ANNUAL REVIEWS

Annual Review of Political Science

Democracy and the Corporation: The Long View

David Ciepley[1,2]

[1]Aarhus Institute of Advanced Studies, Aarhus University, Aarhus, Denmark

[2]Institute for Advanced Studies in Culture, University of Virginia, Charlottesville, Virginia, USA; email: davidciepley@gmail.com

Annu. Rev. Political Sci. 2023. 26:489–517

First published as a Review in Advance on March 13, 2023

The *Annual Review of Political Science* is online at polisci.annualreviews.org

https://doi.org/10.1146/annurev-polisci-051120-113010

Keywords

democracy, corporation, republicanism, constitutionalism, inequality, enterprise foundation

Abstract

There is an unexamined paradox in the history of government in the West. The so-called absolutist monarchs of Europe overwhelmingly chartered republican corporations—e.g., towns, universities, and guilds whose members elected their leaders. Indeed, modern constitutional democracy is patterned after them. Yet, modern democracies themselves have overwhelmingly chartered authoritarian corporations—e.g., universities and business corporations whose subjects have no vote. After this Great Inversion, corporations, which once distributed power and wealth, now concentrate them, straining constitutional democracy. Against this backdrop, this article analyzes the major types of relation maintained between states and corporations: constitutive (states charter corporations), mimetic (states and corporations recurrently copy one another's organizational features), and instrumental (each leans on the other, and sometimes captures it, to better advance its own purposes). The article then examines the special challenges that corporate economies pose to constitutional democracy and considers whether a partial reversal of the Great Inversion could reduce them.

INTRODUCTION: TWO AMERICAN REVOLUTIONS, IN TENSION

Toward the end of the eighteenth century, the world's first large-scale constitutional republic was founded by 13 former colonies of Great Britain. But that was not the only revolutionary development of that time and place. Hardly had the ink dried on the charter of the US federal republic and on the charters of its reconstituted states when the legislatures of these states began inking yet more charters—for corporations. They issued charters incorporating churches and towns, colleges and libraries, hospitals and charities, and similar public-facing associations, to expand civil society and give it permanence and good government (Maier 1993; Novak 2001, pp. 179–82). They also incorporated bridge, canal, and turnpike companies, water companies and firefighting companies, and banking and insurance companies, to erect the physical and financial infrastructure of a society bent on economic improvement. Finally—starting as a trickle, but one that soon swelled—came charters of manufacturing corporations, beginning with industries uncultivated by private parties, to accelerate economic independence from Britain (Dodd 1954, p. 368; Wright 2013).

The rate of incorporation was unprecedented and ever accelerating. By 1857, one Illinois jurist could quip that "more corporations were created by the legislature of Illinois at its last session than existed in the whole civilized world at the commencement of the present century" (quoted in Maitland 2003, p. 3, fn. 4). And Illinois was by no means exceptional. Incorporation was the central developmental tool of the early American republic. Lacking the tax revenues, administrative capacity, or will to undertake the above activities themselves, state legislatures chartered corporations to undertake them instead (Seavoy 1982, Handlin & Handlin 1987, Roy 1999, Hartz 2014). Eventually, the press of applications, and backlash against legislative favoritism and corruption, brought legislatures to pass general incorporation statutes, opening up incorporation to all comers (Maier 1993, p. 76; North et al. 2012, pp. 228–40). The result was not only a corporate civil society [which had antecedents in early modern Europe (Black 2003)], but also the world's first corporate economy.

Incorporation is a powerful tool. Being incorporated means an organization exists in law as a separate legal entity, or "person," owning property, making contracts, and appearing in court in its own name (although under the control of natural persons acting for the corporation). This allows property to be committed in perpetuity to a specific purpose, as specified in the charter, vastly increasing the potential time horizon of human undertakings. It also allows the capital of private individuals (whether donors, taxpayers, or investors) to be pooled, vastly increasing the realizable scale of these undertakings. And it places all this property under the control of a little government, such as a board, that is mandated by and structured by the charter—a miniature constitutional government for the corporation, with the potential to improve the quality of its governance. Finally, it encourages risk taking, in that incorporation grants to corporate officers and investors the liability exemptions normally reserved for government officers. In providing these corporate features, the American governments boosted the power of private citizens to advance ends that the state legislatures supported. The corporation was the original public–private partnership.

But it was also a controversial tool. Incorporation was a privilege once bestowed through the partiality of kings as part of the royal prerogative (Blackstone 1765–1769, p. 461). At independence, this prerogative right defaulted to the American legislatures. Whether their growing willingness to use it was compatible with democracy, or not, was the single biggest question rocking American politics in its first decades (until the issue of slavery eclipsed it) (Speir 2012). And the question has never gone away.

The early American criticism of corporations was threefold, directed at their violations of republican equality, liberty, and virtue. Corporations violate republican equality in that corporate charters are (or at least at that time were) grants of special privileges to the few, and also because corporations, being perpetual, might eventually engross the country's productive resources and subordinate all to themselves. They violate republican liberty because, in most cases, they put people back under the arbitrary authority of individuals (the corporate officers) whom they did not elect. And they undermine republican virtue by organizing partial interests at odds with the common interest and by using their concentrated wealth to corrupt legislatures and government officials. These criticisms crystallized into the notion that corporations threaten a new feudalism, with corporations as the new lords—privileged, unequal, arbitrary, and corrupting (Maier 1993, pp. 62, 70–72; Speir 2012, pp. 124, 127, 129).

It is hard not to conclude that America's early corporate promoters and corporate critics were both right. Liberal corporate chartering spurred an incredible expansion of civil society and business, which in many respects strengthened American democracy—from its civil society safeguards to its goal attainment. But it also created nondemocratic, even antidemocratic, organizational pockets and social forces. In sum, American independence precipitated not one but two revolutions, both of which would echo around the world—a democratic revolution and a corporate revolution, developing side by side, with shifting complementarities and contradictions.

A TYPOLOGY OF STATE–CORPORATE RELATIONS

Ask a political scientist about "democracy and the corporation" and one is liable to get an earful about interest group politics and the outsized influence (or not) of corporations on elections, legislation, and government agency action. This is certainly an important topic and will be treated in due course. But it passes over those relations with the state that most distinguish the corporation from other associations. For analytical purposes, we can distinguish three types of relationship between corporations and states, including democratic states: constitutive relations (states charter corporations), mimetic relations (states and corporations recurrently copy one another's organizational features), and instrumental relations (each leans on the other, and sometimes captures the other, to better advance its own purposes). Corporate participation in special interest politics is a good example of corporations cultivating instrumental relations with the state. But it is just one example on one side of this one branch of relations.

The constitutive and mimetic relations between the two are today cast in shadow because of how corporations have been reconceived. Corporations were originally understood to be (legally limited) governments, exercising rights of government delegated to them by the public authority. Indeed, providing government was seen as their main rationale. As put in a 1702 treatise on corporations, "The general Intent and End of all Civil Incorporations is, for better Government," whether of "Cities and Towns" or of "Trade, Charity, and the like" [Anonymous 2015 (1702), p. 2]. The point was reiterated well into the nineteenth century by leading legal scholars such as William Blackstone (1765–1769, pp. i.463, i.455–56), Stewart Kyd (1793–1794, pp. i.28, ii.95–173), and James Wilson [2007 (1804), p. ii.1036)].

But during the nineteenth century, corporate advocates, seeking to reduce the sway of the public authority over corporations, began analogizing them to private trusts (e.g., *Dartmouth College v. Woodward* 1819; for exposition, Ciepley 2021) and private partnerships (e.g., Morawetz 1882, p. 2; for exposition, Horwitz 1992, pp. 90–93)—nongovernmental bodies constituted through private contract. In recent decades, the partnership analogy especially has become ascendant, influentially promoted by Chicago School finance scholars and law-and-economics jurists. In its nature, the corporation is said to be but a "nexus of contracts," not a separate legal entity (Jensen & Meckling 1976, p. 311; Easterbrook & Fischel 1991, p. 14). The government may provide organizational law to eliminate some contracting costs, but all its terms could in principle be secured through contract (Easterbrook & Fischel 1991). There is thus no special constituting role for the public authority. Furthermore, in its use, the corporation is said to be merely a "financing device" (Easterbrook & Fischel 1991, p. 10), not an instrument of governance. There is thus no thought of comparing it to a government or of exploring the structural homologies and mutual modeling between the two. The corporation is purely a market phenomenon, the handiwork of entrepreneurs looking for low-cost financing and efficient scale in a competitive market economy (although this leaves it a mystery that the corporation never emerged in the highly developed commercial civilizations of the Middle East, the Indian Ocean, and China). The corporation is thus reduced to a voluntary association like any other, with relations to government no different than those of any other private interest group seeking to influence policy through electioneering and lobbying. These are thus the relations that attract all the attention.

But a fuller assessment of the complementarities and contradictions between democracy and the corporation requires consideration of the full range of relations, including over the *longue durée*. This longer view reveals a Great Inversion in the history of governance in the West. Surprising to us today, corporations were, from the Middle Ages through the early modern era, the principal carriers of democratic and republican ideals and practices in a political world otherwise dominated by hierarchy, monarchy, and, at its worst, "absolutist" arbitrary rule. Indeed, the republican corporation of the early modern era provided the mold for modern constitutional democracy. Without it, constitutional democracy as we know it would never have crystallized (see below). But in the modern era, corporations became the principal carriers of hierarchy, monarchy, and arbitrary rule within constitutional democracies formally committed to political and civil equality and republican liberty (i.e., freedom from arbitrary rule).

This Great Inversion foregrounds an unexamined paradox in the history of Western government: The so-called absolutist monarchs of Europe overwhelmingly chartered republican corporations, while the constitutional republics of the modern era have overwhelmingly chartered authoritarian corporations. Such a sea change in corporate governance is surely relevant to any assessment, retrospective or prospective, of the corporation's compatibility with democracy. But again, it is overlooked because we view corporations as private associations, placing them outside of government and the history of government. Properly returning them to the history of government requires recovering some long-suppressed understandings of the nature and use of the corporate form.

CONSTITUTIVE RELATIONS

As noted, the public provenance of the corporation began to be challenged in the final third of the nineteenth century, often as part of various procorporate, antistatist political programs, whether communitarian [Gierke 1990 (1868), pp. 105–23; for exposition, pp. xiv–xxx], pluralist (Maitland 2003, pp. 52–61; for exposition, Burrow 1985, pp. 135–53), or deregulatory (*County of San Mateo v. Southern Pacific R.* 1882, p. 744; for exposition, Horwitz 1992, pp. 69–70).[1] The debate continues, with the challengers now ascendant (see Levy 2014 for a pluralist's account, Easterbrook & Fischel 1991 for an antiregulatory account) but facing new resistance (Ciepley 2013a, Greenwood 2015, Hockett & Omarova 2016). It can get heated. After all, the question touches one of the most important ideological disagreements of the modern era. Is a market economy a natural, self-propelled, self-regulating, relatively autonomous private sphere, with government having mostly a limited "night watchman" role [Smith 1976 (1776), p. 482; Friedman 1962]? Or is the economy a public project, the promotion and shaping of which is a primary purpose of modern government (List 2011, Schwartz 2019)? The business corporation is now our lead market actor. If it is constituted by the public authority, the night watchman view cannot be right—certainly not

[1] In one case, however, doing so was part of a corporate accountability agenda, an effort to hold corporations criminally liable, as real personalities capable of intentions and culpability. See Hager (1989).

anymore. Who could argue with a straight face that government should not intervene in the economy, if the corporation is created through government intervention? Also, great interests are at stake. A publicly constituted entity presumptively bears obligations to the public, beyond the obligations of private associations that use only contract law. This public support for the corporation could justify subjecting it to limits, obligations, and governance reforms, including democratic reforms. Such interventions could crimp the freedom and curtail the benefits currently reaped by executives and stockholders.

