence."

The machinery for such regulation already existed. In 1890 Congress had passed the Sherman Antitrust Act, which declared illegal "every contract, combination in the form of a trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States or with foreign nations." Under the act, the government could prosecute "every person who shall monopolize . . . any part of the trade or commerce among the several States." However, the law had not been effectively used before Theodore Roosevelt's time. Indeed, in one of the early attempts to enforce it, the government had met with a serious setback. It charged, in 1895, that the E. C. Knight Co. had secured a nationwide monopoly over "a necessity of life" by purchasing four competing sugar-refining firms in Philadelphia; but the Supreme Court reversed a lower court conviction on the ground that manufacturing, and not commerce, was involved, and that the company had therefore put no restraint upon trade or commerce.

Nevertheless, during Roosevelt's administration (1901-1909) the government pressed indictments against no less than forty-two trusts, and the number of prosecutions was even larger during the Taft administration (1909-1913). The government was not always successful in obtaining convictions, but one or two victories had a great public effect, even if they did not really inhibit the giant new corporations very much. One such was the prosecution of the Northern Securities Co. in 1904. This corporation was a holding company that effectively controlled several of the country's largest railroads, and the courts supported the government's attempt to dissolve it. And in the most celebrated of all antitrust cases, the Supreme Court ruled in 1911 that the Standard Oil Co., by exerting virtually exclusive control over the oil industry, constituted an unlawful monopoly and must be dissolved. However, in its decision the



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Antitrust cartoon by Homer Davenport for the "New York Journal"

Court interpreted the Sherman Act as outlawing only "undue" or "unreasonable" restraint of trade, thus leaving it to the judges to determine in each case whether such a restraint actually had occurred.

President Woodrow Wilson continued the attack, and the Clayton Antitrust Act and the Federal Trade Commission Act, both passed in 1914, put more teeth in federal antitrust legislation than ever before. The Clayton Act specifically exempted labor unions from prosecution as "combinations in restraint of trade" and was hailed as labor's "Magna Carta." Thus Wilson was able to announce in November 1914 what seemed to be the end of the era of the trusts. "We have only to look back ten years or so," he declared, "to realize the deep perplexities and dangerous ill-humors out of which we have at last issued, as if from a bewildering fog, a noxious miasma." It is true enough that the word "trust" was no longer used, passing instead into the American vocabulary as a synonym for immense power and ruthless contempt for the public good and the politics of democracy. In fact, however, the provisions of both the Clayton Act and the Federal Trade Commission Act were substantially weakened by

later court interpretations, and it is probably fair to say that the "trustbusting" crusade, insofar as it was a crusade at all, was a failure. The corporations simply reorganized, stopped calling themselves trusts, and continued to operate pretty much as before.

5. THE BIG BUSINESS ERA 1920 TO THE PRESENT

AN IMPORTANT RULING of the Supreme Court in 1920 ushered in the modern period in the history of the corporation, the distinguishing feature of which is the unprecedented growth of industrial firms. The case involved the United States Steel Corporation, founded in 1901 by J. P. Morgan and others, and by 1920 the largest U.S. corporation. The government charged that U.S. Steel violated the Sherman Act and asked that it be dissolved. The Court, applying the "rule of reason" used in the Standard Oil case, declared, in the words of Justice Joseph McKenna, that "the corporation is undoubtedly of impressive size and it takes an effort of resolution not to be affected by it or to exaggerate its influence. But we must adhere to the law and the law

does not make mere size an offense or the existence of unexerted power an offense." Implicit in this ruling was the distinction, based on the rule of reason, between "good" corporations and "bad"; a corporation should be judged, the decision indicated, on the actual character of its business practices rather than merely on its size, wealth, or power.

Not all observers agreed that the distinction between good and bad corporations solved the problem. As early as 1915, Louis D. Brandeis, later to be appointed to the Supreme Court, had urged that new legislation ought to deal with the question of corporate size, because giant corporations tended "to develop a benevolent absolutism, but it is an absolutism all the same; and it is that which makes the great corporation so dangerous. There develops within the state a state so powerful that the ordinary social and industrial forces existing are insufficient to cope with it." Charges of this kind continued to be made. In 1941, Senator Joseph O'Mahoney declared that huge corporations like the Metropolitan Life Insurance Company constituted at least a potential danger because they were "richer than any one of thirty-eight sovereign states." The same point was made by economist Earl Latham in 1959. Enormous corporations, he contended, "rival the sovereignty of the state itself. [They] are political systems in which their market, social, and political influence goes far beyond their functional efficiency in the economy."

