Moebius

Volume 1
Issue 3 *The Corporate Univer$ity?*

Article 6

9-1-2003

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Gary Epstein
California Polytechnic State University - San Luis Obispo, gepstein@calpoly.edu

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Before we can understand the impact of corporations on the university, a little background in corporate history is in order.

This country was founded by a group of men who were determined to learn from the mistakes of earlier civilizations in history. To protect us from tyranny, they devised a government with a separation of powers which they hoped would keep contending factions at some approximation of balance. But their larger aim was to elevate the ordinary individual by declaring that he has rights, liberty, and freedom. They also ended government connections with religions, truly a total break with the past. While the main worry was how to keep the government from growing despotic and usurping the rights of the people, there was not much thought about corporations posing a similar threat. In this country, we were careful not to say that the government "granted" the people their rights because whatever is granted can also be taken away. In the case of corporations, it was completely the opposite: corporations could not operate without a charter that only elected state legislatures could grant (and take away). Our constitution lists our individual rights but makes no mention of corporations.

Where did corporations come from? Corporations began in Europe as non-profit institutions under government oversight. Queen Elizabeth I granted Sir Frances Drake "legal freedom from liability" when she joined with him as a shareholder in his ship. She granted a royal charter to the East India Company twenty years after. This profit-making company rapidly grew to the point where 20% of the world's population came under its sway, backed by armies. In America, this and other corporations claimed territories from the Atlantic to the Mississippi and played important roles in colonizing

them. In fact, several of the colonies were actually chartered as corporations from the start! Although the pilgrims chartered the Mayflower from the East India Company for their famous trip to Plymouth Rock, it was the fourth voyage to America for that ship. The American Revolution was aimed, in part, to rid us of this corporate domination which was backed up with British guarantees of trade monopolies and tax advantages that allowed dumping of commercial goods to drive out the local competition.

But what are corporations anyway? In *The Devil's Dictionary,* Ambrose Bierce defines the corporation as "[a]n ingenious device for obtaining individual profit without individual responsibility."[1] Remember when you read in your high school history book that corporate stockholders were limited in their liability? When a company goes bankrupt, the stockholder only loses his own investment but the company's creditors have to eat their losses with nobody to go after. Actually it's worse than that because the creditors are not the only stakeholders that are hurt; the general public is hurt if the corporation leaves behind injured people or a polluted environment for which the public will have to pay the costs of reparations. This is legalized abdication of responsibility followed by the socialization of the costs of repair. Many of the world's ills today promise to fester and grow until meaningful regulation of corporations can be brought about. But it wasn't always like this. After the Revolution and before 1886, the legislatures of the United States regulated corporations by granting or revoking charters of operation for fixed periods of time with rules of operation spelled out. Revocation of charters occurred frequently. Also, in some states investors (owners) were made responsible to pay for debts and any injuries caused by their companies. Most noteworthy is the fact that corporations were forbidden from making campaign contributions to politicians! Remember, not all businesses incorporate. Those that do are asking the government to give them legal limits on their liability and limits on their owners' possible financial losses. When the people's legislatures grant these protections, it is on condition that the companies operate in the public interest. This continued for over a hundred years, but a gradual devolution began to take place as large corporations increasingly resisted the regulations and sought the expansion of corporate rights and the lessening of corporate responsibilities.

After the Civil War, the Fourteenth Amendment of the U.S. Constitution was passed and ratified. Its purpose was to extend the same constitutional rights and due process of law to former slaves after the emancipation. As far as some corporations were concerned, this Amendment opened up a tantalizing opportunity that could change the course of history. First we set down the text of the Fourteenth Amendment (first article):

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state where-

> in they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.[2]

In the legal world corporations had been referred to as "artificial persons." Since the Fourteenth Amendment refers only to "persons" it was argued by the corporations' attorneys that that meant both "natural persons" (i.e., human beings) and "artificial persons" (corporations). Accordingly, they demanded the same rights as natural persons. They claimed that they were discriminated against by towns, counties, and states because they were, for example, taxed differently than were natural people. This preposterous strategy got them nowhere for twenty years, but they never gave up trying.