The surest path to clarity in this debate is to set aside metaphors for what corporations are like, and hypotheses about how they might be formed through contracting, and focus instead on the mechanics of how business corporations are in fact brought into being. We begin with the corporate charter, which empowers an entrepreneur or team to begin operating as a corporation.[2]

A corporate charter is a legal document issued by the public authority. Historically, this would be an emperor, king, pope, or parliament with authority to mandate that the courts uphold the charter's terms. At American independence, the British king's right of chartering corporations passed to the colonial legislatures and then, under the Union, to the federal and state legislatures, with state legislatures today generally delegating the task of chartering to an office of the secretary of state. The charter, along with any incorporation statutes to which it might refer, serves as the constitution of the corporation. It constitutes two things: the corporation as a legal entity and the government of that corporation.

First, the charter ordains a new legal entity (a property-owning and contracting individual, or "person") and gives it a name (e.g., "Princeton University," or "McDonald's Corporation"). In the eyes of the law, this entity—an invisible and intangible legal posit—is the corporation (*Dartmouth College v. Woodward* 1819, p. 518). Everything else—land, labor, and capital—is owned by it or contracted by it. In other words, it is the sole proprietor and sole contracting party of the organization, and therefore it also bears all its liabilities.

In business, it is more commonly said that the stockholders own the corporation and its assets. This encourages one to think of corporations as but glorified partnerships of stock investors, but that would be a mischaracterization.

The roots of the confusion go all the way back to the English East India Company. Founded in 1600 as a form of merchant guild, in the mid-seventeenth century it began copying its more successful rival, the Dutch East India Company, which was first to reorganize as a unified business corporation (Gelderblom et al. 2013). But the English failed to copy the Dutch vocabulary for describing this new creature. Instead, they continued to describe their stockholders in the language of partnerships and guilds, as owners and members, unlike the Dutch, who knew they were not (Ciepley 2020). This misdescription was passed along to all subsequent Anglo business corporations, but it cannot withstand close examination.

Ownership can be thought of as a bundle of rights (Honoré 1961). Were stockholders to hold at least a few of these rights over the organizational property, that could be excuse enough to call them its owners. But in fact, all rights of ownership are held by the entity and none by the stockholders (Robé 2011). Specifically, in the United States, as in most jurisdictions, stockholders have no right to use the assets, exclude others from them, lend them out, collateralize them, sell them, or claim the profits they generate (the residual, which belongs to the entity and is distributed

---

[2]In some European countries (e.g., Sweden), no charter is issued. Instead, corporations are constituted by filing "articles of association" with the state in conformity with a general statute of incorporation [see, e.g., the Swedish Companies Act (2005, p. 551)]. The statute and articles together then serve all the purposes of the Anglo-American charter.

by management at their discretion). Even at dissolution, the stockholders are in the position of heirs, not owners (Ciepley 2013a, 2020).

Second, because an abstract legal entity cannot itself act, the charter also constitutes a government for the corporation, such as a board, with authority to manage the corporation's property and contracts as its legal agent. A corporation has officers rather than owners, with authority derived from the charter rather than from an owner's right to exclude. What is more (and too often overlooked today), the charter also grants jurisdictional authority to this government—the right to legislate, that is, to set rules (by-laws and work rules, for example), usually by majority vote, that are enforceable in court so long as not inconsistent with the law of the land. However, the board and its delegees may only use the corporation's property, contracts, and jurisdictional authority for the purposes authorized by the charter (e.g., providing higher education, religious community, or, with the latitude offered many business corporations today, "any legal purpose"). The charter creates and organizes the offices of this government. It empowers them, limits them, and establishes the procedures for filling them, as does any modern written constitution (Ciepley 2017, pp. 420–21).

The contractualist challenge to the business corporation's public provenance stumbles on both of these points. First, you and I cannot bring into being a new legal entity with rights enforceable against third parties. Only a sovereign or semisovereign with authority over the courts and police (the rights enforcers) can do that. To attempt it contractually, you and I might form a partnership and contractually bind one another not to withdraw assets from it. Is this equivalent to creating a corporate entity, which dedicates property to a purpose in perpetuity? No. One difference is that courts will only enforce such contracts for a limited term; perpetual lock-up is regarded as inconsistent with the rights of individual property ownership (Hansmann & Kraakman 2000, p. 412). Another is that our contract does not exempt us from liability for the debts or unintentional torts of the firm (as stockholders and corporate officers are exempt). We might get part way there by requiring that all our contractual counterparties sign riders restricting their claims to the property used in the partnership (Hansmann et al. 2006, p. 1342), but that would not shield us from the claims of third parties that might be harmed by our firm. The third difference between our contract and a corporate entity is that you and I cannot shield the assets of our firm from the claims of our personal creditors should either of us personally go bankrupt. Such "entity shielding" requires organizational law and was only recently extended to partnerships by statute (Hansmann et al. 2006, p. 1336).

Furthermore, you and I cannot legislate for others, nor can we erect a board with this power. Jurisdictional authority (rule-setting backed by force) is monopolized by the state—and for good reason. So we would have to get by with the more limited and inflexible tool of a contract. Labor contracts would allow us to set rules for our employees. But we would need unanimity among the partners regarding our governance structure and procedures, which would be calcified in contract, and we would also need unanimity on all major operational changes. If it is just the two of us, we could likely pull it off, as partnerships do, but not with 10,000 or 100,000 partners. Corporations are spared this inflexibility, and can attain such scale, by having boards (or some other structure of offices) endowed by the state with jurisdictional authority, which allows them to operate by majority vote on all matters.[3]

[3] Something approaching a business corporation can be (and sometimes was) formed contractually through use of the Anglo-American trust (Morley 2016), but it still falls short of a full corporation (Harris 2000, pp. 137–67). Further, the trust device is an oddity of English law. It was for long enforced only in English courts of equity,

Arguably, certain nonprofit organizations have attained something like corporate status without state backing. Such instances have been used for denying the public provenance of corporations in general (Maitland 2003; Levy 2014, pp. 87–105). For example, religious organizations, such as churches, temples, and monasteries, are often held to be the property of a god or saint (Rosenwein 1999). The god or saint then functions like an undying legal person, or corporation, to whose purposes the property is dedicated in perpetuity (Ciepley 2014, pp. 8, 21). Being sacrosanct, the organizational property is set off from the personal property of the priest or prelate without need for the sword of the state to protect it.

To take a different kind of example, members of medieval funerary societies pooled dues into a "common box," or treasury, to be used for the funeral expense of members. They also set rules for their members, which the community appears to have condoned, such as fines for members who failed to show up at a member funeral (Brentano 1870, pp. 6–8). Such simple, community-based organizations as these built on and reinforced reigning values and customs, such as mutualism and respect for the dead. Also noteworthy, they lacked transactions with external parties that might lead to claims requiring external enforcement of the distinction between organizational property and member property. Local custom supported their practices, and this was sufficient. So not only religious organizations but simple, self-contained, custom-abiding organizations such as these might operate in corporate fashion without a royal charter.

A similar analysis might be made of the classic example [Reynolds 1977, Gierke 1990 (1868)] of medieval towns that attained corporate status without express royal chartering. Furthermore, in this case, the widespread presence of *bona fide* incorporated towns made it easy for courts to accept others as corporate "by prescription," on the presumption that their charters had simply been lost over the centuries (Blackstone 1765–1769, p. 461).

But business corporations are not like these. They are not in general dedicated to sacred purposes but profane ones. They are engaged in far-flung transactions with third parties (Pistor 2019, pp. 16–18). And they operate by rules often in violation of local custom, such as liability exemptions for the investors and officers who together control the firm. This requires support outside of God and custom. For business corporations to defend their practices by force would require them to become states in their own right. Short of this, they must rely on enforcement by an external authority wielding this-worldly sanctions. That is, they must rely on a state or quasistate. No state, no business corporation. (For empirical support from Ming China, see Zhang & Morley 2023.)

This has practical implications in terms of the kind of state capacity needed to create a corporate economy. But it also has potential policy implications. The existence of a corporation, its governmental structure (whether democratic, authoritarian, or mixed), and its governing authority, are provided by the public authority, rather than being the indefeasible choice of private parties. It is easy to see that this public sponsorship might have implications for whom corporations should serve and how they should operate.

MIMETIC RELATIONS

The corporation, I have observed, is a juridical person steered by a legally constituted government that exercises jurisdictional authority. Strikingly, this also describes a constitutional state. The parallel is not happenstance. Justinian's *Digest* of Roman law, Europe's leading sourcebook on the corporate form, notes that the corporation is "modeled on the state" (*ad exemplum rei publicae*),

---

being unenforceable in the common law courts (which held to a strict conception of property rights), and was, for example, unavailable in Continental Europe until very recently, when the European Union adopted it to harmonize laws with the United Kingdom.

with specific mention that, like a state, it has a treasury of its own and must appear in court via a lawyer i.e., it needs a legal agent, since it cannot appear in person (*Digest* 3.4.1).

Indeed, because it is the state that ordains its form and authority, we may well regard the corporation as not just a copy but a replicant of the state. Through the device of incorporation, the state replicates itself in a legally subordinate form, extending to the corporation an iteration of its own legal personhood and jurisdictional authority, to be exercised by a government it prescribes for purposes it condones.

However, the direction of imitation has not been one way only. Ever since the eleventh century, when Europeans recovered the corporate concept from Roman law, the most significant imitations have run in the other direction, from corporation to state. The most basic reason is that Europe at that time did not *have* juridical states—states operating as juridical persons, owning property, making contracts, and appearing in court in their own names, with governments headed by officeholders acting as the states' legal representatives and fiduciaries. Rather, kings claimed personal ownership of their realms and were not regarded as fiduciaries to anyone (except perhaps to God). As the great English legal historian Fredrick Maitland (2003, p. 33) cautioned with reference to the English king, "in the main all his lands were his lands, and we must be careful not to read a trusteeship for the nation into our medieval documents." To read that the corporation was erected "on the model of the state" thus gave medieval Europeans little additional guidance on what a corporation should be, but it was a revelation on what a state should be. And thus began the long, fitful, but truly remarkable process, carried forward by generations of jurists, of reverse-engineering a constitutional state on the model of the corporation.

Two distinct remodelings were involved, corresponding to the two main features of the corporation. On the one hand, the juridical form of the corporation—its status as a separate legal entity, owning property and making contracts in its own name—was adopted by the government, making it a juridical state (for contrasting views of this process, see Runciman 2000, Skinner 2018, Ciepley 2023). Among other things, this introduced a distinction between the personal credit of the king (which was usually miserable) and the public credit of the state, which enabled expansion of the public debt and thus expansion of the government's money-making, war-making, and state-making capacities. On the other hand, the constitutional form of the corporation—its legally defined governance structure—was adopted by the government, making it a constitutional state. Here I focus on the latter.

The Constitutional State

As conventionally narrated, the roots of Western constitutional democracy trace back to ancient Athens,[4] but Europe was more immediately the intellectual heir of Jerusalem and Rome than of Athens. Accordingly, in medieval Europe, as today, legitimate rule was authorized rule—authorized by something superior to itself, such as God (the font of authority in Jerusalem) or the people (the font of authority in Rome). This manner of grounding rule is almost wholly absent from Greek political philosophy. Consequently, though it has much to say about the best type of regime, Greek philosophy says very little about the right to rule, and therefore contributed little to European thinking about authorization, delegation, and representation, the basic building blocks of political order in Europe. But corporations had much to teach about each of these.

