The evolution of the modern industrial corporation

by Richard Freeman

The American corporation, whose functioning was able to flourish as a result of the ratification, in 1789, of the United States Constitution, and which helped power this nation's development for nearly 200 years, no longer exists. It has been decimated by 35 years of a "post-industrial society" policy. That post-industrial society was imposed by the British oligarchy upon the United States, after that oligarchy directed the November 1963 murder of U.S. President John F. Kennedy.

The corporation was given life, and still exists, through a charter issued by the nation-state, with an intended purpose: to serve "the general welfare of the nation." The corporation's sister institution, the patent, is specifically provided for in Article I, Section 8, of the U.S. Constitution, "To promote the Progress of Science and Useful Arts, by securing for limited Times to Authors and Inventors the exclusive right to their respective Writings and Discoveries." The history and function of the corporation and patent are intimately related, and date back to sixteenth-century England, under the Tudors, where there was an arrangement under which the king would grant certain limited liabilities and privileges to an inventor and his business associates, for conducting a certain kind of business in the public good, for some finite period of time.

The function of the corporation is best captured by the idea of the rail common carrier, which idea was in effect from the time that the Interstate Commerce Commission was created in 1887, to regulate the lawless rail industry, to the point in 1980, when the Staggers Act deregulated the railroad industry, creating disaster. Under the ICC, the railroad was treated as a public corporation, acting for the public good. The railroad had to be open, with equal access and service to all shippers, regardless of where they were located in the country, or their economic size. The ICC's enabling legislation stipulated that rates were to be set as "just and reasonable." But this triggered the actuation of a second function that is little understood: That the railroad should charge fair rates also meant that its rate should be set by an ICC-supervised regional rate bureau, composed of the rail common carriers, in such a way that they covered the operating costs of the rail company, plus a reasonable rate of profit that allowed the rail company to expand and technologically upgrade the scale of its operation. This is based on the concept of "equity" in law. It is how agricultural parity functions, and how ICC supervision of trucking and water transport, and government regulation of electric and gas utilities, also functioned. Operating under such conditions, the industries themselves, and the U.S. economy as a whole, prospered.

It must be kept in mind that the rail system is not just of concern to rail companies. The productivity of an economy, especially its manufacturing and agricultural sectors, depends on the effectiveness of the transport grid. The turnover time of bulk and non-bulk commodities and the cost of transport affect every commodity in the economy. The same principle applies to trucking and electricity.

The approach that lay behind the institution of the common carrier abruptly changed, however, with the 1963 inauguration of the post-industrial society policy and the deregulation of industries: securities and investment banking (1975), airlines (1977), trucking (June 1980), railroads (August 1980), and the banking system and savings and loan institutions (1982). Deregulation was attended by the British oligarchy's activation of an interconnected series of post-industrial society policies, such as Paul Volcker's high-interest-rate policies, starting in 1979; the Kemp-Roth Tax Act of 1981, and other measures which we shall detail in the accompanying articles.

As a result of such institutionalized changes, today's corporation bears no resemblance to its progenitor of 1789-1963. It is now the instrument for ripping off trillions of dollars, transferring the funds to a speculator elite of parasitical stockholders, consisting of corporate managers and super-wealthy families, both American and foreign. The corporation is like a funnel attached to the real physical economy, to suck it dry. It turns inward, cannibalizing the labor force, and the plant and equipment (**Table 1**).

The asset-strippers

The agency for this change is the British oligarchy. It assembled, over the past 30 years, a mob of asset-strippers, linking the financial elites with the outright gangsters. This is the case with Eastern Airlines, which was pillaged by corporate raider Frank Lorenzo, whose sponsor for 20 years was Minneapolis-based Carl Pohlad, the gangster heir of Kid Cann's Minneapolis Mob. This is the case with Drexel Burnham Lambert, which fronted drug money for the United Fruit Co. and for Meyer Lansky, which was the reason for the success of junk bonds.

