

What Kinds Of Corporations Were The American Colonists Familiar With AND Why It Is Likely That Corporations Are Not Mentioned In The Constitution Or Its Bill Of Rights?

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We all remember that the British colonies had charters, they were corporations!

Their sole purpose was to make money for their investors who included the King, members of parliament and those with excess money to risk.

To increase their profits, the corporate owners:

1. used **local** corporate overlords and troops for control and enforcement. (the governor of the Massachusetts Bay company was a British general!)
2. They relied on maximizing the production of raw materials for export such as cotton and tobacco, by severely discouraging the production of goods for internal use. These goods they wanted the colonists to buy from them.
3. To do this they extensively used the labor of indentured Englishmen and women (with contracts of decades), and permanent African slaves.

6 years before the 1606 Virginia Colony (corporation) was chartered, some of the same investors had obtained a royal charter for the exclusive access to the lands east of Africa. This was the **EAST INDIA COMPANY**.

Within the first 100 years of its 260 years in existence, the **EAST INDIA COMPANY** took over India, extracting withering taxes from the inhabitants. They confiscated their raw products for sale around the world, especially tea to England.

They set up their own judicial system and jails AND they had the world's largest army.

Pre-revolutionary colonists were well aware of what **EAST INDIA COMPANY** was doing to India.

I imagine some colonists wondered if it could happen to them. BUT remember, these British colonists were already living **WITHIN** corporations!!

EAST INDIA COMPANY ships plied colonial coastal waters for the Crown, looking for the ships of "profiteers". The "smugglers" of goods from England and other countries, if caught were executed. The ships of the **EAST INDIA COMPANY** brought items they weren't allowed to make for themselves.. --- These were constant reminders of the presence of the **EAST INDIA COMPANY**.

In the early 1770s, becoming another India was becoming a real possibility.

At this time there was a world-wide depression and the EAST INDIA COMPANY was in dire straits...tea was backing up in English warehouses...it wasn't selling.

WHAT TO DO?

Parliament, ¾ of whom were EAST INDIA COMPANY investors created a solution, the 1773 Tea Act that:

First, took off the export tax EAST INDIA COMPANY would normally pay (more profit to the investors)

And second, gave the EAST INDIA COMPANY the exclusive right to set up a tea distribution system THROUGOUT the colonies

This got the attention of the tea merchants. These merchants and others reasoned that Parliament wouldn't likely stop with tea, the other commodities they sold could be next, becoming JUST LIKE INDIA!

Hand bills were printed and mass meetings were held.

The first shipment of the excess English tea arrived but it was turned away from New York and Philadelphia.

The Crown decided that Boston would be where it would exert its full authority. The ship, with an English warship escort, dropped anchor in Boston Harbor --- 45 tons of tea were thrown into the harbor. That today, would be worth \$1 million dollars.

British parliament had Boston Harbor closed until Boston reimbursed the EAST INDIA COMPANY, they didn't. A year and half later the colonists took on the British troops at Lexington and Concord.

Each of our founding fathers was familiar with the social contract theory of John Locke that was based on the natural rights of people. The life, liberty, and the pursuit of happiness phrase of our Declaration of Independence was a paraphrase of Locke's, life, liberty, and property.

There they were, the framers of our government, some like Jefferson and Madison, trusted full democracy, others like Adams and Hamilton, didn't. Some claimed better judgement to those with wealth, others trusted in the collective wisdom of all. These differences reflect the tension between those that have wealth and those that do not. Fair reconciliation of these differences has been a struggle of humanity, probably from its beginning.

Our Constitution and its Bill of Rights is OUR answer to that inherently human struggle.

Yes, a struggle among people with the same natural rights. It is inconceivable that our Founders would have even, remotely, considered corporations to have the same rights as people with natural inalienable rights. Why are we even having this conversation today?