Building on the classic research of Gierke [1990 (1868)], Maitland (2003), and Kantorowicz [1997 (1957)], there has lately been a small but notable revival of scholarly interest in the

[4]National Geographic provides a typical popular account (**https://education.nationalgeographic.org/resource/greek-influence-us-democracy**); Kloppenberg (2016, pp. 27–37) provides a more nuanced scholarly version.

corporation's contribution to medieval and modern constitutionalism (Tierney 1982; Lutz 1988; Bilder 2006; Skinner 2009; Oakley 2012, pp. 147–59; Ciepley 2017; Bowie 2019). As noted, corporations are not just abstract legal entities. They are entities controlled by little governments, which have a legally specified structure and legally specified procedures for filling offices and conducting their affairs. This precocious legal specificity made them attractive models for any organization looking to regularize its procedures (or for organizational critics pushing to reform them), including for those most sovereign of organizations: church, empire, and kingdom. Indeed, medieval jurists did not draw our distinction between sovereign states and subordinate corporations but styled the church, empire, kingdom, and city-state as themselves corporations [Tierney 1955, pp. 132–53; Canning 1980; Gierke 1987 (1900), pp. 39–40; Maitland 2003, p. 34]. The internal constitutional order (the *constitutio*) of corporations thus became a model for constitutionalizing government at the highest levels, often carried there by the clerics and lawyers brought in as staff. Practiced in corporate governance through their membership in cathedral chapters, universities, and other such corporations, they placed these governance ideals and habits in the service of the pope, emperor, or king (Tierney 1982, p. 10).

Allowing for a degree of conceptual streamlining, medieval jurists had three basic models of the corporation to draw on. The root question dividing them was over where the corporation's original *jurisdictio* lay—in the members, the head, or the whole. Each answer resulted in a different picture of delegation, a different theory of representation, and therefore a different model of constitutional order.

The corporation that Europeans discovered in the Roman law books had crystallized under the Republic and was itself republican in form. All rights of jurisdiction and control lay with the members, who might institute a corporate head, who was at all times accountable to them, or might not, as they saw fit. This was the legal construction placed on most early civil corporations, such as towns, guilds, and universities [the faculty of which were the members, electing the rector (Kaufman-Osborn 2023)]. Applied to the city-state (Canning 1980), the empire [Gierke 1987 (1900), pp. 39–40], and the kingdom (Skinner 1978, pp. 135–358), it helped generate the doctrine of popular sovereignty, the notion that rulers receive their authority from the people (the corporate members), whom they should serve and to whom they are accountable (Lee 2016)—the foundational doctrine of modern republican government (although at this stage largely restricted to resistance theory). In other words, it is the corporation that was the principal carrier of republican thought and practice throughout the medieval and early modern eras (Black 2003).

The Roman law corporation was too democratic, however, for the hierarchical Catholic Church, which developed two alternatives. The *universitas rerum*, or property corporation, applied to bishoprics, chantries, and various prebends, where it served to distinguish between personal and institutional property. Because it incorporated property rather than persons, it had no true members,[5] so jurisdiction perforce lay with the head. This made it formally autocratic—although this only mattered once employees were added to the picture. As we will see, this became the form of the Anglo-American business corporation, with the board as head. And almost all other Anglo corporations (universities, nongovernmental organizations, etc.) have followed suit. Their boards are neither elected by, nor accountable to, those over whom they rule (the employees), whose welfare is not their end.

The other Church innovation—the canon law member corporation—had members. But it was required to have a head also, and although this head was elected by the members, it was elected

[5]This did not stop the English (and English alone) from finding members for it. When the property corporation was not-for-profit, they construed the officeholders as members. (If there was only one officeholder, this person became a "corporation sole," or one-member corporation.) When it was for-profit, they construed its stockholders as members (Ciepley 2020).

for life, so it was not accountable to the members (Berman 1983, p. 219). The Merovingian and Carolingian "free monasteries," whose monks elected their abbot (Rosenwein 1999), may have been the prototype. But the cathedral chapter became the lead model, composed of cathedral priests who elected a head, the cathedral bishop. Head and members took the lead on different matters, but on the most important decisions, they had to concur. Jurisdiction lay with the whole. It was thus a model of "mixed government" and helped model relations between pope and cardinals, pope and council, and king and Parliament (Tierney 1982).

In sum, in an era when hierarchy and monarchy seemed natural and sacred, and popes, emperors, and kings strove to establish centralized rule, corporations offered alternative images of proper political order. The Roman corporation was invoked in support of republican rule (or against arbitrary, autocratic rule), and the canon law corporation was invoked in support of a mixed, constitutional conception of rule, in which head and members share power.

Constitutional Democracy

An even more dramatic transfer of corporate constitutionalism was to come. It sounds unpromising: the transfer of corporate governance mechanisms from the merchant guild to the state. But this is in fact the story of the birth of the United States and of the modern constitutional republic.

The earliest American colonies were literal corporations of the Crown. The Massachusetts Bay Colony was the Massachusetts Bay Company; the Virginia Colony was the Virginia Company. These were not companies in the style of the modern business corporation. They were "regulated companies"—merchant guilds formed for overseas trade or colonization, in which each member had one vote in setting rules and electing the company's governor. Their governance was thus more like that of medieval towns, although it was investors, not colonists, who were the initial members. However, Massachusetts approached more closely the old town member corporation when Puritan investors acquired majority control and John Winthrop, the Puritan governor of the colony, threw open corporate membership to all male householders who were church members in good standing—a large majority of the adult male population (Morgan 2006, pp. 78–81). That meant they would participate in the corporation's general assembly of members (the General Court) to elect the Governor and Assistants—in effect, the president and senators of the colony—and to pass corporate by-laws, that is, to legislate (Maloy 2008, p. 119). In other words, with this straightforward expansion of the membership, the government of this merchant guild was transformed into the government of a (church-going) republic. The charter functioned as its written constitution. It was from this experience that Americans got their understanding of what a constitution is: a written legal document—a charter—that authorizes and limits a government. This was not the Greek or Roman understanding, nor the British understanding. It came from living under a corporate government.

Americans liked the idea of limiting government by charter. They associated it with liberty, freedom from arbitrary rule. Life under a sovereign government, such as Parliament, they associated with despotism, even political slavery; they did not want their government to be sovereign (Wood 1969, pp. 328–43). But the break with Britain left the Americans with a problem. Their existing chartered governments had all been chartered by the Crown, so independence left their governments technically unchartered, unauthorized, and unlimited, and there was no other sovereign to turn to for rechartering. Or was there?

This was the great American constitutional innovation: to synthesize corporate chartering with popular sovereignty. Just as a sovereign king could issue a corporate charter to found a government with a legally limited (charter-limited) jurisdiction, so could a sovereign people. The US Constitution is not a written "social contract," as widely held, but a popularly issued corporate charter, or "constitutional charter" (*Federalist* 49).

To see the close homology, first note the traits of an early modern corporation:

- Authorized and limited by a charter issued by the *king*
- Owns property and makes contracts in its own name (is a juridical person)
- Authority resides in the office, not in specific persons
- Its officers are not legal agents of the *king*. They are fiduciaries to the purposes established in the charter
- The *king* does not directly participate in its government, but. . .
- The government may not act outside the bounds of the *king's* charter
- These restrictions are enforced by the *king's* courts rather than by the *king* directly, but. . .
- The *king* reserves the right to amend the charter if unhappy with the way things are going

Read through this list again, but substitute "people" for "king." It now perfectly describes a modern constitutional state. All the things that we think of as American constitutional innovations—constitutional conventions, written charters, judicial review, and charter amendment (and, one might add, elected executives)—represent a transfer of instrumentalities used for governing corporations, to governing the state (Ciepley 2017).

The Business Corporation, Fraternal Twin of Constitutional Democracy

North America was not the only place where the English Crown sent regulated companies to advance its mercantilist and early imperial ambitions. It also approved one for the East Indies. Like the Massachusetts Bay Company, the East India Company (EIC) began as a merchant guild—specifically, a regulated company—whose individual members had the right to trade to the Indies, although in practice subsets of them joined in partnership to equip and send out small trading fleets. But the guild did not open membership to those at their trading outposts who were under its authority, nor to its employees. Instead, facing the competition of their much larger rival, the Dutch East India Company, the merchant-capitalists of the EIC were allowed to convert the government of the guild, whose principal subjects had been the merchants themselves, into the government of a unified enterprise, whose subjects were the employees (Gevurtz 2004, p. 122). This was turning the guild inside out, from a device for protecting the independence of the individual tradesman (Black 2003, pp. 9, 182; van Bavel 2016, p. 175) to a device for scaling up, and thereby undercutting the individual tradesman. Tradesmen were then reabsorbed as employees, creating armies of dependent labor previously reserved for pharaohs, emperors, and kings. [Indeed, by 1803, the EIC had grown to employ a literal army of a quarter million men (Robins 2003, p. 79).] The result is no republic. Nor is it a "shareholder democracy" (see **https://en.wikipedia.org/wiki/Shareholder_democracy**). It is a form of imperial oligarchy, with one group (the propertied stockholders) electing a government over another group (the employees) for the purpose of labor extraction.

The startling lesson, unremarked by previous scholars, is that constitutional democracy and the business corporation are fraternal twins. As contemporaneous offspring of England's first, corporate empire, they have a common origin and a common legal structure. Both developed out of the merchant guild, and both are juridical entities with a chartered government. But they developed in different directions with divergent governing structures—republican versus oligarchic and authoritarian—raising tensions between them.

The transfer of juridical personhood and constitutional structures between the corporation and state hardly exhausts the history of their mimesis. Management techniques, for example, freely flow between them. In the late nineteenth century, the staff-and-line organization pioneered by the military passed over to industrial enterprise (Talbot 2003). In the late twentieth century, the multidivisional organization pioneered by General Motors passed over to the state as "new public management" (Brunsson & Sahlin-Andersson 2000). The transfer of constitutionality between corporation and state is thus but the most dramatic example of a regular circulation of organizational forms among legal entities.

INSTRUMENTAL RELATIONS

We have seen that relations between the state and corporation are complex even before we consider their instrumental relations. Ontologically, without the state there is no corporation (at least, no business corporation). Conceptually, without the corporation there is no constitutional state (at least, not in the modern sense of a juridical person with a chartered government). Historically, the constitutional democratic state and the business corporation sprang from the same womb with the same legal genetics (although differently expressed). And they continue to borrow each other's new governance devices (algorithmic governance, surveillance technology, etc.). State and corporation are distinct but closely related instrumentalities that have been built up over time through a dialectical process of coformation.

Consideration of the instrumental relations between the two only adds to the complexity. Reciprocal support was the original premise of all incorporations. In the typical case, the king would see (or would be brought to see) something he wanted done—such as higher education or trade to distant lands—that he could not or would not do himself, lacking the money, organizational capacity, expertise, or desire to be directly responsible. On the other side, private parties might see the activity's potential benefits to themselves but not undertake it for lack of means, governing authority, or willingness to accept liability. The corporation provided a way forward. The king would make available to private parties a nonsovereign government—a corporation—that pools private resources and capabilities and places them under centralized control, with liability for debts and accidents displaced to the entity. In the early years, a monopoly was also usually bestowed on the corporation, as on other government bodies, further promoting its success (Roy 1999, p. 52). But the corporation was restricted by charter to the purpose the king approved. By this means, things got done that otherwise could not have been done, in a public–private partnership that helped each side achieve its goals. Private parties gained in collective power; the public authority gained in infrastructural power (on this concept, see Mann 1984), channeling private capital and organizational capacity to royal ends. Such mutual support was the corporation's chief rationale.

In the early American republic, the rationale for incorporations remained the same, but elected state legislatures replaced the king as the chief chartering agencies. How would they square the imperial government of the business corporation with the democratic ideals of the republic? It might be expected that the radical democratic sentiment unleashed by the American Revolution (Wood 1993) would move state legislatures to attempt to reform the business corporations—from oligarchic, authoritarian, and arbitrary back to republican. With respect to incorporated towns, that attempt did occur (Maier 1993, p. 63), as it did in the myriad small nonprofit corporations (charities, self-improvement societies, and mutuals) marveled at by Tocqueville (Butterfield 2015, p. 4). But in propertied corporations such as universities and business corporations, it did not.

