Journal of the British Academy, **6(s1)**, 17–47. DOI https://doi.org/10.5871/jba/006s1.017
Posted 17 December 2018; Pre-print posted 31 October 2018. © The British Academy 2018

The historical role of the corporation in society

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Abstract: This article charts the historical role of the corporation in society from antiquity to the present day. Using a broad temporal and transnational approach, it argues that social purpose has been a defining trait of the corporation since the concept of legal personhood first appeared in antiquity. The direct connection between incorporation and social purpose formally broke in the 19th century, when countries like the United Kingdom and United States introduced general incorporation laws. Yet many corporations continued to act positively on behalf of society on a voluntary basis, but even as they acted against the interests of workers, consumers, and the environment. This article demonstrates that concerns about corporate power have a long history, and that societies over time have designed a variety of legal systems and forms of corporate governance to address these concerns.

Keywords: Corporation, business, social purpose, corporate social responsibility, company, philanthropy, social welfare, charity, business history, economic history.

EXECUTIVE SUMMARY

This paper charts the historical role of the corporation in society from antiquity to the present day. It argues that, since the dawn of legal personhood, social purpose has been the defining trait of the corporation. This connection was formally broken in the 19th century through general incorporation laws, but many corporations continued to impact society positively on a voluntary basis. Contemporary concerns regarding corporate power are rooted in a long history of similar sentiments.

From the earliest records of goods being traded in the 3rd millennium BC, through Hammurabi's Laws in Babylon and the partnership contracts of the Ancient Romans, the laws evolved to include concepts and practices still recognisable today. The corporate form, or 'moral person', spread through Medieval Europe, was adopted by municipalities, towns, and universities for political, religious, educational, and civic purposes and organised through the Medieval guilds such as the Hanseatic League,

the *cohong* in China, the *esnaf* or *loncalar* in the Turkish world, and the livery companies of the City of London.

The Early Modern corporation was an instinctively and inherently social entity. The global chartered trading companies of the 17th to 19th centuries, backed by the imperial ambitions of their governments, were mandated to increase trade and economic prosperity, but were simultaneously expected to provide employment, housing, and medical and educational services in their trading localities.

However, their immense scale and power eventually provoked protests strikingly similar to contemporary concerns, leading to antitrust legislation and greater regulatory scrutiny. From 1811, different US states passed their own legislation to regulate corporations. In Britain, the Registration Act of 1844 permitted anyone to register a corporation, just in time for the railway company mania. Under the Joint Stock Company Act of 1856 firms no longer depended on Parliament to incorporate, ending the statutory link with social purpose.

While some philanthropists, including Macy's and DuPont in the US, the Cadbury Brothers in the UK, and Krupp in Germany, initiated corporate welfare plans, as corporations grew larger and more powerful, their scale became a central issue in politics. Explicit in these protests was the apparent divergence between the corporation, with legal personhood, that could exploit workers and consumers even while donating large sums to charitable causes. In 1890, the US Congress passed the Sherman Antitrust Act, and, after further constraints, the National Labor Relations Act in 1935 was another step to control the perceived excesses of big business.

The period from 1950 to the 1980s proved to be the heyday of worker-orientated, industrial paternalism, but by the 1990s, the social contract between America and the 'good corporation' had disappeared. Corporate performance was measured in shareholder value rather than jobs created. There were exceptions; for example, Germany passed the Codetermination Act in 1976. Worker-oriented organisations like the Co-Operative Group and the John Lewis Partnership prospered in the UK and the Mondragon Corporation flourished in Spain, but the ideology of profit-maximisation remained dominant.

The history of the corporation puts in clearer perspective the current criticisms against publicly traded, multinational behemoths, seen to be exploiting regulatory arbitrage and driven by short-term profit targets to the detriment of social, fiscal, and environmental concerns. The long history of the corporate form demonstrates that social purpose was not incidental to the privilege of incorporation; instead, it was inseparable from the right to incorporate. It is within the power of the state to devise forms that meet this ambition.

