

# *The Philosophy Regulating Private Corporations*

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There is a discriminating conservatism, which values and seeks to preserve the principle of old institutions, and which understands the conditions of their value. It seeks to save the kernel even at the expense of the shell. There is also an unthinking conservatism, which, by a blind association of ideas, cleaves to the forms of institutions once valuable, overlooking the conditions of their utility, and the principles which remain stable under changing forms, or even demands mutations of form in order to remain stable. This conservatism seeks to keep the shell at the expense of the kernel. Such is often the temper which moves the American people to regard industrial combinations with excessive legislative favor. There was once a historical reason, which made the right of incorporating precious to the free people of Europe. We still feel the former fondness for it, after the state of affairs in which that reason was grounded has been totally reversed.

After the fall of the Roman Empire before the Teutonic invasions, Western Europe was for a time of chaos, "without form and void," presenting no distinctive social order or settled rights. At length, out of the disastrous confusion, the feudal system was seen to emerge. Its main feature was the holding of lands for stipulated military services to the landlord or suzerain, by tenants for life, without a fee-simple title. The tie which thus connected the lord and the vassal was almost the only remaining bond of rights or social obligations. The other essential feature of feudalism was, that the ownership of the lands also carried to the suzerain the right of government over its inhabitants, and made him not only a landlord, but a ruler. Each barony was a military commonwealth, exercising the rights of administering justice within itself, and of waging war on its neighbors, and irresponsible, even to the king, except for its stipulated military obligations and aids. For the vassal, there might be rights and franchises, guaranteed to him by the charter of his fief, and protected by the mailed hand of his lord. But for persons not belonging to the military caste, for artisans and traders, there was no right, and no protection. The tillers of the soil were either slaves or serfs *adscripti glebae*. The inhabitants of the towns were liable to be plundered at will by the neighboring feudal chieftains.

In the 11th and 12th centuries, the industrial classes in towns began to find this expedient: Sometimes by payment of money, sometimes by some timely service, sometimes by their sturdy right arms, they extracted from their lords charters of incorporation, virtually giving them an organic existence and guaranteeing some of their rights. Kings perceiving in these corporations probable counterpoises to the power of the great feudatories, found their interest in proposing themselves as their patrons and umpires. Chief magistrates of nations thus found in these industrial communities agents by whose help they were able to create out of the endless strifes of feudalism a national order. The burghs, enfranchised by these charters, became the strongholds of the commonalty, and the fountains of popular opinions. Industry, protected in them by a republican municipal government, created wealth, comfort, and civilization. Thinking men

recognized in them the saviours of popular rights, as well as the fountains of manufacturing and commercial wealth. They became essential factors in the creation of modern constitutional freedom. It is, then, not strange that these corporations were cherished as precious and admirable, and that their protection was sought for every species of interest against feudal violence. Each trade in the towns was organized into a guild, governed within by strict by-laws, and guarding its common privileges by the stipulations of a charter. Just as in the military caste, every tenure of land had before assumed the form of a fief; so, among the industrial classes, every franchise endeavored to gain the sanction of corporate rights. It is not surprising that generations of the commonalty grew up accustomed to think the usage of incorporation the very bulwark of freedom and source of prosperity.

But this favor for incorporating business enterprises has survived among us, in full force, after every condition of society which justified the practice has passed away. The feudal institutions were aristocratic; they divided society by rigid and arbitrary castes. The power of the feudal lord was a one-man power, and it recognized no restrictions save those of existing charters. The commoner, if he met the baron single-handed, and outside of chartered protection, was absolutely at his mercy. The only hope of the commonalty was in combination, in the union of many weak hands into one corporation. But now, all this is totally changed. Feudalism has been dead in America for more than a century. All men are now legal equals, and each is a sovereign. The chief magistrate, in enforcing the law, acts directly upon individuals, and no longer upon fiefs. The law is in theory supreme, and every man is equal before it. The commonwealth itself is the all-comprehending guild, whose charter, the constitution of the state, should abundantly protect every citizen, whatever his interest or pursuit. Incorporation, once the only expedient of the weak as against the strong, is now too often the partial and usurping artifice of equals against their fellows-of the strong against the weak. Yet, after the whole ground for the prejudice and the usage has been reversed, they still continue in full force. Thus, out of this medieval expedient of the commonalty is now rapidly growing a new aristocracy, armed by law with class-privileges and powers more odious than the feudal. Such is the blind conservatism which saves the shell while it loses the kernel.