Here is an example of how this mob's asset-stripping

TABLE 1
Corporate downsizing: firings and layoffs from late 1980s to 1996*

Company	Jobs cut	Share of company's workforce (%)
AT&T	123,000	30
IBM	122,000	35
General Motors	99,400	29
Boeing	61,000	37
Sears, Roebuck	50,000	15
General Dynamics	42,500	69
Eastern Airlines	42,000	100
Pan American Airways	34,000	100
Digital Equipment	29,800	26
Lockheed Martin	29,100	17
Bell South	21,200	23
McDonnell Douglas	21,000	20
Pacific Telesis	19,000	19
Delta Airlines	18,800	26
GTE	18,400	14
Nynex	17,400	33
Eastman Kodak	16,800	13
Baxter Instrument	16,000	28

Sources: Challenger, Gray, and Christmas consultants; *EIR*; *New York Times*, March 13.
* actual and planned layoffs

works: In 1978-79, one of the first large leveraged buy-outs (LBOs) in America transpired. The victim: Houdaille Industries, primarily a machinery-producer, which had absorbed a number of machine-tool companies, including Burgmaster Corp. In 1965, Burgmaster had become the largest machine tool-maker west of the Mississippi, after developing a turret drill press in the late 1940s. Kohlberg Kravis Roberts (KKR), the dirty money asset-stripper tied to the George Bush machine, performed the Houdaille leveraged buy-out for $355 million, which was ten times the size of most of the LBOs that had been theretofore undertaken.

"Wall Street recognized immediately that the rules were no longer the same. . . . There were virtually no limits on how large a buy-out could be," Max Holland wrote in his 1989 book, *When the Machine Stopped.* The financiers made a killing, but Houdaille was devastated. Recounting an interview with Allan Folger, then president of Burgmaster, Holland wrote, " 'After the buy-out, Houdaille per se changed,' Folger recalled. 'It seemed to lose its equilibrium.' Financial expertise became the single most valued resource, and understandably so. 'Accounting hires grew faster than manufacturing hires,' because managing for cash flow 'to service the debt became the whole end,' said Folger. Corporate headquarters now demanded so many extensive financial reports that even Folger, with his capacity for numbers, came to believe that it interfered with attempts to improve Burgmaster's product and defend its market."

By 1983, Burgmaster's backlog of orders was quite modest, only 2 to 3 months, compared to the 18 months that were common before the KKR-arranged leveraged buy-out. As money was being siphoned from production to pay debt service, Burgmaster's machines were becoming less reliable, but still they were being shoved out the front door. On Oct. 1, 1985, a bankrupted and destroyed Burgmaster was shut down forever.

Today, this principle is pulling down the whole economy. The history of the war of two antagonistic conceptions of the corporation: the republican conception versus the oligarchical-financier conception, each rooted in a different view of economics, determines much of what is happening in America. We present the history and present-day significance of that war, with the view that this is indispensable information for those now attempting to revive the American corporation as an instrument of the public good.

Origins of the corporation: the dirigism of the nation-state

The purposeful evolution of the corporation, which began, in its earliest form, during the eleventh century, reached its highest development in America after the adoption of the Constitution, and especially during the fights during the first quarter of the nineteenth century, to firmly establish a policy of economic dirigism.

During the eleventh through fourteenth centuries, commerce between the Italian seaports and the Near East became the center of a large Mediterranean trade. Business partnerships evolved called *commenda.* One partner, the *tractator,* undertook the management of the enterprise, while the other partner, the *commendator,* supplied the capital. These partnerships often had more than one *tractator* and *commendator.* At the start, these arrangements were made for a single venture, but sometimes they were employed for long periods and more than one voyage.

The *commenda* became the model form for the joint stock company. The East India Company, to which England's Queen Elizabeth I (reigned 1558-1603) gave a royal charter in 1600, was a joint stock company. When the voyage ended, the participants got back their capital, plus a share of profit, if any was made. Frequently, investors were asked to leave their money in for several voyages. In 1617, for example, investors were asked to put in capital to cover seven voyages. Concerning the period 1550 to 1650 in England, an historian wrote:

"The granting of special economic privileges over a trading area or in the production of a certain commodity characterized this period. The corporation was frequently the vehicle for granting these exclusive monopolistic privileges. Sometimes the sovereign participated in the promotion and financing and also the profits. The crown came to regard the corporation as a creature of the state. Under James I of England [reigned 1603-25], the view of a corporation as a separate legal person, distinct from its officers and created by the authority of the state, was first clearly laid down."