INTRODUCTION

Behind almost every product and service that we use, aspire to, and fear is a soulless, lifeless, bodiless legal person known as a corporation. As the makers and distributors of everything from Kalashnikovs to lollipops, corporations feed, connect, entertain, and inform vast swathes of the population, while arming nations, financing political campaigns, and directing global capital flows. The biggest among them have been referred to as 'the masters of mankind' and critics from Adam Smith to Noam Chomsky have questioned their outsized role in society.[1] Corporate scandals ranging from oil spills to emissions manipulations, Ponzi schemes, tax avoidance mechanisms, personal data abuses, and human rights violations, complemented by depictions of a corporatocratic, dystopian future in popular culture, have further defined and exacerbated this malaise.[2] Throughout most of history, however, many societies understood the corporate form (or 'moral person', as it is still commonly referred to in many European languages) as being defined by, and created for, a social purpose.[3] From the *piae causae* of Ancient Rome to Medieval monasteries and the City of London, corporations have been purveyors of education, civic administration, public works, philanthropy, and spiritual enlightenment for millennia.[4]

Building upon a broad array of scholarship, this paper traces the trajectory of the corporation from antiquity to the present day, while also exploring different forms of non-corporate commercial organisation across time and around the world. Detailing this evolution helps us to contextualise the historical moment when individual business pursuits and the corporate form converged, following millennia of legal, economic, and social development. The paper pays particular attention to corporations with a commercial focus and discusses the formal and informal relationships between business activities, corporations, and social purpose. By employing a wide historical and transnational lens, this paper thus challenges two widely held contemporary preconceptions: that 'business' and the corporation are inseparable, and that the corporation and social purpose are inherently unrelated. These preconceptions dominate contemporary public discourse to such a degree

[1] In paraphrasing Adam Smith, Noam Chomsky argues that multinational corporations and financial institutions are today's 'masters of mankind' (Chomsky 2011).

[2] Examples include the Weyland–Yutani Corporation in the *Alien* franchise or the Omni Consumer Products in the *Robocop* films, as discussed by Allan (2016). Also, psychopathic portrayals of the corporation have been popularised by Bakan (2005).

[3] Examples include *personne morale* in French, *ente morale* in Italian, or *persona moral* in Spanish. References to a moral person to define corporations were used by ecclesiastical entities dating back to the Middle Ages, at least, as discussed by Gliozzi (1996).

[4] For further reading on the history of the corporation, see Butler (1989), Jones (1994), Machen (1911), Micklethwait & Wooldridge (2003), North *et al.* (2009), Roy (1997), Wallis (2006), and Williston (1888).

that people often forget how the education, charity, and government sectors benefit from using the corporate form.

For the purpose of this paper, we define the corporation as a *de jure* legal person: that is, a legal entity distinct from its constituent members and recognised by the relevant public authority. Embedding a purpose, be it commercial or otherwise, in such a legal person endows that mission with a lifespan beyond its constituent members. A legal person can enter into contracts; own, purchase, and sell assets; lend and borrow assets, including money; and attack other persons and defend itself in the appropriate legal venues. Other common attributes of a corporation, although not exclusive to it, include the separation of ownership from management, limited liability, and entity shielding.[5] These last attributes can also be found within entities that can be considered de facto or quasi-corporations, and this paper will review examples of these alternatives to demonstrate how businesses operated in the absence of generally available incorporation. The principal benefits of incorporation, therefore, have always been convenience, risk mitigation, and perpetuity. The paper defines social purpose broadly, as those activities that can be considered to benefit the public and are beyond the scope of private profit-making. This notion of social purpose evolved throughout history and includes charitable donations, but also, as this paper demonstrates, the provision of public services and improved welfare to external stakeholders and employees. The presumption of a social purpose often shielded corporations from public criticism, since the owners or managers could argue that the corporation's exploitation of workers or customers served a larger public purpose.

THE ORIGINS OF BUSINESS STRUCTURES AND THE CORPORATION'S RELATIONSHIP TO SOCIAL PURPOSE IN ANTIQUITY

The earliest surviving records of trade come from the Bronze Age, when trade emerged as a distinct occupation in Mesopotamia during the 3rd millennium BC. By the 19th century BC, detailed records of commercial correspondence and trade disputes demonstrate the existence of routine trade between Assyria and Anatolia in textiles, gold, silver, and tin. The Assyrians imported these goods before trading them in Anatolia, with tin coming probably from Afghanistan and textiles from Babylon.[6] Then, as now, long-distance trade voyages involving individuals outside one's immediate circle of

[5] Hein (1963: 134). Limited liability is the protection of the assets of an owner of a legal person from the legal person's liabilities (Hansmann *et al.* (2006). Entity shielding is the protection of the legal person's assets from its owners' liabilities.

