



**TAKING CARE OF BUSINESS:  
Citizenship and the  
Charter of Incorporation**

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The chief executive officer and directors of the International Paper Company are convicted felons. But not one of them has done time in jail paid a nickel in fines or performed a day's community service.

In 1991, International Paper's (IP) CEO, John Georges, and the IP board of directors were charged in federal district court with violating a variety of pollution laws, destroying evidence and lying to the US government. IP's leaders were able to plea bargain these charges down to five felony convictions for criminal violations of the Clean Air Act and Clean Water Act. They then arranged for IP's *shareholders* to pay \$2.2 million in fines for their crimes.

Today, IP continues to poison the people, plants and animals of Maine by dumping 40 million gallons of chemically saturated wastewater daily into the Androscoggin River. Georges and IP's directors still run the corporation.

How can this be?

Under pressure from industrialists and bankers, a handful of 19th-century state legislatures and judges gave corporations more rights than those enjoyed by human beings. Today's business corporation is an artificial creation, shielding owners and managers while preserving corporate privilege and existence by claiming special protections.

Although the US Constitution makes no mention of corporations, the history of constitutional law is, as former Supreme Court Justice Felix Frankfurter said, "the history of the impact of the modern corporation upon the American scene."

## **A Hidden History**

British kings granted charters to the British East India Company, the Hudson's Bay Company and many American colonies, enabling the kings and their cronies to control property and commerce. The royal charter creating Maryland, for example, required that all of the colonies exports be shipped to or through Great Britain.

The American colonists did not revolt simply over a tax on tea. The laborers, small farmers, traders, artisans, seamstresses, mechanics and landed gentry who sent King George III packing, feared corporations. As pamphleteer Thomas Earle was to write in 1823: "Chartered privileges are a burden, under which the people of Britain, and other European nations, groan in misery."

While American volunteers were routing the king's armies, they vowed to put corporations under democratic command. After the revolution, people were determined to keep investment and production decisions local and democratic. They believed corporations were neither inevitable nor always appropriate.

Many colonial citizens argued that under the Constitution, no business could be granted special privileges. Others worried that once incorporators amassed wealth, they would use their corporate shields to control jobs and production, buy off the press and dominate elections and the courts.

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Craft and industrial workers feared absentee corporate owners would turn them into "a commodity being as much an article of commerce as woolens, cotton, or yarn," according to historian Louis Hartz.

Having thrown off British rule, the revolutionaries delegated their elected state legislators to issue corporate charters on the people's behalf. For 100 years after the signing of the Declaration of Independence, citizen vigilance and activism forced legislators to keep corporations on a short civic leash.

Because of widespread opposition to corporations, those early legislators granted very few charters. They denied charters altogether when communities opposed the plans of prospective incorporators.

Citizens governed corporations by specifying rules and operating conditions -- not just in the charters, but also in state constitutions and laws. Incorporated businesses were banned from taking any action that citizens and legislators did not specifically allow.

States limited corporate charters to a set number of years. Citizen authority clauses dictated rules for issuing stock, for shareholder voting, for obtaining corporate information, for paying dividends and for keeping records. They limited corporate capitalization, debts, land holdings and sometimes profits. They required a company's books to be turned over to a legislature upon request.

The power of large shareholders was limited by scaled voting, so that large and small investors had equal voting rights. Interlocking corporation directorates were outlawed. Shareholders had the right to remove directors at will.

Side by side with these legislative controls, citizens experimented with various forms of enterprise and finance. Artisans and mechanics owned and managed diverse businesses. Farmers and millers organized profitable cooperatives, shoemakers created unincorporated business associations. None of these enterprises had the rights and powers of modern corporations.

## **Charter Revocation**

In 19th-century America, many citizens believed that it was society's inalienable right to abolish an evil. The penalty for abuse or misuse of corporate charters, therefore, was not simply a plea bargain or corporate fine, as in *International Paper's* case. It was revocation of the charter and dissolution of the corporation.

Accordingly, revocation clauses were written into Pennsylvania charters as early as 1784. The first revocation clauses were added to insurance company charters in 1809, and to banking charters in 1814. During the 1840s and 1850s, states revoked charters routinely. In Ohio, Pennsylvania and Mississippi, banks lost charters for activities that "were likely to leave them in an insolvent or financially unsound condition," according to business scholar Edwin M. Dodd. Massachusetts and New York revoked turnpike charters when corporations were found guilty of "not keeping their roads in repair."

In 1825, Pennsylvania legislators adopted broad powers to "revoke, alter or annul" corporate charters whenever they thought proper. An 1857 constitutional amendment instructed the state's legislators to "alter, revoke or annul any charter of a corporation hereafter conferred . . . whenever in their opinion it may be injurious to citizens of the community. . . ." By the 1870s, the people of 19 states had amended their constitutions to make corporate charters subject to alteration or revocation by legislatures.