Giant corporations found their defenders, of course. Thus, for example, David E. Lilienthal, New Deal director of TVA and first chairman of the U.S. Atomic Energy Commission, asserted in 1951 that Big Business — the name by which the great modern corporations came collectively to be called — has been a pillar of the national defense. He pointed to the tremendous contributions made by it to the war effort in

World War II; in recent years, others have lauded the efforts of the big corporations in the fields of air- and spacecraft, the munitions, rubber, iron, automotive, and other industries.

Lilienthal answered other charges, as well. We have seen how the view that corporations are opposed to political democracy was voiced as far back as 1800. Theodore K. Quinn, former chairman of the board of General Electric, who became an energetic critic of big corporations, declared in 1948 that these "brute, economic monsters" are "leading our country just as surely as the sun sets to a brand of totalitarianism which is a perversion as far from individualism, civil liberties, and the democratic process as Russian Communism." Lilienthal replied by stressing the American and democratic contributions of the great industrial combinations. "Competition, always the mainspring of our economy and the dynamics of American life, in mid-twentieth century has been stimulated and quickened by Big Business"; and he pointed out that the emphasis on scientific research in many large firms had the effect of increasing "the freedom of business newcomers to enter many industries in competition with the existing long-established firms." He also asserted that the concentration of industrial power in a giant corporation helps to promote maximum efficiency in a free enterprise economy — an argument that recalls the defenses of industrial combinations advanced in the 1890s.

While the argument continued, the corporations — both industrial and financial — grew bigger and bigger. In 1930, the combined assets of the 200 largest corporations totaled a little more than \$100 billion. Thirty-five years later, in 1965, the 10 largest corporations — AT&T, Metropolitan Life, Prudential, Bank of America, Chase Manhattan Bank, Standard Oil of New Jersey, First National City Bank, Equitable Life, General Motors, and New York Life

— had combined assets of more than \$157 billion. The 150 largest industrial firms produced half of the country's manufactured goods; and the 500 largest owned two-thirds of the productive assets of the nation. AT&T alone had assets of more than \$30 billion and operating revenues of more than \$10 billion; the top 5 manufacturers had total sales of nearly \$47 billion, with GM leading the pack with sales of \$17 billion and a net profit of more than \$1.7 billion (AT&T had a net income of \$1.6 billion); Metropolitan Life and Prudential each had more than \$100 billion worth of life insurance in force, a sum almost equal to the annual budget of the United States (in 1965). And the tendencies toward consolidation and growth gave no sign of abating in the near future.

6. THE FUTURE OF THE AMERICAN BUSINESS CORPORATION

SEVERAL PUZZLING QUESTIONS that demanded the attention of observers at mid-twentieth century may give some indication of the direction in which the giant modern corporations are headed.

The primary question concerns the nature and purpose of the corporation itself. In general, three answers seem to be given to this question. The first is that the business corporation is an organization that represents owners and operates for their profit. The second is that the business corporation is an agency of society authorized to perform necessary social functions, and that profit is secondary. The third is that the business corporation is an autonomous entity, existing for its own sake, the nature of which is not wholly to be understood by reference to economic and political phenomena of the past. Each of these answers raises other questions.

Who owns the corporations? If corpora-

tions are responsible to their owners, then who are their owners? It is true enough that a small stockholder in a large corporation owns some *property* — but what is his relation to it? According to Walter Lippmann, such a stockholder has “only an abstract relation to the thing he owns.” Only rarely does he exercise control over the way his property is used; he has become, in Lippmann's words, “merely a money lender.” The economist Joseph A. Schumpeter pointed out in 1934 the sharp contrast between a stockholder of the nineteenth century and one of the twentieth; in his view, the latter has only the vaguest idea of where his property is or of what it consists. And another economist, Eugene V. Rostow, observed in 1959 that it is often the case that the stockholders obey the management rather than the management the stockholders. The “power” of the stockholder, it seems, has been reduced to nothing more than his freedom to sell his holding.

This point was made in 1932 by A. A. Berle and Gardiner C. Means in their classic study, *The Modern Corporation and Private Property*. They asserted that the control of corporate property rests increasingly in the hands of small, elite groups of salaried managers, who are usually stockholders themselves but are not owners in the traditional sense. “The typical business unit of the nineteenth century,” they wrote, “was owned by individuals or small groups; was managed by them or their appointees; and was, in the main, limited in size by the personal wealth of the individuals in control. These units have been supplanted in ever greater measure by great aggregations in which tens and even hundreds of thousands of workers and property worth hundreds of millions of dollars, belonging to tens or even hundreds of thousands of individuals, are combined through the corporate mechanism into a single producing organization under unified control and management.”