[6] Veenhof (1997: 337).

trust necessarily entailed risk and uncertainty. Like modern commerce, Bronze Age traders had to manage information asymmetries, conflicts of interest, agency problems, moral hazard, adverse selection, fraud, operational risks, and unforeseen events in the course of doing business.[7]

These perennial challenges led the Assyrians to develop the earliest legal commercial tool, the contract, which provided the basis for their privately organised commercial arrangements. Through contracts, the Assyrians sought to clarify their role within transactions, as well as their rights, obligations, responsibilities, rewards, and punishments. Contracts established trust between counter-parties, principals, and agents, and investors and the recipients of their investment.[8] One example of a sophisticated Assyrian contractual arrangement was the *naruqqum*, or money-bag society, in which investors provided capital for traders to use over a defined period. Assyrians carefully drafted the *naruqqums* to define the division of profits, early divestment, guarantees, interim dividends, convertible debt, and the ability to renegotiate or even inherit a business.[9] This concept of a short-lived commercial partnership would become a recurring organisational form for millennia.[10]

In Babylon, furthermore, an overarching regulatory framework can be observed in Hammurabi's Laws, the first substantial piece of writing in history, dating to approximately 1754 BC. The Babylonian Code of Law devoted half of its text to commercial matters and recognised the role of merchants, strictly enforced private property rights, enshrined the sanctity of contracts, regulated basic banking and money-lending activities, arbitrated disputes, defined fair pricing, regulated inheritances, and set wage and price controls.[11] Increased long-distance trade coupled with heightened local economic activity in the first millennium BC then led to the development of more formalised partnerships in the form of joint ventures.[12] The notion of active and passive investors in a venture evolved, as did the clear separation of the company's assets and obligations from the owners'. Once these notions existed, traders could create subsidiaries and even merge different trading entities. These structures could last decades, be continued by heirs, or simply be dissolved.[13]

Like the Assyrians and Babylonians before them, the Ancient Romans could also form time-constrained partnership contracts.[14] But from the 2nd century BC onwards,

[7] For further reading on the ancient world, see Dari-Mattiacci *et al.* (2017), Hansmann & Kraakman (2000), and Malmendier (2008).
[8] Veenhof (1997: 344).
[9] Veenhof (1997: 345).
[10] For more on Assyrian business practices, see Moore & Lewis (1998).
[11] Nagarajan (2011).
[12] Jursa (2010: 53–68).
[13] Jursa (2010: 57).
[14] These were known as *societates consensu contracta*.

Roman businessmen also limited commercial risk-taking through a legal ploy called the *negotiatio per servos communes*. Through this structure, Romans transferred commercial responsibilities to a shared slave, who was assigned assets with which to carry out business. This structure provided agency by separating management from ownership, and continuity, by allowing the commercial entity to transfer ownership and thereby outlive both the owners and their slaves. The *negotiatio per servos communes* also protected the entity's assets from the liabilities of the owner, and the owner's assets, in varying degrees, from the entity's liabilities.[15]

Whereas the *negotiatio per servos communes* de-personalised business through the use of a legal non-person (the slave), other types of commercial activities in Rome could be shielded through the use of a legal (or fictitious) person, so long as they explicitly served a social purpose. This legal form, which became the ancestor to the modern corporate form, was a result of developments in the Roman machinery of state and was in use from at least the late Roman Republic.[16] Public bodies, such as municipalities (*municipia*), charities (*piae causae*), and pending estates (*hereditates iacentes*), adopted legal personhood. Some legal persons, such as public works companies (*societates publicanorum*) and voluntary associations (*collegia*), could also have a commercial dimension.[17]

In particular, the Roman state used *societates publicanorum* to manage public services, public property, and tax collection. Dionysus of Halicarnassus first mentioned these public contracts in the 1st century BC, when he wrote about the construction of temples in the 5th century BC by the *societates publicanorum*. Other prominent examples of public services in the 4th century BC included the supply of circus horses, *equi curules*, and the feeding of the sacred geese of Juno at the Capitoline Hill.[18] The management of public properties included grazing rights, mining rights, fishing activity, and other concessions for public benefit.[19] In addition to the privileges of legal personhood, the *societates publicanorum* also issued shares, or *partes*, which could be traded in the *Forum Romanum*. These *partes* had different prices, could fluctuate in value, and, according to Polybius, were held by a substantial number of citizens in the 2nd century BC.[20]

[15] Abatino, *et al.* (2011: 1–25).