It is jarring that, under a federal constitution that "guarantee[s] to every State a Republican Form of Government" (Article IV, Section 4), state governments should turn around and put their citizens under arbitrary and authoritarian *corporate* governments. With respect to business corporations (the main concern here), this occurred partly because no one had yet questioned the dogma that stockholders are the owners and members of the business corporation (Butterfield 2015, pp. 119–57). And it follows from this dogma that they should have the sole control of the corporation. The result is an authoritarian corporation, with the ruler unaccountable to the ruled. For early Americans, democratizing the business corporation did not mean empowering the employees. It meant broadening the stockholder base (and sometimes weighting votes to the advantage of small holders), and much effort went toward this goal (Butterfield 2015). But this merely multiplied the number of rulers, and time would show that the dispersion of stockholding only frees and strengthens the hand of central management (Berle & Means 1932, p. 116).

The Failing Effort to Hold Corporations to the Public Interest

Authoritarian corporations could be reconciled with democracy on the consideration that democratic legislatures, not kings, were chartering them, and not for the king's interest but for the public interest. Like platoons, they would thus strengthen the republic even though internally autocratic. But holding corporations to this public interest standard—their end of the public–private bargain—proved challenging. State legislatures controlled neither the purse nor the personnel of corporations. Nonetheless, legislatures began with numerous tools at their disposal that they believed would keep corporations on the straight and narrow.

First, each corporation would need a special charter from the legislature, which was sent through committee and voted on like any other piece of legislation, and the bar was (formally) set high. There was widespread acceptance of the standard put forth by Adam Smith—a sharp critic of corporations for being legally privileged and lackadaisically managed—that they should be chartered only for activities that genuinely "private adventurers" such as partnerships and proprietorships could not undertake (for lack of sufficient capital), and only when the activity would, on the "clearest evidence," bring public benefits beyond that of "common trades" [Smith 1976 (1776), p. ii.247; see also Hovenkamp 1991]. Early charters were thus highly restrictive as to what a firm might do (see Lamoreaux 2016, emphasizing the democratic backdrop to the strictures), and courts were given the power of "visitation" to enforce them (Pound 1936). For example, a corporation might be chartered to build a bridge, which had a clear public benefit. If it did not get this done, its charter could be revoked through a *quo warranto* proceeding, and if it did anything more than this, it could be struck down as *ultra vires* (beyond powers). Additionally, charters imposed strict governance standards; they limited the capitalization of corporations; and corporations were universally barred from owning stock in other corporations, to prevent conglomeration. Charters were also typically set to expire after 10 or 20 years (Maier 1993, pp. 63, 78). If the incorporators sought renewal, they could be judged on their past behavior. Charters could also be unilaterally revised or rescinded, prior to *Dartmouth College v. Woodward* (1819). Finally, there was no opportunity at this time to "jurisdiction shop"—chartering on lenient terms in one state while operating in another. Brought to life by state law, corporations chartered in one state had, in any other state, no legal existence and thus no right to operate, except on sufferance of that state's legislature and on its terms (*Bank of Augusta v. Earle* 1839). Commerce Clause protection against state regulation of interstate commerce did not apply to corporations. Although these safeguards did not always work well in practice (Hilt 2014), they appeared promising in theory.

But all these safeguards gradually unraveled. One early problem was that the system of restrictive chartering induced legislative corruption. The first corporate lobbyists were lobbyists for charters. Charters were valuable, and not everyone who wanted one could get one. Favoritism and bribery became common complaints. In one of the most insidious developments, political parties in power began issuing bank charters (which were very valuable) to political allies in return for kickbacks to the party, while denying bank charters to political opponents (North et al. 2012, p. 236). This was certainly a system of mutual support, and it was not so different from how the king had sometimes operated (Brenner 1993). But by republican lights, it was textbook corruption, with the public interest perverted by designing parties in league with monied interests.

The eventual solution, widely adopted by the 1850s, was the general incorporation statute. It allowed anyone who wished to enter an approved line of business (and use the statutorily required governance structure) to receive a charter upon payment of a fee to a secretary of state, with no questions asked and no expiration date (Wallis 2005). This was a different kind of democratic approach to the corporation—at least, promoted as democratic, although perhaps more accurately described as liberal. Instead of strict regulation, it provided equal access, "in strict accordance with the great maxim of man's political equality," as expressed by William Leggett, one if its most voluble promoters (quoted in North et al. 2012, p. 239). This largely depoliticized the chartering process. But it also kicked down the leading guardrail of public superintendence: legislative chartering and rechartering.

Meanwhile, the federal courts, arrogating to themselves responsibility for fashioning a national internal market, ended the ability of states to exclude or discriminate against the corporations of other states (Bensel 2000, pp. 289–354). Corporations could now operate in one state while chartering in another. The unintended consequence was "chartermongering," a competition among the states for domiciling corporations, to collect their chartering fees and franchise taxes—a major source, and in some cases even a majority source, of state financing in the nineteenth century (Butler 1985; Grandy 1989, pp. 681–83; North et al. 2012). Because management chooses the domicile, incorporation law was bent to appeal to manager interests—especially manager interests that did not undercut stockholder interests, lest stock purchases evaporate (Carruthers & Lamoreaux 2016, p. 74)—including freedom of corporate activity, freedom to scale up, and reduced accountability (Cary 1974). The result was a race to the bottom in corporate law leniency. Governance restrictions, capital restrictions, and restrictions on what corporations might do were bid into the ground—and eventually, ironically, so were franchising fees and taxes (Grandy 1989).

The race was kicked off in earnest when, in the 1890s, New Jersey, the "traitor state" (Steffans 1905), made it easy for corporations to merge and allowed corporations to own the stock of other corporations. These changes undermined existing antimonopoly strategies and opened the door to conglomerates, holding companies, and, eventually, multinational enterprise. After Governor Woodrow Wilson retightened New Jersey's incorporation law, Delaware gladly stepped into its shoes and has been the jurisdiction of choice for US incorporators ever since. As meaningful regulatory devices, whether for the external conduct of corporations or for their internal governance, corporate charters and state incorporation laws were now both dead—gutted by interstate competition for incorporations. State incorporation law is now largely "enabling law," providing broad latitude for entrepreneurs, when incorporating, to suit the firm's governance to themselves (Grandy 1989, pp. 681, 685–86).

Modern scholars debate whether this race to the bottom, which liberalized incorporation law and empowered managers, occurred at the expense of stockholders or benefited them by increasing their returns (summarized in Carruthers & Lamoreaux 2016, pp. 71–72). This framing of the question reflects today's privatized conception of the corporation, in which stockholder returns are the measure of corporate success. But other consequences are clearer, probably more important, and worthy of greater study. The liberalization of incorporation law, for example, ended the preference once given to proprietorships and partnerships for having liable and responsible owners. It ended customized regulation, via the charter, of specific corporate undertakings. And, in catering to managerial interests, it militated against worker inclusion in corporate governance, even as the scale of operations that it enabled adversely affected the position of labor, both inside and outside of the corporation.

More broadly, the liberalization ended any special public benefit requirement for corporations. The corporation was normalized, left to produce public benefits on terms no different from those of any other economic actor—through the Smithean logic of the market's "invisible hand" (e.g., Leggett, quoted in North et al. 2012, p. 240). Of course, some corporations (e.g., construction companies and defense contractors) may be hired by a government to help it provide benefits to the public (e.g., highways and national defense). But such corporations do not provide these public benefits as a condition of corporate existence. They provide them on a market, contractual basis, paid for in cash.

The effect of these liberalizing changes of the late nineteenth century was to let corporations renege on their end of the original public–private bargain—the bargain that had justified their exceptional rights and their authoritarian governance. But with the corporation normalized, few continued to see it as the product of such a bargain. Factually, the corporation remained dependent on the state for its personhood, its centralized authority, and its liability privileges, but it had shed all outward signs of this dependence (such as legislative chartering). Instead of being seen as a delegated government, it was increasingly seen as a private, contractual association, and could thus be ideologically assimilated to market liberalism. "Corporations," wrote the prominent corporate lawyer and treatise writer Victor Morawetz (1882, p. 2), "are formed by the voluntary association of their members. . . . [T]he existence of a corporation as an entity, independently of its members, is a fiction; . . . the rights and duties of an incorporated association are in reality the rights and duties of the persons who compose it, and not of an imaginary being."

Shortly thereafter, the US Supreme Court began extending to corporations the constitutional rights of citizens. This has not rested on the view that corporations are legal persons, as widely assumed. On the contrary, so long as corporations were recognized as state-created legal persons, there was no question of granting them the rights of citizens. Rather, the Court has followed the associational logic of theorists such as Morawetz. The Court, in its view, is not granting rights to an entity but recognizing the rights of those citizens (the stockholders) whom it mistakenly sees as composing it (Ciepley 2013b, Blair & Pollman 2015). Prior to World War II, most of the rights in question were economic rights under the Fourteenth Amendment (largely retracted by the New Deal Court). Since the war, most have been personal and civil rights from the Bill of Rights—including the controversial right to spend unlimited sums in US elections, as if corporate funds were stockholder funds and this "speech" were stockholder speech (*Citizens United* 2010; for critique, see Ciepley 2013b). In other words, with the reclassification of corporations from delegated governments to private associations, free speech that is denied to the corporation's employees (as members of a so-called private workplace) is extended to the corporation. This and other corporate constitutional rights loosen the regulatory grip of the government on corporations, while tightening the electoral grip of corporations on the government. In this way, too, the legislature's instrumental control declines while the corporation's increases.

As this shows, constitutional democracy has proven fertile ground for the proliferation, protection, and empowerment of corporations, sometimes despite itself. Wary of raising taxes, but wishing to be responsive to constituent petitions for support in good causes, elected legislatures converged on incorporation as a costless solution. This step taken, the ideological strength of the democratic-liberal demand for equal opportunity soon opened the corporate floodgates. It is thus no coincidence that the world's first modern constitutional democracy also produced the world's first corporate economy. That American constitutional democracy is federated, with competition among numerous chartering units, further liberated corporations in directions of benefit to management primarily and stockholders secondarily. The connection Weber drew between capitalism and competitive nation states proved equally true for corporate capitalism among competitive substates: "The separate states had to compete for mobile capital, which dictated to them the conditions under which it would assist them to power" (quoted in Arrighi 2010, p. 13).

Have Corporations Been Good for Constitutional Democracy?

In sum, constitutional democracy has been good for corporations. In important work on the foundations of social order, North et al. (2012) provide an optimistic argument that, reciprocally, general incorporation law has been good for constitutional democracy. Stable constitutional democracies, they argue, simultaneously support and are supported by an "open access order." In an open access order, the state monopolizes violence, which it then uses to allow open access to all other social activities (politics, business, worship, education, etc.) and also open access to the organizational forms facilitating these activities (party organizations, business organizations, etc.). Synthesizing the logic of the self-regulating market with John Kenneth Galbraith's concept of "countervailing powers," North et al. (2012, pp. 141–42) argue that open access induces competition, and competition keeps the system open and adaptive. Market monopolies generate heightened profits ("rents") that attract new entrants, who erode the monopoly (pp. 129–32). Likewise, in open political orders (i.e., democracies), if the party in power tries to limit political competition and monopolize the state, minority parties attract support to challenge them (pp. 125–29).

But that is not all. Business and civil society organizations may also mobilize against the party in power, and will do so if its policies pinch them—including if the party seeks to generate advantage for itself by limiting access to some activity important to business or civil society (as when parties limited access to bank charters in exchange for kickbacks). Business and civil society organizations thus also help keep the political system open (North et al. 2012, p. 128). "[O]pen access in either economics or politics can be sustained only by the double balance of open access in both systems, and open access requires that a large share of individuals be able to form organizations at will" (p. 230).