A corporation is an artificial person, created by the law, usually of many individuals, and clothed by its charter with certain rights of personality, and with a continuity of existence outlasting the natural life of each of its members. Judge Marshall defined it as "an artificial being, invisible, intangible, and existing only in contemplation of law." "A public corporation" is one which, like the municipal government of a town, is created for political functions. A "private corporation" is organized by the law, perhaps of many individuals, and yet mainly to pursue some end of personal gain belonging immediately to the members alone. Public corporations are essential to the execution in detail of the functions of justice and government; and although they may operate each one directly on but a part of the citizens, yet they exist for the common purposes of all the people. Against them I have no word of caution or objection to utter. The thoughts which I propose to unfold are aimed only at private corporations, and only at the unnecessary creation of these.

There are only two cases under a republican constitution which offer any fair pretext for erecting private corporations with special privileges not common to all the citizens. One is that in which the work proposed requires more wealth than any one citizen or copartnership possesses. One

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man may not be found rich enough to build a long railroad. Yet such a road may be found productive of wealth. The other case is that in which the enterprise, in order to be useful, must be continued under the same management longer than the lifetime of any citizen. Hence, it is argued, the law must create an artificial person, which collects into one treasury the wealth of many members, and which does not die when its projectors die, to carry through and perpetuate this costly and enduring work. The only other alternative, it is said, would be for the state to conduct all such enterprises herself, by the agency of multitudes of her officials, and thus to make herself at once the civil government and the universal business corporation. But the commonwealth that should undertake this, in a high material civilization, would become so all-engrossing as to be a gigantic tyranny to the citizens. It would, indeed, be clear of the error of conferring on associations of a part of the citizens class privileges; but this would be at the cost of engrossing to itself dangerous powers from all the citizens. The aggregate of functions thus thrown upon the government would be too heavy and multifarious for anything short of omniscience; and the aggregate of power and money would be too formidable to be entrusted to any hand but that of immutable rectitude. The huge machine would present opportunities for boundless mismanagement and peculation. The plan would convert a free government into a Chinese "paternal" despotism.

But if we concede these arguments, there is no reason why private corporations should thus be causelessly multiplied. At least, their privileges should be jealously limited to suitable cases; they should be made to resemble, as nearly as may be, business copartnerships; and they should have no privileges different from those belonging to every citizen, save such as conduce to the public and general advantage.

We have now touched the prime motive for seeking corporate powers. Business men contemplating any industrial enterprise do not desire to bear the responsibilities of business copartnerships. According to the good old law of copartnerships, the partners were not only jointly, but severally, bound for all the debts of the firm. The creditors of the firm could not only exhaust the definite sums contributed to the firm by the partners, but he could pursue the separate private estate of each partner until their debts were satisfied. Each partner, in signing the firm name to an obligation, bound the firm and its other members. It is precisely these responsibilities which the petitioners for private corporations wish to evade. And the sophistical plea they advance for asking this immunity is, that the foresight of such a sweeping risk deters business men from useful adventures; That the commonwealth, as a whole, is interested in encouraging an active spirit of adventure, because the successful opening out of new industries will add to the common riches; that hence the law should encourage adventure by giving private incorporation, which will enable business men to make the experiment by risking only their specified capital stock.

My position is, that this specious plea is *wholly unsound*, at least for existing American society. The spirit of industrial adventure *does not need stimulus among us*, but it needs prudent repression. The temper of our people is already over-adventurous. We are perfectly sure that every possible new adventure, promising increase of private or common wealth, will find men to pursue it vigorously; the private motives of ambition, love of excitement, and desire of gain, ensure this. Does not experience testify that too many adventures are made, in experiments too

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uncertain and of too little reasonable promise, either of private or public reward? I repeat, no stimulus is called for in our day.