President Andrew Jackson enjoyed wide popular support when he vetoed a law extending the charter of the corrupt and tyrannical Second Bank of the United States in 1832. That same year, the state of Pennsylvania revoked the charter of ten banks for operating contrary to the public interest.

New York, Ohio, Michigan and Nebraska successfully revoked the charters of oil, match, sugar and whiskey trusts. In 1894, the Central Labor Union of New York City, citing a pattern of abuses, asked the state's attorney general to request the state supreme court to revoke the charter of the Standard Oil Trust of New York, which the court did.

## **"Judge-Made" Law**

During the last third of the 19th century, "Corporations confronted the law at every turn," according to Harvard law professor Lawrence M. Friedman. "They hired lawyers and created whole law firms. They bought and sold governments." Courts began creating legal doctrines to protect corporations and corporate property, subverting charter law and constitutional amendments.

In hundreds of cases decided in the latter half of the 19th century, judges declared that the corporate rate of return on investments (i.e., profit) was corporate property and, hence, could not be meddled with by citizens or by their elected representatives.

These judges gave certain corporations, such as railroad, mining and manufacturing companies, the power of eminent domain -- the right to take private property with minimal compensation to be determined by the courts. They eliminated jury trials to determine corporation-caused harm and to assess damages. Workers, the courts also ruled, were responsible for causing their own injuries on the job. This came to be called the "assumption of risk."

Judges created the "right to contract" doctrine, which stipulates that the government cannot interfere with an individual's "freedom" to negotiate with a corporation for wages and working conditions. Former George Washington University law professor Arthur Selwyn Miller called the creation of the right to contract doctrine "one of the most remarkable feats of judicial law-making this nation has seen."

Responding to banking, shipping, railroad, manufacturing and agribusiness corporations and their lawyers, judges creatively interpreted the commerce and due process clauses of the US Constitution. Inventing the concept of "substantive due process," they ruled that laws passed as a result of widespread citizen organizing -- e.g., state wage and hours laws, fees and rates for grain elevators and railroads -- were unconstitutional.

Judges also established the "managerial prerogative" and "business judgment" doctrines, giving corporations legal justification to arrest workers' civil rights at factory gates and to blockade democracy at boardroom doors.

The biggest blow to citizen constitutional authority came in 1886. The US Supreme Court ruled in *Santa Clara County v. Southern Pacific Railroad* [[118 U.S. 394], that a private corporation was a "natural person" under the US Constitution, sheltered by the 14th Amendment, which requires due process in the criminal prosecution of "persons." Following this ruling, huge, wealthy corporations were allowed to compete on "equal terms" with neighborhood businesses and individuals. "There was no history, logic or reason given to support that view," Supreme Court Justice William O. Douglas wrote 60 years later.

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Within just a few decades, appointed judges had redefined the "common good" to mean the corporate use of humans and the Earth for maximum production and profit -- no matter what was manufactured, who was hurt or what was destroyed. Corporations had obtained control over resources, production, commerce, jobs, politicians, judges and the law. Workers, citizens, cities, towns, states and nature were left with fewer and fewer rights that corporations were forced to respect.

## **Taking Back the Charters**

Today, citizen struggles to keep corporations under civic authority have been largely written out of history. We are out of the habit of contesting the legitimacy of corporations like International Paper, Du Pont, General Motors or Union Carbide. But we can challenge corporate-shielding legal doctrines and deny judges the final say over our economic lives, over the planet's flora and fauna, rivers and mountains, and over our children's future.

We can revoke corporate charters. Our state legislatures continue to have an historic and legal obligation to amend and revoke corporate charters, along with the certificates of authority that permit corporations to conduct business outside their chartering state. Our elected state legislators are still responsible for overseeing all corporate activities.

We can demand to see the charters of every corporation. We need to know what each charter prohibits, especially if it is an old charter. We can amend our state corporation laws, establishing our own ecological, labor and democratic criteria for issuing charters and operating businesses. (The Vermont legislature and the state's business community are currently rewriting that state's corporation law. By vigorously injecting themselves into this

process, Vermont's citizens are trying to establish greater authority over *all* corporations chartered, and doing business, in that state.)

We cannot command the modern corporation with laws that require only a few days' notice before a corporation leaves town or with laws, such as the Clean Air Act and the Toxic Substances Control Act, that assess an occasional fine while allowing a corporation to continue to spew toxic chemicals.

We do not have to plead with corporations to be socially responsible, or grant them concessions and incentives to cause a little less harm. If we citizens want to control the corporation, we must be the ones to define it.

By rewriting the laws governing corporations, we citizens can reassert the convictions of the people who struggled to resist corporate rule in the past:

- *The corporation is an artificial creation and must not enjoy the protections of the Bill of Rights.*
- *Corporate owners and officers must be liable for all the harms they cause.*
- *No corporation should exist forever.*

Our sovereign right to decide what is produced and to organize our work is as American as a serf-governing people's right to vote. We can assert our historical and legal rights over the fiction that is the modern corporation.

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