A parallel process occurred for patents. During the reign of England's Elizabeth I, petitions could be made to the throne for patents. In 1623, during the reign of the Stuart James I, a statute on monopolies was passed, specifying that the first and true inventor of a new manufacture within the realm, was granted the right to be the only person exploiting that article for a period of 14 years.

However, the shape and purpose of the corporation were to be very much molded by the tendency represented by France's King Louis XI, who, during his reign of 1461-83, created the nation-state of France and the parallel idea of national economy. Louis XI's outlook arose from the 1439-40 Council of Florence, which began from the conception that man is a force of creative reason, created and acting in the image of God.

Sovereign individual man's creative discovery is the wellspring of all economic wealth. But these ideas are materialized and spread by the nation-state. By fostering the transmission of scientific ideas, the nation-state uniquely creates sustained social surplus, or profit, which is the source for growth in potential relative population density.

During the seventeenth century, that concept of economics was transmitted and enriched by Jean-Baptiste Colbert (1619-83), who was French King Louis XIV's Controller-General of Finances, and a collaborator of the founding spirit of America, the philosopher-scientist Gottfried Wilhelm Leibniz. Colbert made clear that the industrial or trading firm and/or corporation was not an abstract ethereal, but was realized only by the protectionist-dirigistic activity of the state, which gave it a charter. The corporation meant something only if the nation-state developed it as an instrument for the good. This purpose of furthering the firm and/or corporation is explicitly made in the royal declaration of Aug. 26, 1664, for which Colbert was responsible. It stated:

"[H]aving considered how much it would be useful for this kingdom [of France] to re-establish commerce both within and beyond the borders of the same, and that beyond our support and protection nothing could contribute better to the success of such a good plan, we have resolved to that end to have held and give over in its entirety every two weeks a special commercial council in which the interests of businessmen and merchants in making such a re-establishment succeed will be examined and resolved as also everything which concerns the manufacturing industry. . . . We . . . have allocated from the expense of our State 1 million livres annually for the re-establishment of manufactures and for the increase of shipping capacity. . . ."[1]

The corporation in the United States

In America, the Colbertian-Leibnizian factional viewpoint of the state-chartered corporation found fertile soil and evolved, in America's fight for nation-building. The American tradition of corporate charters started with the 1629 Massachusetts Bay Colony, which operated under an English charter. In colonial America, there were only six business corporations. But there was a rapid increase in incorporations once America ratified the Constitution, thus becoming a republic. By 1800, there were were 219 turnpike, bridge, and canal companies; 36 corporations providing dock facilities, or furnishing water and fire protection; and 67 bank and insurance companies. Aside from the financial institutions, several of which were necessary, the bulk of incorporations were in infrastructure.

Frequently, it took a special legislative act to get a corporate charter. In 1795, North Carolina offered the first incorporation law. However, it was restricted to canal companies, and provided that the enterprise should ultimately become public property. Massachusetts provided a similar law for water companies. In 1811, New York State became the first state to grant general incorporation for manufacturing purposes: The law limited each charter to 20 years, and limited capital to $100,000.

Meanwhile, the Supreme Court intervened into the process to decide the character of the corporation. From the very beginning, the federal government had been involved in the development of the American economy. As early as 1806, the government had begun construction of a "National Road"—the Cumberland Road, with its eastern end at the headwaters of the Potomac River, and extending westward, eventually, as far as Vandalia, Illinois.

But still, certain traitorous, pro-British forces questioned the national government's right to issue charters, and specifically its right to incorporate the Second Bank of the United States, which was used to direct cheap credit to the development of industry and agriculture. This was a direct attack on the Bank. In *McCulloch v. Maryland* in 1819, the U.S. Supreme Court upheld the right of Congress to incorporate the Second Bank.

Also in 1819, in the Dartmouth College case, Chief Justice John Marshall ruled: "A corporation . . . being a mere creature of law, it possesses only those properties which the charter of its creation confers upon it either expressly or as incidental to its very existence." This is important in the debate today on the nature of the corporation prompted by Sen. Thomas Daschle (D-S.D.), Rep. Jeff Bingaman (D-N.M.), and others. Since it is the state that grants a corporate charter, it can insist on certain criteria being present in that charter.