But all these industrial adventurers pursue these experiments, reasonably hopeful or foolishly rash, for their own private behoof. This is all they think of. The other vital fact in the question is, that the experiment *inevitably costs money*, somebody's money, and usually a great deal of it. The money it has cost is actually consumed, and *somebody* is inexorably compelled to "pay the piper." Is there a mine to be developed, supposed to promise much wealth? Is a private corporation created to do it, consisting of ten members, each of whom only puts in as capital stock one thousand dollars? But by the adroit use of their credit they get the control of labor and other values to the amount of one hundred and fifty thousand dollars, which are all sunk in useless shafts and tunnels, and then the honorable corporators, after paying all *the corporation*, has ten thousand dollars of debt, wipe their mouths and announce the mine a total failure, and dissolve their corporate body into thin air. But now, values to the amount of one hundred and forty thousand have been irrevocably consumed. Whose? The labor of honest working men; the timber, forage, and provisions of the neighboring farmers; the little patrimonies of orphans and widows, lent to the corporation as a safe investment on rash representations. *These* are the people that are made to pay the cost of the rash experiment, while the responsible experimenters go nearly free and retain all their private wealth, and while the honest losers would not have been allowed a mite of the direct profits of the minerals had the barren veins proved rich in them. This is a flagrant natural injustice. The men who devised the experiment for their own private advantage, who were guilty of the mismanagement, and who made the mistakes, these are the men who are justly bound to bear the whole risks and losses of these mistakes. The only showing of a pretext which saves the transaction from the just charge of robbery, is that such experiments on the whole redound to the common advantage and wealth, and that therefore the adventurers should be relieved of a part of their risk. But I have shown this assumption erroneous. The community is not interested to have such spirit of enterprise stimulated in this form. The measure does not result in the increase, but in the destruction of private and public wealth. It is these costly and wasteful experiments, unwisely and rashly made, because consciously made at other peoples expense, which are devouring a large part of the honest and solid increase of wealth made by regular industries, and thus are retarding the progress of society.

Again, this sophistical pretext has only a showing of a fair application to business enterprises which are novel and untried. As to all the known and approved lines of industry, men ought to be able to know the reasonable expectations of risk and gain; and, if they attempt them, to do so with as good a knowledge of the prospect of gain, as their other fellow-citizens have in their industries. If a man is personally ignorant of such established and known industry, what right has he to migrate into it? What right to demand that he should indulge his impertinence in assuming a business he does not understand, and has not fitted himself for, at his neighbors expense? Here is a man who knows how to make shoes, and understands the risks, and the ways honest, moderate profits are made from leather. But his ambition, avarice, or laziness moves him to attempt woolen manufacture, of which he knows nothing, and has not taken the pains to learn. As a corporator, he can "play gentleman" instead of sticking to an honest last. So this law equips him with a private corporation, to enable him to make this experiment of playing gentlemen at others expense! I repeat: it is only when the industrial experiment which promises general advantage is untried and novel, that any color of pretext appears for relieving the adventurers

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themselves of any part of the risk. And then, the wise and equitable way would be for the state to pay the first adventurers a small *bounty*, taken out of the common treasury, to aid in the costs of the first trials. But now we see the insidiousness of the private corporation granted for pursuing every familiar and ordinary line of business as old as society itself.

If this ill-advised species of legislation were reformed, and all men who wished to adventure their riches in the hope of acquiring other riches, were made to do so under the responsibilities of the old copartnership, we should see this change: men would much more regularly stick to the callings in which they had been reared, and in which they were qualified and entitled to succeed. There would be few adventures of the absurd and dishonest character now so common, made by men ignorant of the business into which they intrude, at the expense of men more honest, industrious, and modest than themselves. There would be far less over-trading. There would be far less waste of the earnings of remunerative industry in unwise experiments. The steady and wholesome increase of solid wealth would be much greater.