North et al. (2012) never make clear why organizing corporations, rather than partnerships, is necessary for businesses to compete and to discipline government. Classical theorists of the self-regulating market, such as Smith [1976 (1776), p. ii.247], pointedly excluded them. But the argument would be that if incorporation is open to any it should be open to all, or it will generate rents that (as in the case of the banks) can be tapped by political leaders to dominate the political arena. In a world with business corporations, general incorporation helps preserve democracy.

This may be true—although ironically banking is the one sector where special chartering was restored, after 30 years of financial volatility under "free banking" (Hockett & Omarova 2016). However, a complication for this treatment is that corporations do not behave like the proprietorships and partnerships that inspired classical liberals to treat the free market as a self-regulating system, needing little more than policing of force and fraud [Smith 1976 (1776), p. 482]. Market self-regulation was premised on the personal responsibility of the producer, liable for all the firm's debts and torts (Hockett & Omarova 2016, pp. 464–65). Incorporation, however, shifts all (noncriminal) liabilities to the entity, excusing both investors and officers from them. This creates obvious problems of moral hazard in the form of economic and environmental risks that managers are more likely to take, to gain their potential upside, because personally immune from most of their downside. The corporation institutionalizes irresponsibility, and thus generates a much greater need for external regulation.

Market self-regulation is also short-circuited by the enormous scale of many corporate undertakings, which geographically separates those in control from the company's environmental harms and from its workers and customers. These distances disembed those in control from the social norms and negative feedback that historically curtailed abusive behavior. Finally, corporations generate monopoly (and monopsony) even under open access. Much more easily than proprietorships, corporations can buy up or interlink with rivals to create monopolies, or can grasp the opportunity of natural monopolies.

In short, corporations are not normal, and corporate economies are nowhere close to self-regulating. The corporate form is immensely valuable for enhancing productivity, especially where large amounts of specialized capital are needed (Ciepley 2013a, pp. 144–45). But it also generates significant and varied collateral damage, heightening the need and the demand for regulatory intervention. With the federal courts having loosed corporations into the national market, the response ultimately had to be national (over the long objection of these same courts). The so-called alphabet soup of US federal regulatory agencies that constitutional conservatives deplore were, and are, overwhelmingly meant to regulate corporations, including the Interstate Commerce Commission (established in 1887), the Federal Trade Commission (1914), the Securities and Exchange Commission (1934), the Federal Communications Commission (1934), the National Labor Relations Board (1935), the short-lived but dramatically interventionist National Recovery Administration (1933), the Environmental Protection Agency (1970), and the Occupational Safety and Health Administration (1971).

Few would argue that these regulatory bodies have solved all major problems. One risk, therefore, is that a corporate economy simply overwhelms the regulatory capacity of the state, allowing rent-seeking and harm to proliferate. This can result from underregulation or from regulatory capture. But even if regulation is robust, the scale, structure, and liability rules of corporate firms are such that, in many common circumstances, the risk-adjusted pecuniary interest of managers (especially middle managers) will be to violate regulations and even criminal law (Coffee 1981, Ciepley 2019a)—a problem significantly exacerbated by corporate governance regimes that pressure managers for improved earnings every quarter. In corporate economies, external regulation is both more needed, and less able, to control business malfeasance.

Another risk is political and is the focus here. By the mid-twentieth century, the tensions between democracy and the business corporation appeared, to many, satisfactorily resolved by the postwar economic settlements in many Western countries (Brick 2015; for the most prominent contemporary dissent from the notion that postwar "democratic capitalism" was really democratic, see Mills 2000). These settlements typically included (*a*) high tax rates on business corporations and the wealthy, to check economic inequality and to fund public investments and social safety nets; (*b*) strong labor unions and labor protections (including, in the Germanic and Nordic countries, board-level worker representation) to limit the arbitrary authority of managers and to secure a more even distribution of corporate income; and (*c*) either extensive public ownership (in Europe) or extensive regulation (in the United States), particularly of the corporate sector, including strong antitrust (antimonopoly) laws, corporate securities regulation, banking regulation, and campaign finance regulation, to limit corporate power and corruption (Yergin & Stanislaw 1998). These can be thought of as devices for securing, respectively, republican equality, liberty, and virtue in an industrial age. The coalescing of these settlements is (public ownership aside) largely consistent with the proposition of North et al. (2012, pp. 122–24) that open access orders expand government to address the interests of ordinary citizens in market-compatible ways.

But this proved not to be an equilibrium state. It just raised the stakes of gaining control of the federal government. The postwar settlements came under political assault in the late 1970s and were replaced by a neoliberal political economy that is hostile to high taxes, labor unions, public ownership, antitrust prosecution, and government regulation, but friendly to corporate autonomy, corporate capital mobility, and investor rights. The unsurprising consequence has been skyrocketing inequality, with a notable concentration of wealth at the very top (Mishel et al. 2015). A particular driver of this inequality has been neoliberal reform of corporate governance and executive pay, reorienting it from stakeholders to stockholders and from salary to stock options. As a result, more profits are "returned" to stockholders; and the average ratio of CEO-to-median-worker pay has, thanks primarily to stock-based pay, risen from 20:1 in 1965 to 300:1 today (Mishel et al. 2015), although a better accounting method places today's ratio closer to 900:1 (Hopkins & Lazonick 2016, pp. 53–55). A billionaire class that does not directly or indirectly draw its wealth from the corporate sector does not exist.

The immediate policy context for the neoliberal turn was the declining growth and rising inflation (stagflation) of the 1970s—arguably attributable to oil price shocks and monetary policy (Barsky & Kilian 2001), though neoliberals blamed the postwar settlements themselves (Rodgers 2011, pp. 41–76). But the genesis and implementation of neoliberalism has been a long process with many parts, and these parts all bear corporate fingerprints.

The story is in part about ordinary interest group politics. Pinched in so many places by the government, corporations—especially the dirtiest, most dangerous, and thus most regulated—have developed sophisticated professional lobbies to undermine these regulations, and even turn them to their advantage (Plotke 1992, Drutman 2015). But the story goes well beyond this. At its origins, a neoliberal "thought collective," centered at the University of Chicago, was sustained and spread by targeted corporate funding, distinct from previous patterns of university donations (Mirowski & Plehwe 2015). Much attention has also been given to the Powell Memo of 1971, which helped galvanize corporations against New Deal and Great Society regulation (Hacker & Pierson 2011). Out of this and related initiatives sprang the Business Roundtable; dramatic increases in corporate political action committee expenditures (Hacker & Pierson 2011); a network of free market think tanks (Medvetz 2012); the Federalist Society, to displace legal liberalism from law schools, federal agencies, and the judicial bench (Teles 2008); and a conservative media ecosphere, with roots in the 1950s, pressing themes of liberal media bias and liberal elitism (Hemmer 2016).

Meanwhile, the crucial political support for neoliberal policies has come primarily (though not only) from the Republican Party, a natural home for opposition to New Deal and Great Society legislation. The party has enjoyed electoral success, despite this procorporate, procapital policy agenda, by working assiduously to shift the grounds of political identity from class to culture—an approach that commenced with Nixon's Southern Strategy (an appeal to white southerners opposed to black civil rights) and continued with the use of wedge issues such as abortion, school prayer, gun ownership, gay marriage, and transgender access to bathrooms. The objective is to stoke politically favorable social polarization, which ironically feeds on the growing economic polarization and precarity induced by neoliberalism that would otherwise generate unfavorable class politics (Kalleberg 2013, Hacker 2019). This approach has accomplished the remarkable feat of pulling a majority of the white working class into the political party of neoliberal plutocrats. The risk to democracy is that the strategy has been most effective when conducted in the apocalyptic language of warfare between good and evil—and thus dubbed "culture wars" (Hunter 1991)—creating a political environment in which 30% of Republicans (and 11% of Democrats) now say violence may be necessary to "save" America (Gabbatt 2021), and 80% of each party sees the other as a threat that, if not stopped, will destroy America (Murray 2022). A recipe for "populist" authoritarianism, this raises the stakes of elections to the point of justifying bending democracy and the rule of law in order to keep the enemy out of power (McCoy & Somer 2019). A comparable use of culture wars by rightist parties against social democratic parties is now seen in Brazil and throughout Europe, whether by imitation or convergent evolution (Rydgren 2013).

The point is that for-profit business corporations and their beneficiaries appear unwilling to accept the restrictions on their prerogatives and profits that a balanced economy requires. And they generally have the resources and organizational capacity to undermine these restrictions.

These developments dovetail with a very different account of the trajectory of market societies than that offered by North et al. (2012). Market distribution of finished goods is commonplace in human history. Much rarer, as Polanyi (2001) noted, are societies that use the market as the primary means of allocating the key *inputs* of production—land, labor, and capital—as opposed to using some admixture of kin allocation and communal, ritual, and centralized allocation. In Eurasia, between the fall of Rome and the nineteenth century, there were only a few market societies in this deeper sense. Van Bavel (2016) provides a comparative history of the rise and decline of those societies—medieval Iraq, Renaissance Italy, and early modern Netherlands—along with briefer treatments of England and the United States, which have yet to complete the market cycle.

The regularity of their trajectories is sobering, because it dents the idea that the American or European trajectory could easily be altered by some minor adjustment. In every case, there is an initial condition of relative equality in wealth and power, often the result of a recent social revolution. A bottom-up demand for access to land, work, and capital propels markets in each of these, producing a period of rapid economic growth. But these markets also erode nonmarket restrictions on accumulation. Over time, therefore, clear market winners emerge, and their concentrated control of the key factors of production produces a sharp increase in inequality and social polarization. To generate returns that are more consistent, lower risk, and larger, these market elites reorient from productive enterprise to finance, including government finance, and interweave themselves with the government apparatus, where they bend the rules of the game to entrench themselves. Authoritarianism, economic sclerosis, and societal decline follow (Arrighi 2010; van Bavel 2016, pp. 2, 251–59).

Equally sobering, because of their familiar ring, are the harbingers of decline that appear in every case. These include the market eclipsing the state as an allocation system; a concentration in the control of the means of production, and the spread of monopoly; a growing share of the economic surplus being extracted by economic elites rather than the public authority; the amassing of huge fortunes; a cultural obsession with wealth; the spread of wealth protection devices (e.g., trusts); a declining ability to tax the wealthy; declining tax revenues; increased borrowing by the public authority from financiers; an interlinking of economic and political elites; the swelling of financial markets; a reorientation of the highly educated from serving the public authority to serving economic and financial elites; the shrinking of a middle class that could potentially invest; reduced incentives to invest in productive enterprise; a focus on short-term gains; declining productivity; increased coercion of labor as an alternative to paying higher wages; deterioration of the welfare of average people; spiking inequality; social polarization; an increase in unrest and rebellions; rising expenditure on security; and increased vulnerability of the society to wars and natural disasters (van Bavel 2016, pp. 63–94). Readers will not fail to hear the rhyme with developments in the United States over recent decades (Savage 2021).

Van Bavel's (2016) volume is deeply pessimistic about the possibility of halting or reversing this cycle. In his sketch of the American case, the addition of democratic politics does little to stop it. The reversal effected during the New Deal, World War II, and the early Cold War might suggest hope, but this was "no more than an interlude," brought on by a temporary market collapse and an external threat, and "did not bring a fundamental rupture" in the trajectory that "resumed again in the 1960s" (van Bavel 2016, p. 237). Economies that marketize the key factors of production produce sharp inequality and, as Justice Louis Brandeis long ago warned, "We can have democracy. . . , or we can have great wealth concentrated in the hands of a few, but we can't have both," because the wealthy few will capture the political system and entrench themselves (quoted in Dilliard 1941, p. 42).