[16] Burdick (1938: 280). Legal persons in Rome represented their constituent members as one entity, and had legal immortality and limited liability. Limited liability is described in one of Ulpian's legal maxims in the Digest of Justinian, which reads *si quid universitate debetur singuli non debetur; nec quod debet universitas singuli debent.* This translates to the individual members of a legal person not being owed what is owed to the legal person, nor owing what the legal person owes.

[17] Abatino *et al.* (2011: 4).

[18] The geese had gained this privilege after warning the city of an impending Gallic approach.

[19] Malmendier (2005: 32).

[20] Malmendier (2005: 38).

Like the *societates publicanorum*, the *collegia* could have a commercial purpose. But, unlike the *societates publicanorum*, they were voluntary associations that could take on a variety of forms. *Collegia* had their own governing statutes, the free right to assemble in sporadic intervals, and their own rights, obligations, assets, and liabilities separate from their constituent members.[21] Most importantly, *collegia* were formed to carry out necessary works of public use, much like the *societates publicanorum*.[22] *Collegia* could thus be associations with charitable, cultural, religious, funerary, and even commercial purposes. The commercial purpose of a *collegium*, however, could not be to advance private commercial interests, but rather to advance the needs of particular trades, which explains why *collegia* have sometimes been compared to Medieval guilds or modern trade unions. *Collegia* with a commercial dimension could include a wide range of occupations ,such as brothel keepers, wine dealers, weavers, shoemakers, doctors, teachers, smiths, and tanners.[23] Moreover, Rome deemed some *collegia* illegal and one notable group, which may have been a *collegia illicita*, was the early Christian Church.[24] Like the *societates publicanorum*, the *collegia* were thus not available for private business, and the state restricted their numbers.[25] Writing in the 2nd century AD, the Roman jurist Gaius explained that '*collegia*, and bodies of this sort may not be formed by everybody at will; for this right is restricted by statutes, *senatus consulta*, and imperial *constitutiones*. In a few cases only are bodies of this sort permitted.'[26] Thus Romans limited voluntary associations, just as they did public bodies, to those which they agreed were beneficial to society.

Whereas some scholars blame legal inertia or a lack of legal sophistication to explain why private business pursuits lacked legal personhood in Rome, the explanation may also be cultural, since Romans had strong views on the inherent ethics of commerce. The Romans largely shared the views of the ancient Greeks, who, despite the importance of trade in their economy, generally opined, dating back at least to Homer, that the only honourable way of acquiring wealth was through war or the ownership of land.[27] These beliefs were complemented by a suspicion of excessive wealth that was addressed by some of the Classical world's great philosophers. For example, to guard against the dangers of excessive wealth, Socrates, through Plato, famously argued that his philosopher-kings should be deprived of all material wealth

[21] Berger (1953: 395).
[22] *Collegia* existed *ut necessariam operam publicis utilitatibus exhiberent.*
[23] Guesde & Bliss (1898: 675).
[24] Berger (1953: 395) and Kaatz (2016: 176).
[25] Hansmann *et al.* (2006: 1362).
[26] D. 3.4.1 pr. (Gai. 3 ad ed. prov.), as cited in Abatino *et al.* (2011: 4).
[27] Bresson (2014: 53) and Backhouse (2002: 11).

and even be forbidden to handle gold or silver.[28] In Rome, this attitude was complemented by a strong sense of personal responsibility, encapsulated in legal maxims such as *cuius commoda eius et incommoda*, referring to the inseparable nature of gains from losses, and the more colloquial *ubi commoda, obi incommoda* (where there are gains, there will also be losses).[29] These overarching cultural norms may thus have contributed to a belief that incorporation was a privilege to be bestowed only on those endeavours that explicitly embodied a public purpose or social benefit to the exclusion of private commercial undertakings.

It is important to note that the Roman corporate form may not have been the first incarnation of legal personhood in world history. One example of a society that used legal personhood for political, social, and even economic purposes, centuries before the Romans, was Ancient India, which had legal persons such as the *gana*, *samgha*, *sabha*, and *sreni*, amongst others. The case of the *sreni* is of particular interest due to its resemblance to the *collegia* and the subsequent Medieval guilds. *Sreni* were 'a legal entity composed of a collection of people who were normally engaged in a similar trade', but could also be composed of different occupations and were sometimes used in municipal and political activities. From at least 800 BC, these proto-corporations were widespread and some had over a thousand members. They were recognised by the state, easy to set up, and sometimes registered their internal regulations with the authorities in order to resolve disputes. Most importantly, many *sreni* engaged in charitable and religious work. As the legal scholar Vikramaditya Khanna argues, it 'was quite common for the *sreni* to use some of their profits toward building or maintaining a public garden, tank, assembly hall, or religious edifice as well as providing support to people during natural disasters and those who are ill, destitute or otherwise economically disadvantaged.'[30] Like its Roman counterpart, ancient Indian legal personhood thus included a dimension of social purpose that distinguished it from private business endeavours. The case of the s*reni* also suggests that European legal personhood was hardly unique and opens up potential avenues for comparative research into the concept of legal personhood outside of Europe in the ancient world.