Corporate privileges can never be common *franchises*, belonging of right, and equally, to all citizens. They must ever remain of the nature of special grants; and hence, they can be equitably bestowed on favored persons only on special grounds, which constitute the petitioners for them in some sense exceptions from their fellow citizens. The fair interference from these truths would seem to be, that the granting of such privileges should be the sovereign and the very careful act of the legislature alone. It should be regarded as a power too delicate and important to be delegated. The American States, in delegating this prerogative by some delicate law of incorporation, to an inferior agency—as nearly all the states have done—may plead that, in such action, they have merely devolved upon the lower department the ministerial function of arranging the *forms* of the corporation; while the principles of the general corporation law sovereignly determine the nature and conditions of the privileges allowed. So much may, however, be safely affirmed: that these sweeping expedients for facilitating incorporation are symptoms of an abuse of the usage by its undue and rash extension. Legislatures have seemed to think, that because their general laws of incorporation contained no express limitations; because they offered equal privileges, in seeming and in word, to any and every citizen desiring to incorporate, therefore they were not making class-legislation; therefore they were not chargeable with conferring special privileges on some citizens at the expense of their fellow-citizens. This view is entirely deceptive. No matter what right the law may seem to offer to all, all men cannot actually pursue all avocations. There must always be some branches of industry naturally unfitted to come under corporate management; while some are naturally adapted to gain advantage to this form of control. A private corporation may be extremely well suited to the management of a mammoth distillery, or woolen-factory, and utterly unfitted to the successful rearing of poultry and pigs. It is, therefore, a mockery to the farmer for the legislature to say to him: “The general law of incorporation is, in its letter, as open to you as to the distiller. If you wish to enjoy its privileges, incorporate yourself to rear pigs.” Imperious circumstances have made it impossible for them to incorporate themselves successfully. Hence the incorporated distillers are, by this law, empowered to pursue their industry with special privileged advantages against their fellow-citizens, the farmers. This is essential injustice, under the guise of a nominal equality. Again, if the shrewd men who avail themselves of these corporate powers do not regard them as specially advantageous, why do they seek them, in preference to the old, fair copartnership? Evidently, then, they know that the condition of their making advantage of their

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corporate powers is this: that many of their fellow-citizens shall still pursue their industries unprotected by similar corporate powers. If the system of incorporated and privileged industries could be equitably universal, it would cease to be unfairly advantageous to anybody. If everybody could practically enjoy the system, then these shrewd men would cease to desire it for themselves. They would say: "Now it would do us no good, because all are again on one level." Thus, the obstinate truth still appears, that the customary legislation for private corporations is invidious class-legislation, anti-republican in tendency, however republican in seeming, and favorable to oligarchy in business, and ultimately in the state.

But these wholesome views have not prevented the states from vying with each other in general corporation laws, which throw wide open the gates, and make the acquisition of these privileges as easy as possible to the classes favored by circumstances. In Texas, any persons combining to pursue any legitimate industry may obtain corporate powers by certifying their pretensions, their capital stock, their names and by-laws, to the secretary of the commonwealth, and complying with certain rules of mere form. Thereupon it is the latter's duty, as a matter of course, to confer on these the full powers. In Virginia, the same law is in force, except that the official who incorporates is the judge of the circuit (district) court. In New York, two laws authorize the secretary of state to grant incorporations to any and every imaginable enterprise, except banking, whenever the petitioners certify him of the objects, duration, capital, and trustees of the proposed combination.

Thus, instead of maintaining any wise restrictions on private incorporations, we have them for everything, not only to build railroads, navigate ships, operate factories, educate the young, bury the dead; but corporations to carry parcels on the vehicles of these other corporations; corporations to spin, to make our clocks and watches, to peg shoes and make a nail; corporations to fatten cattle on the "free grass" of other corporations; corporations to play Shylock; corporations to print bank notes for those other corporations; corporations to lock up the papers safely, which represent the fictitious wealth of sister-corporations.

Note the following among the actually existing corporations of the great State of New York: "The American Bag-Loaning Company;" "The American Hotel-Directory Company" (to print directories for hotels); "The Ball Players' Publishing Company;" "The John Bauer Company, for dealing in *junk*!" "The Empire Brewing Company;" "Electric Manufacturing and Miscellaneous Stock-Exchange Company;" "The Farmers' Milk Company;" "The Metropolitan Milking-Machine Company;" "Metropolitan Cafe Company" (for carrying on an eating-house); "The Ready-Cooked-Food Company" (to provide hot dishes); "The Salamanca Embroidery Company," to embroider cloth; "The Horse Stealing Prevention Society;" "The Chatauqua Lake Camp-Meeting Company;" "The Gramercy Boat Club;" "The Citizens' Plate Glass Insurance Company;" "The Company to Prevent Extortion by Gas Companies."

Does not this list more than justify the exaggerated sarcasm of Dickens' description of the "Hot Muffin and Crumpet Baking and Ready Delivery Association," which Mr. Ralph Nickleby inaugurated so successfully with the help of the eloquent member of parliament, and which he manipulated so much to his own profit? This picture of our American extremes would be ludicrous, were it not alarming.