The Role of Corporations in a New America

The framers of our Constitution were well aware of the excesses related to corporate charters. Some recognized that corporations could play important roles in the new nation, others were fearful to them, having lived under them for so long. Granting corporate charters became, by default, the states' responsibly. There is no mention of corporations in the Constitution or its amendments.

Post colonial corporate charters were granted by state legislatures.

1. Corporations were chartered for a clear purpose, usually a public one
2. Their charters were revocable if their purpose was not fulfilled.
3. The charters were for a limited time (20-30 years).
4. The charters specified limits on attainable profits.
5. The liability of corporate stockholders was often **NOT** limited.
6. A corporation wasn't allowed to own stocks in another.
7. Corporations were prohibited from making ANY political contributions.

In 1800 there were 335 business charters 76% were toll roads, bridges, canals, etc. 20% were banks & insurance companies

How was this charter control of corporations working?

AT first, A balance seems to have been struck.....

Corporate suits against states, apparently making claims not supported by the Constitution, were rebuffed by the Supreme Court which, in Marbury vs Madison (1803), asserted for itself, "judicial review" of the constitutionality of lawsuit claims. This early Supreme Court **didn't** find corporations in the Constitution.

For example:

In 1819 Chief Justice Marshall declared a corporation is a "mere creature of law...possessing only those properties which the charter confers upon it"

As is seen from this early Supreme Court case and others, corporations or their potential shareholders were continually testing the charter and legal systems to, **of course**, increase corporate profitability or find new uses for investor wealth. This is the only thing that is natural about corporations, trying to be more profitable.

This constant testing was the basis for a growing public opposition to corporate charters in the 1820s and 30s.

These sentiments were articulated by Jefferson (1816), and Madison (1817)

Quote B. Jefferson, in 1816 wrote: “I hope we shall crush in its birth the aristocracy of our moneyed corporations which dare already to challenge our government in a trial of strength and bid defiance to the laws of our country.”

Quote C. Madison, in 1817 wrote: “There is an evil which ought to be guarded against in the indefinite accumulation of property from the capacity of holding it in perpetuity by..corporations. The power of all corporations ought to be limited in this respect. The growing wealth acquired by them never fails to be a source of abuses”

However, these sentiments weren't anti-business.

The charter system worked and it wasn't hindering rapid growth in manufacturing and retail where most were sole proprietorship, association, or unincorporated partnership businesses.

The manufacturing output of the United States increased 4-fold in the first half of the 19th century making it second, only to England in the world.

The railroad industry is a good example of how one industry changed and how it promoted its best interests.

THE GOOD THINGS ABOUT RAILROADS WERE:

- They opened up the “West” to trade and expansion.
- They provided rapid movement of goods and people, facilitating the industrialization of America.
- This rapid movement was especially important for crops, and the movement of troupes and materials during the Civil War.
- They provided standardization of time in 1883, from 50 zones to what we have today
- They standardized tracks and equipment for a seamless interconnectivity of the rails.

THE BAD THINGS WERE:

- They competed with existing modes of transportation (6-horse wagons)
- They could determine the survival or extinction of communities
- Railroad lobbyists corrupted legislators in their competition for where the tracks would be sited.
- Once established, railroads fixed prices for tonnage, passage and the use of grain silos

The number of railroads exploded, as did the number of miles of track, from 400 miles in 1833 to 45,000 in 1871 covering ~200 million acres. 1/10 of the area of the U.S. was deeded to the railroads.

At end of Civil War Lincoln said:

Quote D. “I see in the near future a crisis approaching that unnerves me and causes me to tremble for the safety of my country. As a result of this war, corporations have been enthroned and an era of corruption in high places will follow, and the money power of the country will endeavor to prolong its reign by working upon the prejudices of the people until all wealth is aggregated in a few hands and the Republic is destroyed. I feel at this moment more anxiety for the safety of my country than ever before, even in the midst of war.”

The 13th, 14th and 15th amendments to the Constitution were written to give to former slaves, rights they had been denied. They were ratified in 1865, 1868, and 1870.