Corporate Reforms to Dampen Inequality and Strengthen Democracy

This is a powerful critique. However, there may be an overlooked possibility that the corporatization of the economy opens. Corporations play a role in the stories of both North et al. (2012) and van Bavel (2016), but the details of corporate governance do not. I suggest that the

Great Inversion in corporate governance is the underappreciated backstory to the inequality and democratic deficits that leave democracies today struggling against new authoritarianisms. And it may be at least partially reversible.

In broad brushstrokes, here are our options: In a private property economy, but without entity ownership, large-scale organization brings extreme inequality, as one proprietor (or a few) owns all the assets and monopolizes control. We are thus left to choose between an egalitarian society without organizations (and thus scant collective power or geopolitical viability), or an organizational society, rich in collective power, but in which the few dominate the many. Entity ownership opens a new possibility: an organizational society, rich in collective power, but without domination or extreme inequality, because the public authority implements corporate control structures that more equally share control and benefits. This would be fully justified, given the public provenance of the corporation. Indeed, it is the story of medieval and early modern corporations. In its early applications (towns, universities, guilds), the corporate form increased collective power and wealth, but its control and benefits were shared relatively equally among the participating members (Black 2003).

Anglo-American corporate governance today squanders this possibility. Indeed, it does precisely the opposite, concentrating corporate control and benefits and thus exacerbating the inequality that market economies generate. This is not because authoritarian control is so obviously the most effective form of governance, even in business. The Germanic and Nordic countries have disproven that (Hassel et al. 2019). Rather, business authoritarianism rests on the myth of stockholder ownership, which implies that all power and noncontracted benefits should lie with stockholders. This is the ideological back door that allows wealth to reassert its control over the corporation, which it uses to concentrate wealth and power further, exacerbating social polarization and thus accelerating democratic jeopardy.

Is there a viable way to transform the source of this exacerbation—the corporatized economy—into a source of mitigation? This brings us to a final scholarly literature relevant to "democracy and the corporation"—the literature on democratizing corporate governance. Denmark may serve as an example. In Denmark's highly competitive corporate sector, 30% of corporate board seats are reserved for worker representatives, and nonprofit foundations have majority control of firms representing 70% of the value on the Danish stock market (Thomsen 2017). Both of these elements are worthy of comment.

Democratizing the corporation through worker participation in its control. Among political theorists, political philosophers, and some legal scholars and politicians, there has been a recent surge of interest in democratizing the corporation through greater worker participation in firm governance (for a recent overview, see Frega et al. 2019; see also Ferreras et al. 2022)—after a period of quiet following Robert Dahl's contributions in the 1980s (e.g., Dahl 1985). Some arguments address productivity—for example, a motivation argument posits that participation increases worker motivation (especially if it establishes a connection between worker performance and pay), and an epistemological argument holds that worker participation pools more relevant information, making organizations smarter (Gerlsbeck & Herzog 2020). Other arguments are directly political, such as the claim that habits and skills of democratic governance in the firm have positive spillover effects on democratic governance in the polity (Pateman 1975). Still others appeal to justice, arguing that in a democracy, all authority should be based on consent; that worker participation is necessary to avoid domination; that it is necessary to make work meaningful (for an overview, see Frega et al. 2019); and that it produces a more equal and equitable distribution of (new) wealth. With regard to the last point, studies of firms with codetermination by worker and stockholder representatives find an income boost for workers between slight and strong (Hörisch

2012, Jäger et al. 2022). If the above reflections are correct, such equalization is itself a contribution to more resilient democracy.

It could well be asked, however, if the wider distribution of revenues in worker-controlled firms is wide enough. Many postindustrial firms have large profits but few employees (with most of the work subcontracted). Also, the employees that remain are typically already well paid. Raising their pay further does little to close the gap with workers in low-margin, low-profit firms with numerous employees, such as large retailers. Additionally, on the thesis of this article, the ultimate beneficiary of the corporation should be the public, not the workers alone, any more than the stockholders alone.

Democratizing corporate benefits through charitable foundation control. This brings us to the Danish enterprise foundation. As noted, almost 70% of the market capitalization of all Danish registered companies comes from for-profit corporations whose boards are selected by nonprofit foundations, called enterprise foundations, that own a majority of their voting stock (Thomsen 2017, pp. 18, 105, 112). Three of the four largest Danish corporations—Carlsberg, Novo Nordisk, and Maersk—are foundation controlled (p. 19). (The United States too once had such firms, until the Tax Reform Act of 1969 banned nonprofits from owning more than 20% of the shares of a for-profit, for reasons no longer germane.) The arrangement does not seem to hurt the performance of the controlled for-profits. Indeed, they are more profitable (higher return on assets), on average, than their purely publicly traded peers, with less volatility (pp. 134–36).

This system of governance, in its pure form, leaves all power with the stockholder, but it changes the nature of the stockholder from a pecuniarily interested, short-term investor to a disinterested nonprofit foundation that is maximally oriented to the long term, being charged with advancing its corporate purpose in perpetuity. Perhaps for this reason, companies controlled by enterprise foundations score exceptionally well on product quality and social responsibility (including the treatment and pay of workers) (Thomsen 2017, pp. 146, 149). One imagines how the public performance of banks or social media companies such as Facebook might be improved by adoption of the form. And while R&D expenditure declines in Europe and the United States, it is exploding in Denmark due to R&D conducted by foundation-controlled companies and by the foundations themselves, which are usually charged by their founders to disburse excess corporate dividends to charitable causes, with scientific research absorbing almost half (pp. 195, 198). In short, this system of corporate governance widely distributes a sizeable share of the profits of the Danish corporate sector via nonprofit charitable foundations, generating not just private goods for the few, but public goods for the many.

However, Denmark does not use the system in pure form, but, as noted, combines it with worker board representation at the 30% level. Given this combination, it is perhaps not surprising that Denmark vies for Western Europe's lowest level of economic inequality (World Bank 2019) and is a highly stable democracy. Although the proposition needs testing, this is likely not only a function of its system of taxation and fiscal expenditure but also of its system of corporate governance.

These are just two ideas on how the reform of corporate governance can preserve the immense productivity of the corporate form of business while spreading its income in a manner that constrains inequality and produces public benefits, in accordance with its original bargain with the state.

CONCLUSION: THREE CORPORATE AGES AND THE DYNAMICS OF WESTERN HISTORY

It may be useful, by way of conclusion, to situate our own time within the broader history of the corporation. The corporation, I have argued, is not fundamentally a business technology but a governance technology. It is a device for delegating state-like forms of property-holding, liability, and authority to private persons, to pursue state-sanctioned ends. However, a survey of history suggests that use of the corporation as an instrument of delegated governance is unstable.

Generally, after the initial honeymoon, the relationship between sovereign and corporation sours. Although (or because) the corporation controls its operations, staffing, and financing, it resents even the minimal restrictions that the sovereign imposes on the corporation setting its own ends, choosing its means, and structuring its governance; and, at least historically, it has also had to fear revocation of its charter. The sovereign, in turn, is frustrated that its children have minds of their own and cannot be brought to put their shoulder behind the sovereign's goals, and sometimes work against them. The sovereign often pushes for greater control in the relationship, sometimes to the point of absorbing the corporation into its own administrative apparatus, extinguishing its independent corporate life, as when the British Crown absorbed the East India Company or European countries nationalized major industries after World War II (Yergin & Stanislaw 1998). Contrariwise, the corporation pushes for greater independence in the relationship, possibly to the point of rupture, as occurred with Britain's North American corporate colonies. Or, even more to its advantage, the corporation may push for greater control in the relationship, to the point of "capturing" the sovereign and commandeering its policy so that the sovereign grants the corporation independence where it wants it and support where it wants it. The corporation imposes its values on the sovereign and reorients its governmental apparatus to the corporation's ends. This is why the Frankenstein monster simile seems so apt for corporations. The tug-of-war between sovereign and corporation is what gives European history (and the history of its offshoots) its distinctive shape and dynamic.

Tocqueville famously emphasized one direction of this corporation–sovereign dynamic, as appropriate to interpreting the situation of France in his day. This was the centuries-long process whereby the French kings undermined the independence of the corporations and provincial *parlements*, clearing the way for assertion of royal absolutism [Tocqueville 2006 (1856), pp. 312–13]. Today, one would point to Putin's Russia or Orbán's Hungary as examples in which autocrats, by bending or disregarding the rule of law, have brought their corporations into dependence (Magyar 2016). But to interpret a country like the United States, in which the rule of law largely continues to be upheld, it is the other direction of this dynamic that must be understood—the direction of corporate capture. It too has been a recurrent and momentous force in Western history.

European civilization has passed through three great corporate ages, each dominated by a different type of corporation, the lead organization of its day. The first age was the age of the Church corporation—the heyday of the canon law member corporation, the model for mixed government. The first of these were the monasteries. In the second half of the first millennium, popes chartered rafts of them, in part to channel popular movements for a purer Christian life, but also in part to undermine the power of the bishops [Davis 2000 (1905), p. 57]. The bishops at this time were not selected by the pope, but usually by lay election or royal appointment, and thus functioned as independent powers within the Church. The monasteries, as alternative objects of lay admiration and largess, sapped the financial resources of the bishops and deprived them of their popular followings.

But like all corporations, the monasteries were operationally independent of their chartering sovereign, who controlled neither their personnel nor purse strings. Over generations they accumulated vast wealth, especially from bequests. And they were organized—internally, as disciplined corps, and externally, as great congregations of sister monasteries, beginning with Cluny in 910. They thus became immensely powerful and were able to capture the Church that had chartered them, impressing their values on it. From the seventh through the ninth centuries, the Church was "monasticized" in its organization [Davis 2000 (1905), p. 56]. Then, after a century of degeneracy, it was captured by the monasteries again, as symbolized by the Gregorian Reform, and the monastic values of celibacy, discipline, and hierarchy were impressed on the Church as a whole.

The second corporate age was the age of guilds and towns. In good measure, these were incorporated and enfranchised by the king to sap the power of rival manorial lords (van Bavel 2016, p. 160). Grants of urban self-government undermined the lords' seignorial control of these increasingly important centers (Pollack & Maitland 2013); and grants of market privileges helped quicken and monetize commerce, generating taxes in coin that could readily be gathered by the king, as opposed to taxes in kind controlled by local lords (Schwartz 2019, pp. 8–11). But guilds and towns, too, were operationally independent, accumulated indefinitely, and were organized. And they too sometimes captured the sovereign that chartered them. First the guilds captured the towns and impressed their priorities and values on them. In a few important cases, the towns then captured the state and did the same. The Dutch Republic was essentially an alliance among the Dutch cities and their merchant groups (Adams 2007). As for England, we remember the Puritans as the foot soldiers of the English Civil War but forget that the Corporation of London bankrolled it (Brenner 1993, p. 689). This was Marx's *burgerliche* revolution, or bourgeois revolution, which could as well be translated "townsman revolution." Additionally, as discussed above, the American constitutional revolution represents, we might say, the nationalization of the charter republicanism of the guild and town. It was the last act of the second corporate age, in which the civic values of republicanism, rule of law, and commercial spirit were impressed on the state; henceforth the state was to serve civil society, rather than civil society serve the king and state.

As this suggests, corporate capture is not inherently bad. Its moral valence depends on the kind of corporation doing the capturing. What also bears noting is that, in every age, the leading class of corporations has passed on its form of governance to the central government. The mixed government of monasteries and cathedral chapters passed to the medieval kingdoms. The republican government of guilds and towns passed to (a few) early modern states. Often, the recruitment of personnel from corporation to government has been the conduit of this mimesis. This dynamic immediately raises a concern about the third corporate age.

The republican revolutions in England and North America, which culminated the second corporate age, simultaneously inaugurated the third corporate age, which is our own—the age of the property corporation, especially the business corporation. The US Constitution, in particular, provided unprecedented protection for property and contract and proved highly favorable to corporate rights, especially once the corporation had been ideologically privatized. In other words, the constitutional republic, which was developed out of the republican member corporation as a bulwark *against* arbitrary government, facilitated the proliferation of the modern business corporation, an authoritarian property corporation and *redoubt* of arbitrary government.