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In arguing against the abuse, further, I note first a point which is least important - the costly and wasteful methods of production caused by private corporations, as compared with individual, responsible effort. I know that the boast of their advocates is just the opposite: That the association of the means of many men enables a corporation to produce a given value more largely and methodically, and thus more economically; the "union is strength." Why do these shrewd corporaters, claiming to have capital and skill for a given production, so jealously shun the strength of that union which the old right of forming copartnerships would give them, and so eagerly prefer the private corporation? Obviously, because they know that they shall thus get more gain for their capital and skill, and throw on other people more of the risks and responsibilities of unlucky ventures. But somebody must "pay the piper." Of course, the people who deal with the private corporation must, on the whole, pay more for the service than it had paid before. Let us exemplify in some detail. Why does the money-lender so often prefer to lend as a member in an incorporated bank, rather than as a private citizen? Because he wishes to enjoy the experience and prudence of the bank to get him safe loans? But suppose the money-lender has gotten himself made director or cashier in this lending corporation, so that the prudence of the bank is no other than his own individual prudence? Now, why? Because the banking corporation can get more interest than private money-lenders. Why does the capitalist who actually puts in more than enough money to build and operate *one* of the largest factories, prefer to be a shareholder in a company which builds a whole town of factories? Because he aims not only to manufacture that class of fabrics, but to operate a monopoly in their sale. Here is a ship-owner, who has himself plenty of money to build and man the finest steamer, but he prefers to be *one* member of a "navigation company" which has a fleet of steamers plying between New York and Richmond. He designs to monopolize the coasting trade between the two ports, so as to charge exactly double freight for the same barrel of potatoes the day after a competing ship, belonging to an individual owner, ceased to run. (I speak that I do know.) But perhaps the most glaring plunder is that of the "express forwarding companies," private corporations chartered to do the duties of "common carriers" on the vehicles of other corporations, which have no other title to existence than to be themselves "common carriers;" so that to say they are not competent to these duties is to confess themselves dishonest delinquents. A snug plan this, truly, to make the public pay twice over for one service. No wonder the express company divides fabulous dividends, rears palaces in our trading towns, parades its cohorts of fat horses and officials! What is the exalted function which is so magnificently rewarded? Only that which was performed by our forefathers, by simple wagoners and sturdy shipmasters.

That the means employed by private corporations are promotive of wasteful, and not of economical production, is proved by their employing in a thousand ways more lavish methods than individual producers ever do. The administration is on a scale of gigantic waste. Does the rich private capitalist, carrying his own risks and responsibilities, ever pay his steward or head clerk \$25,000 salary? the rate of a modern railroad president! Why is it that all the salaries paid by the corporations are higher than those paid for similar services by wise individuals, from the highest to the lowest? The steward of the company gets his \$25,000, while the steward of the the most gigantic private business gets perhaps his \$3,500. The mere laborer gets his \$1.50 *per diem* for the same species of manual labor for which the most thrifty farmer can only give fifty cents. The answer is clear: the monopolist power which the incorporation confers enables them to rake together masses of money, at the expense of other industries, which beget prodigality and waste in administration.

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I shall be reminded that this age, so marked by the multitude of private corporations, is also the age of cheapened productions. The reconciliation of this with my conclusion is in this truth. The marvellous applications of beneficent science to the work of production have indeed cheapened many values to a great degree. But the contrary influence of the corporations has, in most cases, *intercepted the benefit* of this cheapened production, in whole or in part, and prevented the people from enjoying the advantage to the degree to which they are entitled. It is applied science which has provided economical production for us; it is the private corporations which have prevented a part of the results. Besides, the cheapening of production turns out to be after all partial and deceptive. The corporations do give us some things astonishingly cheap, partly by making them in what Carlyle called the "cheap and nasty way." And yet, they do not give us, on the whole, cheaper living. They give us a yard of flimsy calico for five cents, but it costs more to dress a girl a year, than when French chintz sold for seventy-five cents. The mortising machine gives us a cheaper panel door, or slat blind, yet it costs much more to build a given house than before there were mortising machines.