In 1823, the Supreme Court made a ruling of very far-ranging import. Robert R. Livingston, of the powerful New York Livingston family, had secured from the New York State legislature in 1807, a five-year monopoly on the patent and use of Robert Fulton's steamboat. The monopoly was

1. Christopher White, "Jean-Baptiste Colbert and the Origins of Capitalism," in *The Political Economy of the American Revolution,* by Nancy Spannaus and Christopher White (New York: Campaigner Publications, 1977). The second edition, published by EIR, will appear this spring.

extendable for 30 years, and proscribed other people from using this promising new technology. Livingston succeeded in having New York State pass, and enforce, legislation that authorized the government to seize any steamboat used by any shipping line of any other state, under the forfeiture clause. In the case of *Gibbons v. Ogden,* Gibbons challenged this monopoly as a restriction of trade.

In rendering the opinion for the court in this case, Chief Justice Marshall delineated the power of the United States to regulate interstate commerce, and thus voided a ruling by New York State that contravened that power. Second, he ruled against a monopoly construed in such a manner that it would deny basic science which could benefit the country. Marshall found against a New York State ruling which upheld the monopoly. Marshall's finding read in part that such "exclusive privilege . . . [is] repugnant to the Constitution and laws of the United States." He continued:

"They are said to be repugnant—

"1. To that clause in the Constitution which authorizes Congress to regulate commerce.

"2. To that which authorizes Congress to promote the progress of science and useful arts. . . ."

With this nationalist ruling, the Supreme Court made it clear that corporate charters could not be established, such as the Livingston one, even if backed by individual states, if they gave powers to corporations which contravened the common good of the United States.

Regulating the railroads

In 1887, the U.S. Congress passed the law creating the Interstate Commerce Commission. The nationalist forces had built the American rail system, through every form of government assistance: state bonds; city/county issuance of railroad stock; state purchase of railroad stock; state guarantee of railroad corporate bonds; state loans; state and federal subsidies; federal grants of lands, including all mineral rights within a certain distance of the railroad; and so forth. By 1860, there were 30,000 miles of railroad track, but the Lincoln rail acts of 1862-64 gave an impetus so that total U.S. track mileage increased to more than 190,000 miles by the 1890s.

However, the monetarist forces of J.P. Morgan, James Hill, Edward Harriman, Cornelius Vanderbilt, Jacob Schiff, and Jay Gould took most of the rail lines away from the nationalist forces who had built them, and then the monetarists pillaged them. During the 1870s and 1880s, twenty percent of the railroads were permanently in bankruptcy. Rail owners cut wages by 20-30%, which set off violent strikes.

In 1887, the Congress passed "An Act to Regulate Commerce," introduced by Sen. Shelby Cullom (R-Ill.). It set up the ICC to regulate the rail industry; stated that rail rates must be "just and reasonable"; prohibited discrimination, so that rates and services must be accessible and the same for everyone, regardless of whether they are a large or small shipper, and regardless of where they are located in the country; forbade rebates, which the rail companies gave to favorite customers; outlawed collusive pooling agreements, etc.

A few subsequent acts over the years were necessary to give the ICC teeth in enforcement.

Regulatory commissions already existed in states for everything from railroads to water to public utilities, and they would soon extend to communications, telephones, and electricity.

In 1935, ICC economic regulatory authority was extended over the trucking industry. In 1940, it was extended over interstate water-borne commerce (which had already been under some form of government regulation since 1916).

In 1938, the Civil Aeronautics Authority (later Board), was created to "regulate rates and service, mergers, accounts and finance" of the airline industry.

On April 10, 1981, before the Oklahoma Grain and Feed Association convention, Thomas R. McFarland, speaking in opposition to the 1980 Staggers Act, which was deregulating the railroad industry, presented the concept involved: "Before the Staggers Act, the regulated common carrier concept prevailed. . . . Under that concept, railroads were treated as common carriers. They had to serve all shippers on fair terms. Rail rates had to be published. Unjustified discrimination was prohibited in rates and service. In short, railroads were treated as 'quasi-public' corporations, with a special duty to serve the public."