The first attempt to use this argument in the U.S. Supreme Court in 1873 not only flopped but earned a reproof from one of the justices. Now comes the critical case: The Southern Pacific Railroad refused to pay taxes levied by Santa Clara County. It claimed that when the State of California assessed the property of the railroad it improperly included the value of the fence posts along the right-of-way which was really the county's job to assess. So the railroad refused to pay all its taxes for a half-dozen years. It fought this case to the U.S. Supreme Court. One of its six arguments was its claim that the Fourteenth Amendment gives it the same rights as natural persons. The railroad won its case (*Santa Clara County v. Southern Pacific Railroad* [118 U.S. 394]) on a technicality, but not because of its Fourteenth Amendment argument.[3] Routine case? Yes. But our high school history books taught us that the justices in that case gave corporations the same rights as natural citizens under the Fourteenth Amendment! Thom Hartmann recently wrote a book, *Unequal Protection,* which tells an interesting story: The Supreme Court's reporter, one J.C. Bancroft Davis, wrote what are called "headnotes" which were published alongside the actual decision but not part of it. In his headnotes he wrote that "The defendant Corporations are persons within the intent of the clause in Section 1 of the Fourteenth Amendment to the Constitution of the United States, which forbids a State to deny to any person within its jurisdiction the equal protection of the laws." Hartmann found these notes in the law library in the Vermont Supreme Court building. An attorney explained to him, "Lawyers are trained to beware of headnotes because they're not written by judges or justices, but are usually put in by a commentator or by the book's publisher."[4] This misreading of the Court's decision is a tragic outcome that now affects not only our country but most of the world! You can examine the actual text of this Supreme Court decision yourself on the web. One such place has the following URL:*http://www.ratical.org/corporations/SCvSPR1886.html.*

During the 25 years following the Santa Clara County case the gravy train was rolling as 288 of 307 Fourteenth Amendment cases were related to corporations seeking more and more of the rights of natural persons. Women (denied the right to vote), blacks (subjected to the new Jim Crow laws), and labor unions (denied the right to represent workers) also tried to obtain their rights by appealing to the Fourteenth Amendment but did not succeed. On the other hand, corporations were awarded "free speech," which meant the right to lobby and give money to politicians, "privacy," which protected their internal records from government inspection (and, lately, to block surprise inspections by OSHA and EPA), "nondiscriminatory license fees" or parity with locally owned small businesses with whom they compete. In time the state legislatures rolled back most of the laws that regulated corporations and safeguarded the public interest. In fact, the states even began to compete among themselves for large corporations to establish residence in their states. Delaware was one of the winners in this competition: Corporations could be chartered there in perpetuity and have interlocking boards with other corporations, etc.

To show that this legislative largess marches on today, consider a recent column published in our local newspaper written by Chellie Pingree, President of Common Cause, in which she writes:

> Congress included a provision, Section 214, in the Homeland Security Act that would make it harder for citizens to learn about security breaches at companies in their communities, and to hold those companies accountable if they are negligent. Section 214 allows a business to report a vulnerability, for example, in the security of its computer systems, physical plant or energy pipelines, to the Department of Homeland Security. That information cannot be disclosed to citizens if the business gives it to the department voluntarily and labels it "critical infrastructure" material. There is nothing in the provision that requires the business to fix whatever security weakness it has confessed. And should a tragedy occur because of this weakness, and if injured citizens want to sue, this information cannot be disclosed to a court. Government employees who disclose this information to citizens can be fined or even imprisoned. This provision also overrides any state or local Freedom of Information laws.[5]

So there it is: Corporate contributions to politicians corrupt the law makers who in turn give more protection and public resources to feed corporate greed. Eventually this leads to economic collapse. Then reform measures lead to recovery. Finally, memories fade and the whole cycle starts over again.

Today the common wisdom says that we should leave questions of resource allocation to the marketplace as much as possible. It is also considered antiquated to advocate "promoting the general welfare." But there is still a commonwealth in this country and some of the items that comprise it are being snared by corporations in a process called "privatization." Still on the list of assets in our commonwealth are the public libraries, the beaches, the skyways, the parklands, forests, grazing lands, the highways, the post office, the water supplies, the sewage systems, the military, the police, prisons, the fire service, public health, power systems in some communities, primary and secondary education, community colleges, etc. Other systems have passed over from the public domain into the private corporate domain: telephone service, the radio and television airwaves, the banking system, the railroad lines, power systems in some communities, etc. Finally, important aspects of a core resource is approaching the auction block: The Public University.