Twenty years later Berle was even more sure that "when an individual invests capital in the large corporation, he grants to the corporate management all power to use that capital to create, produce, and develop, and he abandons all control over the product." The separation of ownership and management led R. W. Davenport, editor of *Fortune*, to assert in 1954 that the power inherent in the control of plant, organization, and goodwill of a corporation by its "hired managers has superseded the power inherent in the stocks and bonds."

There seems to be widespread feeling that this problem is insoluble, at least in the near future. But one solution — admittedly a radical one — was proposed by Louis O. Kelso and others in 1958. Kelso agreed with Berle's contention that the "property atom has been split"; where control once followed ownership, the owner of a share of stock is now merely the passive recipient of dividends, while others — the hired managers — determine what shall be done with his property. Kelso therefore suggested that all "mature" corporations — new corporations might enjoy exemption from the rule for a stated number of years — be required by law to distribute *all* of their after-tax income to stockholders. Once this was done, the managers, in order to diversify, to launch a new product, or even to finance replacement of obsolescent plant and machinery, would have to persuade the stockholders to *reinvest* their dividends. They might do so in the original company, or they might take their money to another company that, in their opinion, was better run. In any event, they would regain their "suffrage" in the company, as Kelso called it, and thereby not only force the managers to be more efficient but also inject a measure of democracy into the corporation itself that would otherwise be missing.

So far, Kelso's proposal has not been adopted by any large U.S. company, but it

would be interesting if it were. [For further consideration of the problem of stock ownership, see Ch. 13: PRIVATE PROPERTY.]

Are the corporations benevolent? The second answer to the question about the nature of the corporation — that it is an agency of society authorized to perform essential functions — also raises other questions. The most important of these concerns the social intent of corporations, and their relation to government and to the people.

As far back as 1785, James Madison could declare that the business corporations of his time were "the greatest nuisances to government"; yet he found it necessary to ask: "Are they not too valuable to renounce?" As we have seen, similar views have been held throughout our history. And Edward S. Mason pointed out in 1959 that the relation is complicated both by the heavy reliance of corporations on government and by the equally heavy reliance of government on corporations. Government is a chief customer of many of the largest corporations; at the same time, Mason observed, it "has sought increasingly to use the private corporation for the performance of what are essentially public functions. Private corporations in turn, particularly in their foreign operations, continually make decisions which impinge on the public — particularly foreign — policy of government. And government, in pursuit of its current objectives in underdeveloped areas, seeks to use techniques and talents that only the business corporation can provide." President Eisenhower, in his Farewell Address (1961), warned of the dangers inherent in the "conjunction of an immense military establishment and a large arms industry," but he too was forced to recognize "the imperative need for this development." At the same time he observed that "the potential for the disastrous rise of misplaced power exists and will persist."

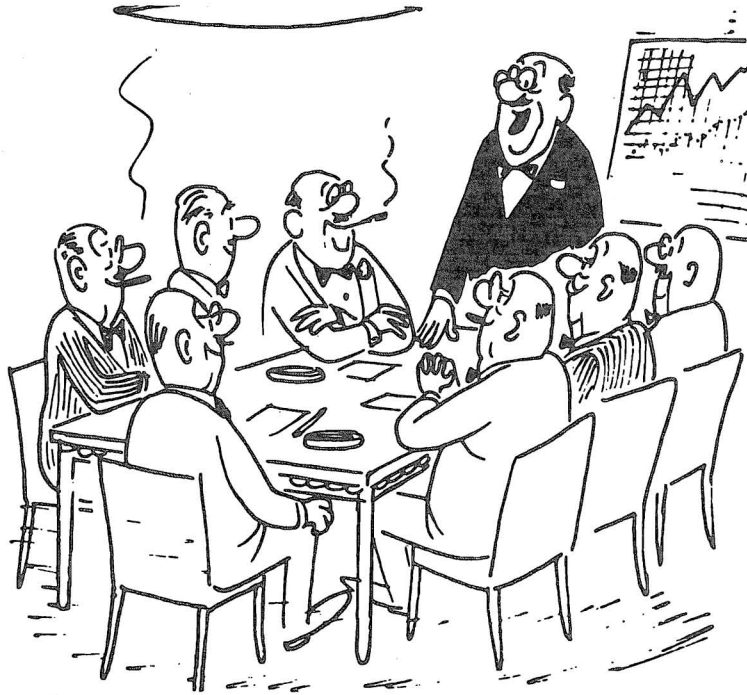
Berle discussed these problems too — es-