Second: I advance to a more weighty argument, "*Money is power.*" It used to be a maxim of political science, that "*where power is, thither power tends.*" As long as the love of power is native to man's heart, this centripetal tendency must exist. Jefferson taught that, in order that republican equality of political rights may continue, no excessive differences in wealth must arise. Hence, he felt it necessary to abolish in Virginia all rights of primogeniture; so that when special energy and skill should have gathered a large mass of wealth into one hand, parental love should usually ensure its division at the holder's death, and thus its redistribution. But we undo his work by creating corporations which never die, but which do continue from generation to generation to grasp wealth with all the greed of the "robber-baron," and to hold it perpetually in *mortua manu*, with all the tenacity of that baron's descendants with their law of entails. We create an aristocracy of active capital, furnished with trains of drilled retainers, far more dangerous to the common liberties than a landed aristocracy. Must not the natural arrogance of wealth suggest the lust for more power? It is for the gratification of this desire for more gainful organization and more monopolies, that they first enter the arena of political manoeuvre. Success in this will in due time suggest the desire for more direct political power. The experience of the American States with these creatures of their legislation has just passed through the first stage and is approaching the next. The seniors among us can remember how a moneyed corporation in Philadelphia, the creature of the United States, once challenged the whole force of the United States government, and almost came off conqueror. It is now the stale jest of some capitals, that their legislatures meet mainly to register the edicts of railroad presidents. In Maryland, there is a corporation whose revenues far exceed those of the sovereign commonwealth, and which commands an army of trained officials so much more numerous, that the state's servants are but a squad before them. And, for a reason to be explained anon, corporations will always incline to employ means much more corrupt than private men would venture, to seduce legislators to bestow further favors. The eager craving of the age is for equality before the law. The people are taking the surest plan for disappointing their own desires, through the growth, out of these corporations, of oligarchies more oppressive than the feudal aristocracies they have overthrown. We have made our forms of government extremely democratic; and this epoch of democracy witnesses the creation of the new oligarchies. So "extremes meet." The peril is illustrated by this fact, that monopolists and victims are alike so devoted to material good, that they join in flouting the counsel which would have us forego any of these supposed means of enrichment, for the sake

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of sound morality and political safety, as a silly crotchet. The sufficient answer is, Who expects the American people to forego the readier means of *making money*, for your “political abstraction”?

I urge, third, that the forms of industry promoted by the powerful corporations tend to undermine the domestic and personal independence of the yeomanry. The associated means of production supplant the individual, the products of the older and more independent forms of industry retreat before those of the corporations. The time was when manufactures were literally “domestic,” the occupations of people in their homes. The producing yeoman was a “free-holder,” a person whose vital significance to British liberty our times have almost forgotten. He dwelt and labored under his own roof-tree. He was his own man, the free-holder of the homestead where his productions were created by the skill and labor of himself and his family and servants. Now all this is changed. The wheel and the loom are no longer heard in the home. Vast factories, owned by corporations, for whose governors the cant of the age has already found their appropriate name as “kings of industry,” now undersell the home products everywhere. The axe and hoe which the husbandman wields, once made at the country forge, the shoe upon his mule’s feet, the plough with which he turns the soil, the very helve of his implement, all come from the factory. The housewife’s industry in brewing her own yeast can hardly survive, but is supplanted by some “incorporated” “baking powder,” in which chemical adulteration may have full play. Thus the centralization of capital leads at once to the centralization and degradation of the population. The free-holding yeoman citizen is sunk into the multitudinous mass of the proletariat, dependent upon the corporation for his work, his wages, his cottage, his kitchen garden, and privilege of buying the provisions for his family. In place of the freeman’s domestic independence, he now has the corrupting and doubtful resource of the “labor union” and the “strike.” His wife and children are dragged from the retirement of a true home into the foul and degrading publicity of the festering manufacturing village, the “negro-quarter” of white wage-slaves, stripped of the overseer’s wholesome police, and the master’s and mistress’ benevolent oversight. Thus conditions of social organization are again produced more incompatible than feudalism with republican institutions.

The fourth, and chief argument against our system is found in its influence on the virtue of the people. Every one remarks on the alarming relaxation of business and political morals. But unless we can refute the testimony of not only Washington, but of Moses, David, and Solomon, correct morals are the very foundation of public safety, and this unfashionable, homely, and simple old truth must stubbornly hold its place, notwithstanding nineteenth century smartness. I shall show that the species of legislation which I criticise furnishes the occasion for much of the corruption which all sensible men dread.