The Public University has served two complementary purposes: (1) cultivate people in the Liberal Arts to equip them to participate more effectively as citizens in a democratic republic and (2) prepare people to become professionals in medicine, science, technology, engineering, agronomy, business, and other fields needed to build a prosperous society. Included in the second purpose is research, both pure and applied. There are aspects of professional training and research that have attracted the interests of corporations. This is both healthy and desirable. However, it is the way that corporate commercial interests are sometimes accommodated that threatens to change the university's culture, ideals, and values for the worse. Much of this has been exacerbated by an act of Congress in 1980 called the *Bayh-Dole Act*. This act gives universities the right to take research discoveries paid for with public funds and patent them and take them to market. And that is the point where business ethics drives out academic ethics.

The penetration of corporate ethics into the university has especially impinged on academic ethics in certain fields such as medicine and biotechnology. An excellent discussion of this is found in Derek Bok's recent book *Universities in the Marketplace* (2003). But the university as a whole is a workplace and unlike most workplaces has evolved elements of academic freedom, governance, and due process, which is another way of saying employee "rights." Outside the universities, most employees cannot bring their political rights inside the workplace and expect to participate in making decisions that affect their work. That contrasts with their entitlement outside the workplace to make decisions through voting that affect the government. The best vehicle for establishing employee rights in the workplace has proved to be collective bargaining between unionized employees and management backed up with binding arbitration and the right to strike. There is an antiunion doctrine called "employment at will" which gives management the right to terminate an employee for no cause. There are advocates for

at-will employment at colleges and universities. At Cal Poly this has already happened at the Cal Poly Foundation, where each employee must sign his or her agreement to the terms of the following document:

I acknowledge receipt of the *California Polytechnic State University Foundation Employee Handbook* and realize it is my responsibility to read and understand this booklet. If anything is not clear, I will ask for an explanation. I understand the Handbook is mine to keep. I recognize that the employment relationship is at the mutual consent of the Foundation and myself. Consequently, either the Foundation or I can terminate the employment at will. I also understand and agree that the Foundation retains the right to demote, transfer, change my job duties, and adjust my compensation at any time with or without notice or without cause due to business necessity at its sole discretion. Employer and employee further agree that the at-will employment policy cannot be amended, modified or altered in any way by oral statements or in any other way, and can only be altered by written amendment. Continued employment with the Foundation indicates that you understand and accept these terms of employment.[6]

The East India Company has a website now. So we infer that it came back to life. In a way we are again facing some of the same challenges as faced the founders of our government system. We have profited in many ways from the innovation, inventiveness, and industry of our corporations. But now our political rights and the public interest are in danger of being vanquished by overreaching, unregulated corporations. Only those who work in higher education are protected in their examination of this process and have the opportunity of making their findings known to the general public. But attention must be paid to the corporate concentration and control of the media and corporate incursions in the university.

Notes

1. "The Devil's Dictionary" by Ambrose Bierce, The World Publishing Company, (1948). On page 57: "CORPORATION, n. An ingenious device for obtaining individual profit without individual responsibility."
2. The 14th Amendment has five Sections. I quoted only the first Section in its entirety. *The World Book Encyclopedia* calls these units "Sections" but Thom Hartmann refers to these units as "Articles" on page 91.
3. The year was 1886.
4. "Unequal Protection" by Thom Hartmann, Rodale Inc. (2002) The quotation: "Lawyers are trained to beware of headnotes because they're not written by judges or justices, but are usually put in by acommentator or by the book's publisher" is found on page 108 and is attributed to attorney Jim Ritvo. The quotations of passages in the headnotes are found on pages 107 and 108. These were found by the author in Volume 118 of United States Reports: Cases Adjudged in the Supreme Court at October Term 1885 and October Term 1886, published in New York in 1886 by Banks & Brothers Publishers, and written by J. C. Bancroft Davis, the Supreme Court's reporter.
5. "Chellie Pingree On Washington "Blocking citizens from information" *San Luis Obispo Tribune,* October 6, 2003.
6. "Acknowledgment of Receipt of Employee Handbook"