pecially the problems raised by the conflict of ends between society and the business corporations. "The really great corporation managements have reached a position for the first time in their history," he declared in 1954, "in which they must consciously take account of philosophical considerations. . . . In a word, they must consider at least in its more elementary phases the ancient problem of the 'good life,' and how their operations in the community can be adapted to affording or fostering it." He attributed to the leaders in the corporate field the conviction — one not shared by their predecessors of half a century ago — that it is not possible for them "to carry on great corporate businesses apart from the main context of American life." And he warned that "if private business and businessmen do not assume community responsibilities, government must step in and American life will become increasingly statist." He also suggested that, on the whole, the record of corporate activities in the international field has been, in this century at least, fully as good as if not better than that of governments.

The idea that corporations might have an increasingly benevolent intent has been sharply questioned by several writers. With the effective control of the great corporations in the hands of a few thousand men at most, Mason wanted to know "who selected these men, if not to rule over us, at least to exercise vast authority, and to whom are they responsible? The answer to the first question is quite clearly: they selected themselves. The answer to the second is, at best, nebulous." Professor Ben W. Lewis was even more troubled. Commenting on the proposition that the corporation may develop into a "conscience-carrier," he declared in 1959 that "it is not going to happen; if it did happen it would not work; and if it did work it would still be intolerable to free men. I am willing to dream, per-

haps selfishly, of a society of selfless men. Certainly, if those who direct our corporate concentrates are to be free from regulation either by competition or government, I can only hope that they will be conscientious, responsible, and kindly men; and I am prepared to be grateful if this proves to be the case. But I shall still be uneasy and a little ashamed . . . to be living my economic life within the limits set by the gracious bounty of the precious few. If we are to have rulers, let them be men of goodwill; but above all, let us join in choosing our rulers — and in ruling them."

Lewis failed to say how we should do either of these things — a failure that is shared by practically everybody. The rule, such as it is, that the managers of the great corporations exert in the political and economic realms of modern life is at best shadowy, indirect, and difficult to discern. We may *feel* that the corporations somehow "run things," but we do not know how, and we find it hard to point to particular examples of their use of power. It is for this reason that it has been proposed by some commentators that, if it turns out that government cannot control business by traditional political devices — for example, anti-trust laws and regulatory commissions — then perhaps business ought to participate in government openly, instead of doing so covertly by lobbying and other methods, as now seems to be the case. The idea of a senator from General Motors, AT&T, or the Metropolitan Life Insurance Co. sounds very odd at first, but it conceivably might have merit if it served to make apparent to the press and to the people activities that are now hidden. The contention that underlies this proposal is of course that although the individual citizen has little enough to do with choosing his legislative representatives, he does have some influence, if only through his periodic visit to the voting booth. In like manner, some public control



Courtesy, "The Wall Street Journal"

"As you know, gentlemen, business thrives on competition. . . . And to prove it, we have just bought out another of our competitors"; cartoon by Bernhardt in "Sorry — No Budget"

would be exerted over the "representatives" of the great corporations.

Are corporations autonomous entities? The answer to the third question about the modern corporation — that it is an autonomous entity that exists for its own sake in a way entirely unprecedented in history — raises further interesting problems. In 1964, Andrew Hacker asked us to imagine a hypothetical company that, by 1982, had replaced every one of its workers with automatic machinery. Some years before this date, the company's directors began to use pension plan funds to buy up the outstanding stock; by 1982, when the last surviving worker died, the pension fund, which now owned all the stock, was liquidated. At this time, the company belonged to itself and was run by ten director-managers. The company existed only for its own sake; it had no responsibility to stockholders, workers, or society at large; even the director-managers could expect to gain nothing from it, since they received a straight salary of \$100,000 a year, regardless of profits. What kind of world would it be, Hacker asked,

that had such creatures in it? Would such an organization be beneficial? Or would the question be meaningless?