1. One evil begins at the very inception of the legislation. It puts into the power of legislators to pass, and of suitors to urge, enactments directly affecting individual, pecuniary interests. By this system the legislator, whose only rightful business is the equitable protection of the *moral rights of all citizens*, is invited and enabled to use the sacred power of the commonwealth to vote money indirectly out of the pockets of one citizen into those of another. Disastrous invention! Every prudent statesman has recognized the peril and the evil of such political action as suggests, even to the citizens, the habit of looking to the action of the government for any pecuniary personal advantage, instead of looking to it for the just and equal defence and regulation of the

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independent, manly exertions of each citizens for himself. Whatever may be the direct object of the legislation, which contains, like the tariff laws, this ill-starred suggestion, it forms a weighty objection to it. It is an unwholesome day for the virtue of the people, then they learn to look to that government for partial pecuniary advantage, whose only legitimate action is the equitable guardianship of it all. And this is especially the tendency of our unrestricted legislation for private corporation. The petitioner goes to the legislature of his country with an unfair motive. Hence immediately the temptation to apply to the legislator some improper motive. Let me repeat the short demonstration: Here is a group of men who desire to combine their means for the pursuit of some known and customary business. There is the old, fair, and honest way of *copartnership*, with the effective strength arising out of close union, and its just responsibilities. Why do these men put the legislature to the trouble of making them a corporation? Of course it is because they expect thereby to acquire some additional and partial advantage over their fellow-citizens with whom they propose to deal. These advantages have a money value, of course it becomes natural to think of paying money for them. Here the poisoned fountain is opened for the corruption of the lawmakers themselves.

2. It is an urgent point of moral interest to the commonwealth, that as few business functions as possible be entrusted to corporations, especially of those functions which enter into the ordinary traffic and production of the people, because "corporations have no soul." Sir Edward Coke uttered this in one sense; sensible men have now universally learned to take it in another. Corporations are too often deficient in that prime attribute of rational souls, *conscience*. and the formidable feature of this fact is, that it is the result of regular and efficient moral causes. The legal personality of the corporation is artificial; what more natural than that its attributes should be artificial? Moral responsibility can only exist as an *individual* thing, binding the separate, single soul, by its own immediate obligation, to its Divine Ruler. When the agent is an association, the sense of responsibility is so diminished by being divided out among numbers, that it comes to be lightly felt by each member. In point of fact, we see all men yield, in some degree, to this illusion, except the few who have kept a thoroughly enlightened and unbending conscience. Average men will not usually feel as immediate responsibility for their associated acts, as for their individual acts. The world is full of instances; no further illustration is needed.

Again, few appreciate the plausibility of the influence against just action, arising out of this feature of business associations, that they usually deposit the ruling responsibility in one place, and the executive agency in another place. The orders emanate from the directory, in the great city. The execution is by the hands of hired officials, away in the country. These officials are *inclined, by their very honesty*, to execute the orders of the heads of the corporation with unquestioning punctuality. The ordinary logic of the faithful official is: "I have nothing to do with directing the action of the corporation; I am not the least responsible for the moral character of it. I have covenanted, in consideration of my salary, to execute orders. I have no business with criticising their moral propriety as long as I hold my office." Thus, this official has become as mere a tool as the common soldier in a standing army. But the directory also persuade themselves that their fidelity should be in studying exclusively the interests of their association. The individual injustices they order are executed far away, and by other and inferior hands; they do not pique the consciences of the directors, not being seen.

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Let us view a plain instance. Here is an honest and faithful station agent. A valuable package has been lost by his railroad, or a neighboring widow's only cow has been injured by a train. The claim for damages is presented to him as the only accessible representative of the corporation on the spot. The good man reaches down from a pigeon-hole a list of the corporation's rules, and reads to the aggrieved claimant this: "The company, considering that it has been imposed on in the levying of claims for damages, instructs all agents to resist such claims in the future, until enforced by process of law." And then, his comment is this: "No doubt, respected madam, your case is just, but you see, *I have my orders.*" Now if this were an individual transaction, would this decent man resist a claim after he had conceded its justice, and wantonly put the injured claimant to the additional costs of a suit? He would be ashamed to do it. But now, he is the tool of a corporation. "He has his orders." And if the lordly directory are asked why they enforce a rule which works this individual injustice, they answer: "It is our duty to study the general interest of the stockholders." Thus conscience is bandied backwards and forwards between employers and employed, until it is tossed clean out of the business, and the traffic of the great corporation becomes as heartless as that of a dead machine.