This third corporate age has itself generated three distinct corporate waves, each of which has threatened to overwhelm the republican state that launched them. The age began with the launching of the great trading companies—the first corporate wave. The English and Dutch East India Companies were the pace setters. Their chartering was to advance the purposes of the state, weakening Spain and Portugal by attacking and sapping their Asian trade. But the English EIC in particular, being under the control of its stockholders, was operationally independent of the Crown; it could accumulate property indefinitely; and it was organized. By the end of the eighteenth century, it had a quarter-million-man army, ruled directly or indirectly over a fifth of the world's population, and had revenues greater than the Crown's (Robins 2003, p. 79). It repeatedly worked at cross purposes to the British state, often corrupted it (soft capture), and nearly subverted it (Robins 2006). But after its own failures in India, the EIC was finally pushed back and, in 1858, was dissolved.

The second corporate wave was that of the great industrial combinations. The American states initially chartered corporations to advance their purposes, using them to build the nation's infrastructure. But these corporations were operationally independent, could accumulate capital indefinitely, and were organized. By the 1880s, the Pennsylvania Railroad had a larger budget than any state government.[6] Many more behemoths would be formed by the close of the century in the Great Merger Movement unleashed by New Jersey's liberal incorporation law. Some of these captured the state governments and even the federal government. New Jersey, for example, was known as the State of Camden and Amboy in reference to the railroad that controlled the Democratic Party and through it the state government (Roy 1999, p. 68). But the populist movement, and then the progressive movement, pushed back; and with the New Deal and Cold War, a kind of containment was established.

Today, we are caught up in a third wave, the wave of the neoliberal corporation (Ciepley 2019b). It is the corporation theorized as a private association, with constitutional rights of political participation that enhance its ability to capture the state. It is the corporation reoriented to short-term stock price, dropping its residual public benefit of generating long-term economic growth in favor of short-term value extraction for those who control it (Lazonick 2014). It is the corporation that has engineered a new global economic regime that allows it to leverage the mobility of capital and the mobility of legal personhood against the immobility of land, labor, and the natural world, degrading these latter while evading the state's regulatory and tax regimes (Ruggie 2018, pp. 323–24). It leaves the constitutional republic struggling to fulfill its founding purpose of advancing the welfare of its citizenry. Instead, the corporation bends the state to its own purposes. And it passes its own authoritarian habits to the state through the circulation of personnel and management techniques. We face a classic example of a new form of government—the constitutional republic—unleashing at its birth a new social force, the modern business corporation, that works, not wholly to undermine it (since it depends on the state to bear its protection costs), but to capture and reprogram it. But it does this by means of social polarization that may undermine the republic nonetheless, generating political turbulence that neither state nor corporation can control.

The Western democracies are now entering a new and challenging geopolitical and political-economic landscape, where the authoritarianism and short-termism of the neoliberal corporation will serve them poorly, both competitively and in terms of popular allegiance. Whether the democratic forces that remain have the capacity to push back this third, internationalized wave of corporate capture, and replace authoritarian corporate governance with an alternative that is at once more productive, more equitable, and more compatible with democracy, remains to be seen.

DISCLOSURE STATEMENT

The author is not aware of any affiliations, memberships, funding, or financial holdings that might be perceived as affecting the objectivity of this review.

ACKNOWLEDGMENTS

The author thanks the Aarhus Institute of Advanced Study for support during the composition of this article, and thanks Philipp Rieck, Elizabeth Sperber, and the anonymous reviewer for helpful comments.

[6]See **https://en.wikipedia.org/wiki/Pennsylvania_Railroad**.

LITERATURE CITED

Adams J. 2007. *The Familial State: Ruling Families and Merchant Capitalism in Early Modern Europe*. Ithaca, NY: Cornell Univ. Press

Anonymous. 2015 (1702). *The Law of Corporations*. Facsimile Publisher

Arrighi G. 2010. *The Long Twentieth Century: Money, Power and the Origins of Our Times*. Brooklyn, NY: Verso

Bank of Augusta v. Earle, 38 U.S. 519 (1839)

Barsky RB, Kilian L. 2001. Do we really know that oil caused the great stagflation? A monetary alternative. *NBER Macroecon. Annu.* 16:137–83

Bensel R. 2000. *The Political Economy of American Industrialization, 1877–1900*. Cambridge, UK: Cambridge Univ. Press

Berman H. 1983. *Law and Revolution: The Formation of the Western Legal Tradition*. Cambridge, MA: Harvard Univ. Press

Berle AA, Means G. 1932. *The Modern Corporation and Private Property*. New York: Macmillan

Bilder MS. 2006. The corporate origins of judicial review. *Yale Law J.* 116:502–66

Black A. 2003. *Guild and State: European Thought from the Twelfth Century to the Present*. New Brunswick, NJ: Transaction

Blackstone W. 1765–1769. *Commentaries on the Laws of England*. Oxford, UK: Clarendon

Blair M, Pollman E. 2015. The derivative nature of corporate constitutional rights. *William Mary Law Rev.* 56:1673

Bowie N. 2019. Why the Constitution was written down. *Stanford Law Rev.* 71:1397–1508

Brenner R. 1993. *Merchants and Revolution: Commercial Change, Political Conflict, and London's Overseas Traders, 1550–1653*. Princeton, NJ: Princeton Univ. Press

Brentano L. 1870. *English Gilds: The Original Ordinances of More Than One Hundred Early English Gilds*. Bristol, UK: Early English Text Soc.

Brick H. 2015. *Transcending Capitalism: Visions of a New Society in Modern American Thought*. Ithaca, NY: Cornell Univ. Press

Brunsson N, Sahlin-Andersson K. 2000. Constructing organizations: the example of public sector reform. *Organ. Stud.* 21(4):721–46

Burrow JW. 1985. *Whigs and Liberals: Continuity and Change in English Political Thought*. Oxford, UK: Clarendon

Butler H. 1985. Nineteenth-century jurisdictional competition in the granting of corporate privileges. *J. Legal Stud.* 14(1):129–66

Butterfield K. 2015. *The Making of Tocqueville's America: Law and Association in the Early United States*. Chicago: Univ. Chicago Press

Canning JP. 1980. The corporation in the thought of the Italian jurists. *Hist. Political Thought* 1(1):9–32

Carruthers B, Lamoreaux N. 2016. Regulatory races: the effects of jurisdictional competition on regulatory standards. *J. Econ. Lit.* 54(1):52–97

Cary W. 1974. Federalism and corporate law: reflections upon Delaware. *Yale Law J.* 83(4):663–705

Ciepley D. 2013a. Beyond public and private: toward a political theory of the corporation. *Am. Political Sci. Rev.* 107(1):139–58

Ciepley D. 2013b. Neither persons nor associations: against constitutional rights for corporations. *J. Law Courts* 1(2):221–46

Ciepley D. 2014. *The corporate roots of the liberal democratic state*. Work. Pap., Soc. Sci. Res. Netw. **http://dx.doi.org/10.2139/ssrn.4350951**

Ciepley D. 2017. Is the U.S. government a corporation? The corporate origins of modern constitutionalism. *Am. Political Sci. Rev.* 111(2):418–35

Ciepley D. 2019a. Can corporations be held to the public interest, or even to the law? *J. Bus. Ethics* 154(4):1003–18

Ciepley D. 2019b. The neoliberal corporation. In *Oxford Handbook of the Corporation*, ed. T Clarke, J O'Brien, CRT O'Kelley, pp. 274–96. New York: Oxford Univ. Press

Ciepley D. 2020. The Anglo-American misconception of stockholders as owners and members: its origins and consequences. *J. Inst. Econ.* 16(5):623–42

Ciepley D. 2021. *Governing people or governing property? How Dartmouth College assimilated the corporation to liberalism by treating it as a trust*. Work. Pap., Soc. Sci. Res. Netw. **http://dx.doi.org/10.2139/ssrn.3796298**

Ciepley D. 2023. The juridical person of the state. In *States, Firms and their Legal Fictions: Attributing Identity and Responsibility to Artificial Entities*, ed. M Durkee. Cambridge, UK: Cambridge Univ. Press. In press

Citizens United v. Federal Election Commission, 558 U.S. 310 (2010)

Coffee JC Jr. 1981. "No soul to damn: no body to kick": an unscandalized inquiry into the problem of corporate punishment. *Mich. Law Rev.* 79(3):386–459

County of San Mateo v. Southern Pacific R., 13 F. 722 (1882)

Dahl RA. 1985. *A Preface to Economic Democracy*. Berkeley: Univ. Calif. Press

Dartmouth College v. Woodward, 17 U.S. 510, 518 (1819)

Davis JP. 2000 (1905). *Corporations: A Study of the Origin and Development of Great Business Combinations and of Their Relation to the Authority of the State*. Fairless Hills, PA: Beard Books

Dilliard I. 1941. *Mr. Justice Brandeis, Great American*. St. Louis: Modern View

Dodd M. 1954. *American Business Corporations Until 1860*. Cambridge, MA: Harvard Univ. Press

Drutman L. 2015. *The Business of America Is Lobbying: How Corporations Became Politicized and Politics Became More Corporate*. New York: Oxford Univ. Press

Easterbrook FH, Fischel DR. 1991. *The Economic Structure of Corporate Law*. Cambridge, MA: Harvard Univ. Press

Ferreras I, Battilana J, Méda D. 2022. *Democratizing Work: The Case for Reorganizing the Economy*. Chicago: Univ. Chicago Press

Frega R, Herzog L, Neuhäuser C. 2019. Workplace democracy—the recent debate. *Philos. Compass* 14(4):e12574

Friedman M. 1962. *Capitalism and Freedom*. Chicago: Univ. Chicago Press

Gabbatt A. 2021. Almost one in three of Republicans say violence may be necessary to 'save' US. *The Guardian*, Nov. 1. **https://www.theguardian.com/us-news/2021/nov/01/republicans-violence-save-us-poll**

Gelderblom O, De Jong A, Jonker J. 2013. The formative years of the modern corporation: the Dutch East India Company VOC, 1602–1623. *J. Econ. Hist.* 73(4):1050–76

Gerlsbeck F, Herzog L. 2020. The epistemic potentials of workplace democracy. *Rev. Soc. Econ.* 3:307–30

Gevurtz FA. 2004. The historical and political origins of the corporate board of directors. *Hofstra Law Rev.* 33:89–173

Gierke O. 1990 (1868). *Community in Historical Perspective: A Translation of Selections from Das Deutsche Genossenschaftsrecht (The German Law of Fellowship)*, ed. A Black, transl. M Fischer. Cambridge, UK: Cambridge Univ. Press

Gierke O. 1987 (1900). *Political Theories of the Middle Age*, transl. FW Maitland. Cambridge, UK: Cambridge Univ. Press

Grandy C. 1989. New Jersey corporate chartermongering, 1875–1925. *J. Econ. Hist.* 49(3):677–92

Greenwood D. 2015. Person, state or not: the place of business corporations in our constitutional order. *Univ. Colo. Law Rev.* 87(2):351–435

Hacker JS. 2019. *The Great Risk Shift: The New Economic Insecurity and the Decline of the American Dream*. New York: Oxford Univ. Press

Hacker JS, Pierson P. 2011. *Winner-Take-All Politics: How Washington Made the Rich Richer—and Turned Its Back on the Middle Class*. New York: Simon & Schuster

Hager M. 1989. Bodies politic: the progressive history of organizational "real entity" theory. *Univ. Pittsburgh Law Rev.* 50(2):575–654

Handlin O, Handlin MF. 1987. *Commonwealth: A Study of the Role of Government in the American Economy: Massachusetts, 1774–1861*. Cambridge, MA: Harvard Univ. Press

Hansmann H, Kraakman R. 2000. The essential role of organizational law. *Yale Law J.* 110(3):387–440

Hansmann H, Kraakman R, Squire R. 2006. Law and the rise of the firm. *Harvard Law Rev.* 119(5):1333–403

Harris R. 2000. Trusts, partnerships, and the unincorporated company. In *Industrializing English Law: Entrepreneurship and Business Organization, 1720–1844*, pp. 137–67. New York: Cambridge Univ. Press

Hartz L. 2014. *Economic Policy and Democratic Thought: Pennsylvania, 1776–1860*. Cambridge, MA: Harvard Univ. Press

Hassel A, von Verschuer S, Helmerich N. 2019. *Workers' Voice and Good Corporate Governance in Transnational Firms in Europe*. Düsseldorf: Inst. Econ. Soc. Res. Hans-Böckler-Found.