In fact, Hacker's imaginary example is just that, imaginary — for few if any companies will be able to replace *all* their workers with machinery in the near future, although technology and automation tend in that direction. Nevertheless, the relations of corporations and labor have undergone subtle changes in recent years. Nineteenth-century labor leaders tended to attack management and to see themselves in fundamental opposition to it. Abram Chayes pointed out how different modern labor-management negotiations have become. "In these negotiations," he wrote in 1959, "the parties are made to appear as hostile antagonists in a kind of legalized class-warfare. But the negotiation of a labor contract can equally, perhaps more fruitfully, be seen as an effort to adjust the relations of both parties so that their common ends may be pursued jointly and they will not endlessly interfere with each other in the pursuit of their separate ends. . . . The bargaining

sessions, then, are no more a continuation of war by other means than are the sessions of any other legislative body."

Labor and management are thus seen as sharing in a common purpose, which is not that of the individuals involved, nor is it that of society at large — it is the corporation, perhaps now to be spelled with a capital C, to which all loyalty is owed, and that may be expected to confer all of life's benefits upon its adherents. A similar conception is implied in the notion of the "organization man" — the junior or even senior executive who indeed "reports" to a superior, but who serves The Company with all of his strength and thought, much as men of an earlier day served The Country or even — still earlier — The King or The Church.

This may be too extreme. The specter of the corporation as an entirely autonomous entity, political, economic, and social — as in some sense the real "state" in the bosom of which we live and to which we owe our deepest allegiance — may indeed be something to fear in the future, but it is not yet a reality. John Kenneth Galbraith made this clear in his book *American Capitalism* (1952), which was subtitled "The Concept of Countervailing Power." According to Galbraith, the fact that the classical economic "chimera" of free competition is more and more irrelevant as corporations grow larger and at the same time fewer does not mean the end of all restraints on private power. Just the contrary is the case. "Private economic power," he declared, "is held in check by the countervailing power of those who are subject to it. The first begets the second. The long trend toward concentration of industrial enterprise in the hands of a relatively few firms has brought into existence not only strong sellers, as economists have supposed, but also strong buyers, as they have failed to see. The two develop together, not in precise step but in such manner that there can be no doubt that the one is in response to the other."

Examples of such responses, in Galbraith's view, include the rise of strong labor unions in industries that are controlled by a few strong corporations (e.g., steel, automobiles, rubber), and the rise of powerful organizations of retailers whose countervailing power is opposed to the pressure exerted by wholesalers. In contrast, he pointed out that in agriculture there are few or no strong unions, the reason being that "the farmer has not possessed any power over his labor force, and at least until recent times has not had any rewards from market power, which it was worth the while of a union to seek. As an interesting verification of the point, in the Great Valley of California, the large farmers of that area have had considerable power vis-à-vis their labor force. Almost uniquely in the United States, that region has been marked by persistent attempts at organization by farm workers."

The theory of countervailing power may be an answer to the questions raised here about the nature and scope of the modern corporation. It is possible that economic laws that are just now beginning to be understood will solve the problem of the autonomy and uncontrolled power of the corporation that so troubles writers of the present day. And the corporation's challenge to political democracy may be met as well.

In any event, the traditional conception of a corporation as merely an organization of businessmen combining their talents to produce goods and to make money is seen by almost everyone to be outmoded. The new conception must take into account the altered nature of the owner-manager relation, the changes in internal organization of corporations, their heavy involvement in the general economy, and new developments in the structure of politics and of society. It will have to recognize, too, that the modern corporation poses perhaps the greatest challenge to democratic government in our history.

There is no consensus on what the new

conception will have to be. As Mason observed in 1959, "the 'viewers with alarm' are approximately balanced by the 'pointers with pride.' On the one hand, we hear much talk of 'a new feudalism,' of 'self-perpetuating oligarchies,' of 'irresponsible private power,' and of 'euthanasia of the capitalist owner.' But on the other, we are told of 'the twentieth-century revolution,' the 'professionalization of management,' the various 'publics' whose interests are sedulously cared for, and the beneficence of the 'corporate conscience.' It is not to be wondered that, to date, this cacophony of voices has not produced a very firm view on what

to think or what to do about the corporation either in the general public or the minds of legislators.

"The fact seems to be," Mason went on to say, "that the rise of the large corporations and attending circumstances have confronted us with a long series of questions concerning rights and duties, privileges and immunities, responsibility and authority, that political and legal philosophy have not yet assimilated." [For further discussion of some of the topics treated here, see Chs. 4: GOVERNMENT BY THE PEOPLE, 13: PRIVATE PROPERTY, 17: WORK AND WORKERS, and 25: AMERICAN DESTINY.]