Hence, I repeat, it is important for the maintenance of the public conscience, that as little as possible of the ordinary traffic of society be conducted by corporate agencies, and as much as possible by individuals or copartnerships, under their wholesome, personal responsibilities. But private corporations have been so heedlessly multiplied, that now, many things have ceased to be done by men in their individual capacities. Do you wish a parcel carried by land or sea? It is not done for you by any individual ship-master or carrier, acting under the restraints of personal conscience, but by an "Express Company" or "Navigation Company." Do you need shoes? You do not get them from the shop of a cordwainer, but from some "Shoe Company." Or a handful of nails? An "Iron Company" is invoked to produce them. Do you wish your person transported? You commit it to a "Railroad Company." Are you fearful that they may break your neck? You secure an insurance from an "Accident Insurance Company." Lo we go to the end, when our heirs secure a grave for us from an incorporated "Cemetery Company."

3. The creating of private corporations for transacting the current business of society is exceedingly unfavorable to morality, because these associations so multiply the chances for secret fraud. In illustrating this point, I have but to refer the intelligent reader to the unfathomable tricks of the stock-boards and of Wall street. "The mystery of iniquity doth already work." Is not this, in plain English, the recognized prudence of the speculator in these markets: that he shall believe nothing which is told him by other dealers; that he shall take it for granted they always have a concealed design in making whatever representations they profess to give to the public; that he shall construct his argument as to what is the prudent thing for him to do by inferring what is his adversary's secret trick? Does not every lawyer know that it is vain to endeavor to ascertain the actual solvency of a corporation even by inspecting its records? They let him see just so much as tends to mislead him. Who has not heard of the illustrious invention of "watering stocks"; or of the ways that are dark of sending out the human jackals to "bear" the stocks the capitalist wishes to buy, or to "bull" the sinking bonds he is anxious to sell; of managing the works of the corporation so as to announce lean dividends when the "operators in the ring" wish to buy the stock, and of flaunting before the public fat dividends when they wish to sell; of buying largely on credit from honest merchants, and selling largely for cash, dividing out the proceeds of the sales as dividends; so that when pay-day comes, the creditors find only a

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dead corporation with no assets, while the members of yesterday walk abroad to-day rich private citizens, secure from the righteous claims of the men they have plundered? By all these arts the large stockholders in the directory victimize the small holders and the creditors of corporations almost at their will. "The big fish continually eat up the little ones." The whole system tends "to make the rich richer, and the poor poorer," thus producing a condition among the people most incompatible with permanent republicanism.

I have been speaking of the *tendencies* of this legislation. I make no sweeping attack upon the personal character of the members, directors, and officers of these corporations. Many of these have been men of the noblest public spirit, of blameless integrity. Their action has been a help and support to their constituents. Their faithful exercise of the trusts with which the law has charged them has been the chief influence commending a vicious system, for whose errors they themselves were not responsible to the confidence of their fellow-citizens. In criticizing the dangerous *tendencies* of the system, and the sins of its unworthy members, I would not detract anything from the fair credit of such men.

Yet the crowning objection to the prevalent system is that its tendencies are unfavorable to the virtue of society. This is not only the occasion of that tide of dishonesty which threatens to undermine our civilization; but it is one occasion which the people can ill afford to tolerate when the other conspiring causes are so influential.

The history of Federal institutions presents us with one more commentary on the tendencies of private corporations, which should be peculiarly instructive to Southern statesmen. We have been taught by the fathers of the constitution that the centralization of political power is adverse to the liberty of the people, of which the due independence of the several states in the exercise of their reserved rights is the only earthly bulwark. But manifestly these incorporations have been promotive of political centralization. The first wrench which perverted the constitution and the action of the Federal Government from that equitable model designed by the fathers, was the assumption by Congress of power to create a banking corporation within the domain of a sovereign State, as the debate on this measure was the beginning of that undying contest between the party of reserved rights and liberty, and the party of centralization and despotism, which was never appeased until it ended in the wreck of the constitution itself. The next great constitutional struggle was against the protective system, but this is grounded in the same principles of class legislation and partial advantage, and it has always been closely wedded to corporations. They are twin sisters. But for the influence of private corporations on the affairs of the United States the revolution of 1861-'5 would never have been attempted, and without the congenial aid of these associations the aggressive party would have found the South unconquerable in its defence of the constitution and the freedom of the people.

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