[28] Plato (1987: 125).
[29] Abatino *et al.* (2011: 20).
[30] Khanna (2006).

THE RISE OF GUILDS IN THE MIDDLE AGES AND THEIR ROLE IN THE COMMUNITY

After the fall of Rome, the Catholic Church integrated the concept of legal personhood into its canonical law. Early canon law, later codified and collected in the *Corpus Juris Canonici* in the 12th century, recognised legal persons, which were then promulgated in the 13th century by Pope Innocent IV, who affirmed '*cum collegium in causa universitatis fingatur una persona*', or that the entity is in corporate matters figured as a person.[31] The *personae fictae*, or fictitious person, therefore also became used to denote Christian institutions.[32] The corporate form, which also became known as a 'moral person' (as it is still commonly called in French, Italian, and Spanish), spread throughout Medieval Europe. As in Rome, it was primarily adopted by municipalities, towns, and universities for political, religious, educational, and civic purposes.[33]

One type of Medieval corporation, however, the guild, was also used for commercial purposes, and it rose to prominence in Europe and across the globe. As Cambridge economic historian Sheilagh Ogilvie has explained, people formed guilds in order 'to pursue mutual purposes' that arose from shared occupations. The guilds regulated markets by holding local monopolies over their trades, occasionally enforced contracts, upheld quality standards, and facilitated investment in human capital through systems of apprenticeship. Following sporadic appearances throughout the Dark Ages, guilds emerged across Europe, as economic activity revived.[34] Examples include the *corps de metiers* in France, livery companies in England, *gremios* in Spain, and *zünfte* in Switzerland, to name just a few.[35] These guilds sometimes set up foreign branches and created associations such as a *hansa*, with the German *Hansa,* composed of 70 northern German, Dutch, and Baltic cities in 1300, being the most famous example. The Hanseatic League, as it eventually became known, was a confederation of guilds that began in the 12th century, developed into a league of cities in the 14th century, and wielded significant political power until the 17th century. The *hansa* had their own set of regulations and foreign trading posts, and they also engaged in diplomatic and military operations while pursuing the commercial interests of their members. During the 14th century, for example, the Hanseatic League declared war against Denmark and regularly battled pirates.[36] Yet, despite the remarkable influence

[31] Quoted by Gillet (1927: 165), as translated and cited in Koessler (1949: 437).
[32] Dewey (1926: 665).
[33] For further reading on the Middle Ages, see Laski (1917), Lewis (1937), Sutton (2016), and van Steensel (2016).
[34] Ogilvie (2014).
[35] Hickson & Thompson (1991: 127–68).
[36] Dollinger (1970: xviii).

of the Hanseatic League during the Middle Ages, there is too little contemporary research in the English language on its institutional history.

Similar systems of guilds also existed in Ancient Egypt, India, Rome, Greece, and in Medieval and Early Modern Japan, Persia, China, and Byzantium.[37] The *za* in Japan emerged in the 12th century and were chartered by *bakufu*, or feudal lords, who viewed them as a means of promoting 'orderly business and meticulous control'.[38] The *za* protected their members from competition, meticulously regulated flows of goods, and controlled quality and prices in order to stabilise trade. Their power increased in the 14th and 15th centuries, and they remained active until the Meiji Restoration in 1868.[39] Similarly, during the 17th century, the Chinese government granted a small number of merchants in Guangzhou the sole right to form a guild called the *cohong* in order to trade with the West. Through their monopoly over trade with the West, the presence of the *cohong* guaranteed state control over external trade and the uninterrupted flow of silver into China through the 19th century.[40] Similar craft guilds are also recorded in the Middle East, with the *asnāf* or *hirfa* in the Arab world and the *esnaf* or *loncalar* in the Turkish world.[41]