Section 1. of the 14th Amendment says:

Quote E. 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 wherein 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.

The railroads, especially, saw in the 14th Amendment, a possible way out of paying some of their state taxes.

As a result of railroads’ unending goal of reducing their taxes, many lawyers had represented them over time, including a future president (Lincoln), Supreme Court justices, governors, and many, many legislators. Because of their deep pockets and these connections within the justice system, the railroads were able to continue to sue states, and have their cases appealed, repeatedly, all the way to the Supreme Court.

In 1879 the California state legislature drew up a new constitution that denied railroads "the right to deduct the amount of their debts from the taxable value of their property, a right which was given to individuals.”

In 1882 Santa Clara County sued Southern Pacific Railroad for failure to pay taxes. The railroad’s response was that they didn’t have to because the law was unconstitutional. They claimed that their 14th Amendment right to equal protection was violated. This was

not a new argument by the railroad, just the latest. Previous cases had been resolved on non-constitutional issues.

In 1886 this Santa Clara County vs Southern Pacific Railroad case came before the Supreme Court.

In that era, court decisions were published by the court reporter. The published decisions were of two parts, a preface-summary followed by the actual text of the court's decision. The summary was the reporter's words, the decision, those of the justice writing the decision.

The unusual published summary of this case included an aside by the Chief Justice made **before** oral arguments were given. Inclusion of such informal comments in published decisions was not usually done. For reasons unknown to this day, that aside had Chief Justice Waite, saying in essence "We are all of the opinion that the 14th amendment applies to corporations". Further, it is not known why the court reporter chose to include this statement in the summary of a case whose actual decision was based solely on a tax law interpretation of the arguments, not a Constitutional interpretation. Could the reporter, having previously been the chairman of the board of directors of a railroad company, have anything to do with it? Or that one of the Justices hearing the case was a long-time friend of the owner of the Southern Pacific?...speculations bound.

Whatever the motivation, this Santa Clara County case is cited, to this day, as the legal underpinning of corporate personhood!

The years after the Civil War saw radical changes in the provisions of corporate charters.

THEN and NOW

Corporations could own shares in other corporations;
Corporations could be set up for any legal purpose;
The investors in corporations were granted limited liability
There were no time limits on length of charters.....corporations could be immortal;
There were no limits on the return on investments;
There were no limits on the size a corporation could be;
Corporate lobbyists roam the hall of our legislatures.

These across-the-board charter changes allowed a proliferation of trusts and mega corporations that fixed their prices high because of the monopolies they had in their industries. These included the Standard Oil trust, U.S. Steel, and International Harvester, each controlling its product, in its own way, at the expense of the small merchant and the consuming public.

In 1888 Grover Cleveland's State of the Union address he said:

Quote F. “As we view the achievements of aggregated capital, we discover the existence of trusts, combinations, and monopolies, while the citizen is struggling far in the rear or is trampled to death beneath an iron heel. Corporations, which should be the carefully restrained creatures of the law and the servants of the people, are fast becoming the people’s masters.”

With Cleveland as president, the Sherman anti-trust act of 1890 was passed. Standard Oil was broken up in 1892.

How corporations are formed and what constraints are put upon them is a matter of legislative law. This, I have shown, has changed radically over time. But how the laws are interpreted should not include consideration of any “natural person” rights corporations have, of course don’t, **they are NOT natural, they are creations of the state.**

Between 1886 and 1986, and beginning with the 14th Amendment’s equal protection clause, corporations were found by the Supreme Court in the First, Fourth, Fifth, Sixth and Seventh Amendments.

The Supreme Court has FOUND the right to privacy of people in the Constitution, and it has also found that corporations are persons...which do YOU think would logically follow from the natural rights, that our founders believed in? Do you think that it is time for the Supreme Court to be told, by an amended Constitution, that corporations are NOT people, and as you will later understand, that money is NOT speech?