Hemmer N. 2016. *Messengers of the Right: Conservative Media and the Transformation of American Politics*. Philadelphia: Univ. Pa. Press

Hilt E. 2014. History of American corporate governance: law, institutions, and politics. *Annu. Rev. Financial Econ.* 6:1–21

Hockett R, Omarova S. 2016. "Special," vestigial, or visionary? What banking regulation tells us about the corporation—and vice versa. *Seattle Univ. Law Rev.* 39:453 – 500

Honoré A. 1961. Ownership. In *Essays in Oxford Jurisprudence*, ed. AG Guest, pp. 113–28. Oxford, UK: Oxford Univ. Press

Hopkins M, Lazonick W. 2016. *The mismeasure of mammon: uses and abuses of executive pay data.* Work. Pap. 49, Inst. New Econ. Thinking, New York. **https://www.ineteconomics.org/uploads/papers/WP_49-Hopkins-Lazonick-Updated.pdf**

Hörisch F. 2012. *The macro-economic effect of codetermination on income equality*. Arbeitspap. 147, Mannheimer Zent. Eur. Sozialforsch., Mannheim, Ger.

Horwitz M. 1992. *The Transformation of American Law, 1870–1960*. Cambridge MA: Harvard Univ. Press

Hovenkamp H. 1991. *Enterprise and American Law, 1836–1937*. Cambridge, MA: Harvard Univ. Press

Hunter JD. 1991. *Culture Wars: The Struggle to Define America*. New York: Basic Books

Jäger S, Noy S, Schoefer B. 2022. *Codetermination and power in the workplace*. Rep., Econ. Policy Inst., Washington, DC. **https://www.epi.org/unequalpower/publications/codetermination-and-power-in-the-workplace/**

Jensen M, Meckling W. 1976. Theory of the firm: managerial behavior, agency costs and ownership structure. *J. Financ. Econ.* 3:305–60

Kalleberg AL. 2013. Globalization and precarious work. *Contemp. Sociol. J. Rev.* 42(5):700–6

Kantorowicz E. 1997 (1957). *The King's Two Bodies*. Princeton, NJ: Princeton Univ. Press

Kaufman-Osborn T. 2023. *The Autocratic Academy: Re-envisioning Rule within America's Universities*. Durham, NC: Duke Univ. Press

Kloppenberg J. 2016. *Toward Democracy*. New York: Oxford Univ. Press

Kyd S. 1793–1794. *A Treatise on the Law of Corporations*, 2 vols. London: J. Butterworth

Lamoreaux N. 2016. Corporate governance and the expansion of the democratic franchise: beyond cross-country regressions. *Scand. Econ. Hist. Rev.* 64(2):103–21

Lazonick W. 2014. Profits without prosperity. *Harvard Bus. Rev.* 92(9):46–55

Lee D. 2016. *Popular Sovereignty in Early Modern Constitutional Thought*. New York: Oxford Univ. Press

Levy J. 2014. *Rationalism, Pluralism, and Freedom*. New York: Oxford Univ. Press

List F. 2011 (1841). *The National System of Political Economy*. New York: Cosimo Classics

Lutz D. 1988. *The Origins of American Constitutionalism*. Baton Rouge, LA: LSU Press

Magyar B. 2016. *Post-Communist Mafia State: The Case of Hungary*. Budapest: CEU Press

Maier P. 1993. The revolutionary origins of the American corporation. *William Mary Q.* 50(1):51–84

Maitland FW. 2003. *State, Trust and Corporation*, ed. D Runciman, M Ryan. Cambridge, UK: Cambridge Univ. Press

Maloy J. 2008. *The Colonial American Origins of Modern Democratic Thought*. New York: Cambridge Univ. Press

Mann M. 1984. The autonomous power of the state: its origins, mechanisms and results. *Arch. Eur. Sociol.* 25(2):185–213

McCoy J, Somer M. 2019. Toward a theory of pernicious polarization and how it harms democracies: comparative evidence and possible remedies. *Ann. Am. Acad. Political Soc. Sci.* 681(1):234–71

Medvetz T. 2012. *Think Tanks in America*. Chicago: Univ. Chicago Press

Mills CW. 2000. *The Power Elite*. New York: Oxford Univ. Press

Mirowski P, Plehwe D, eds. 2015. *The Road from Mont Pèlerin: The Making of the Neoliberal Thought Collective, with a New Preface*. Cambridge, MA: Harvard Univ. Press

Mishel L, Gould E, Bivens J. 2015. *Wage stagnation in nine charts*. Rep., Econ. Policy Inst., Washington, DC. **https://www.epi.org/publication/charting-wage-stagnation/**

Morawetz V. 1882. *A Treatise on the Law of Private Corporations Other than Charitable*. Boston: Little, Brown

Morgan ES. 2006. *The Puritan Dilemma: The Story of John Winthrop*. London: Pearson
Morley J. 2016. The common law corporation: the power of the trust in Anglo-American business history. *Columbia Law Rev*. 116:2146–2198
Murray M. 2022. "Anger on their minds": NBC News poll finds sky-high interest and polarization ahead of midterms. *NBC News*, Oct. 23. **https://www.nbcnews.com/meet-the-press/first-read/anger-minds-nbc-news-poll-finds-sky-high-interest-polarization-ahead-m-rcna53512**
North D, Wallace JJ, Weingast B. 2012. *Violence and Social Orders: A Conceptual Framework for Interpreting Recorded Human History*. New York: Cambridge Univ. Press
Novak W. 2001. The American law of association: the legal-political construction of civil society. *Stud. Am. Political Dev*. 15:163–88
Oakley F. 2012. The mortgage of the past: reshaping the ancient political inheritance (1050–1300). New Haven, CT: Yale Univ. Press
Pateman C. 1975. *Participation and Democratic Theory*. Cambridge, UK: Cambridge Univ. Press
Pistor K. 2019. *The Code of Capital: How the Law Creates Wealth and Inequality*. Princeton, NJ: Princeton Univ. Press
Plotke D. 1992. The political mobilization of business. In *The Politics of Interests: Interest Groups Transformed*, ed. M Petracca, pp. 175–98. Boulder, CO: Westview
Polanyi K. 2001 (1944). *The Great Transformation: The Political and Economic Origins of Our Time*. Boston: Beacon
Pollack F, Maitland F. 2013 (1898). *The History of English Law Before the Time of Edward I*, Vol. 1. Indianapolis: Liberty Fund
Pound R. 1936. Visitatorial jurisdiction over corporations in equity. *Harvard Law Rev*. 49(3):369–95
Reynolds S. 1977. *An Introduction to the History of English Medieval Towns*. New York: Oxford Univ. Press
Robé J-P. 2011. The legal structure of the firm. *Account. Econ. Law* 1(1). **https://doi.org/10.2202/2152-2820.1001**
Robins N. 2003. Loot: in search of the East India Company, the world's first transnational corporation. *Environ. Urban*. 14(1):79–88
Robins N. 2006. *The Corporation that Changed the World: How the East India Company Shaped the Modern Multinational*. London: Pluto
Rodgers D. 2011. *Age of Fracture*. Cambridge, MA: Harvard Univ. Press
Rodrik D. 2018. Populism and the economics of globalization. *J. Int. Bus. Policy* 1(1):12–33
Rosenwein B. 1999. *Negotiating Space: Power, Restraint, and Privileges of Immunity in Early Medieval Europe*. Ithaca, NY: Cornell Univ. Press
Roy WG. 1999. *Socializing Capital: The Rise of the Large Industrial Corporation in America*. Princeton, NJ: Princeton Univ. Press
Ruggie JG. 2018. Multinationals as global institution: power, authority and relative autonomy. *Regul. Gov*. 12:317–33
Runciman D. 2000. Is the state a corporation? *Gov. Oppos*. 35(1):90–104
Rydgren J, ed. 2013. *Class Politics and the Radical Right*. Abingdon, UK: Routledge
Savage L. 2021. You can have billionaires or you can have democracy: an interview with Chuck Collins. *Jacobin Mag*., June 22. **https://www.jacobinmag.com/2021/06/billionaire-class-superrich-oligarchy-inheritance-wealth-inequality**
Schwartz H. 2019. *States Versus Markets: Understanding the Global Economy*. London: Macmillan
Seavoy R. 1982. *The Origins of the American Business Corporation, 1784–1855: Broadening the Concept of Public Service During Industrialization*. Westport, CT: Greenwood
Skinner Q. 1978. *Foundations of Modern Political Thought*. Cambridge, UK: Cambridge Univ. Press
Skinner Q. 2009. A genealogy of the modern state. *Proc. Br. Acad*. 162:325–70
Skinner Q. 2018. *From Humanism to Hobbes*. Cambridge, UK: Cambridge Univ. Press
Smith A. 1976 (1776). *An Inquiry into the Nature and Causes of the Wealth of Nations*. Chicago: Univ. Chicago Press
Speir I. 2012. Corporations, the original understanding, and the problem of power. *Georgetown J. Law Public Policy* 10:115–83
Steffans L. 1905. New Jersey: a traitor state. Apr., *McClure's Mag.*

Swedish Companies Act. 2005. **https://studylib.net/doc/8708592/swedish-companies-act**

Talbot P. 2003. Management organisational history—a military lesson? *J. Eur. Ind. Train.* 27(7):330–40

Teles SM. 2008. *The Rise of the Conservative Legal Movement: The Battle for Control of the Law*. Princeton, NJ: Princeton Univ. Press

Thomsen S. 2017. *The Danish Industrial Foundations*. Copenhagen: Djøf

Tierney B. 1955. *The Foundations of Conciliar Theory: The Contribution of the Medieval Canonists from Gratian to the Great Schism*. New York: Cambridge Univ. Press

Tierney B. 1982. *Religion, Law and the Growth of Constitutional Thought 1150–1650*. New York: Cambridge Univ. Press

Tocqueville A de. 2006 (1856). *The Ancien Régime and the French Revolution*, ed. J Elster, transl. A Goldhammer. New York: Cambridge Univ. Press

van Bavel B. 2016. *The Invisible Hand? How Market Economies Have Emerged and Declined Since AD 500*. Oxford, UK: Oxford Univ. Press

Wallis JJ. 2005. Constitutions, corporations, and corruption: American states and constitutional change, 1842–1852. *J. Econ. Hist.* 65(1):211–56

Wilson J. 2007 (1804). *Collected Works of James Wilson*, 2 vols. Indianapolis: Liberty Fund

Wood GS. 1969. *The Creation of the American Republic, 1776–87*. Chapel Hill: Univ. North Carolina Press

Wood GS. 1993. *The Radicalism of the American Revolution*. New York: Vintage

World Bank. 2019. Gini index—European Union. **https://data.worldbank.org/indicator/SI.POV.GINI?locations=EU**

Wright RE. 2013. *Corporation Nation*. Philadelphia: Univ. Pa. Press

Yergin D, Stanislaw J. 1998. *Commanding Heights*. New York: Simon & Schuster

Zhang T, Morley J. 2023. The modern state and the rise of the business corporation. *Yale Law J.* 132:In press