Like the *collegia* before them, guilds justified their existence through the prism of social purpose. On a broader level, they claimed to protect trade and specialist crafts, ensure quality standards, and prepare the next generation of master craftsmen and traders. Thus the leaders of guilds argued that the private gains facilitated by a guild's monopoly were balanced by the public benefits that arose from their monopoly powers. Recent literature has also shown that, depending on the context, members of guilds became pivotal to their local societies by contributing to charitable and religious causes, while ensuring the welfare of their respective members and their families. In London, for example, 'the distribution of charity became increasingly important in the self-representation of the livery companies', as guilds donated to charitable trusts aimed at hospitals and almshouses, and sometimes managed their endowments over long periods of time. The larger guilds in the Netherlands contributed to their members' burial, invalidity, and pension expenses, while also providing informal help at critical times. They also supplied relief to widows by allowing them to retain their late husbands' guild rights or providing them with a pension. British and German guilds also provided funds to unemployed fellow journeymen to help them seek employment in other locations. Individual contributions and the guilds' own capital

[37] Ogilvie (2014, 169).
[38] Hirschmeier (2006: 36).
[39] Hirschmeier (2006: 37).
[40] Van Dyke (2011).
[41] Kuran (2005: 39).

endowments financed the schemes.[42] All of these social functions were a principal justification for the guilds' legal and social status in Medieval Europe.

Despite their explicit social purpose and acts of philanthropy, however, guilds also secured political and economic privileges for their members. For centuries, one needed a licence from a guild in order to perform skilled trades in most European towns.[43] This exclusivity and the consequent restriction of trade is why Adam Smith described them as 'a conspiracy against the public' and believed that, although 'the law cannot hinder people of the same trade from sometimes assembling together, it ought to do nothing to facilitate such assemblies; much less to render them necessary.'[44] Smith identified the constant tension between the economic good arising from the market stability that cartels provided and the cost of the cartels' economic power over consumers.

In the continued absence of generally available incorporation, merchants and traders used a variety of organisational forms to arrange their private business endeavours throughout the Middle Ages. The *commenda*, for example, was a type of limited partnership that arose in the 10th and 11th centuries in maritime trade and became widespread throughout the Medieval Italian city-states.[45] These limited partnerships structured the investment, employment, agency, risk, profit sharing, and entity shielding of commercial relationships.[46] Much like the ancient Middle Eastern contracts, the *commenda* was a private contractual agreement that involved a passive investor and an active trader. The *commenda* lasted for a single ship journey, and the capital provider was only liable for losses incurred whilst at sea.[47] The passive partner thus enjoyed some limited liability, and the *commenda* offered some entity shielding, as 'the firm's assets were sequestered in the hull of the ship or in foreign ports'.[48] Any further liabilities the active party took on during the journey, such as debt, were at their peril alone.[49] The renewed prominence of maritime trade in the Middle Ages also led to the development of the *lex mercatoria* (merchant law), a set of trans-regional rules regarding trade. For centuries, the *lex mercatoria* continued to evolve, and elements of it were ultimately absorbed into the national legal systems of the 19th century.[50]

Similar maritime legal arrangements had already been common in ancient Greece, and they appeared across many regions in the Middle Ages, including the Middle

[42] Archer (2002: 17), Imray (1968), and Sutton (2016).
[43] Ogilvie (2014).
[44] Smith (1776: 152).
[45] Hansmann *et al.* (2006: 1372).
[46] Harris (2007: 8).
[47] Pryor (1977: 6–7).
[48] Hansmann *et al.* (2006: 1373).
[49] Harris (2007: 10).
[50] Juenger (2000: 1135).

East, India, Indonesia, and China.[51] The Byzantine *chreokoinōnia*, for example, was a commercial partnership for maritime trade with added provisions for debt. Similarly, Jewish merchants used the *ʾisqa* to provide half the required capital as an interest-free loan. The other half was a speculative investment that had to be returned if the voyage was successful but was lost if the voyage failed. In the Islamic world, the *qirād* was the equivalent of the *commenda* but absolved the travelling partner of liability for any eventual loss of capital and had no fixed rules regarding the division of profits.[52] The Islamic world also adopted a commonly used form of partnership, the *mudaraba*, which bestowed limited liability on the investing partner.[53]

As the number of voyages increased, commercial partners began to seek a legal form that could outlast a single journey. One solution was the *compagnia*, which had unlimited liability for its partners and could outlive its constituent members. Like many partnerships, the *compagnia* was usually composed of family members (its etymological roots refer to the sharing of common bread, or *cum panis*).[54] The partners could allow the agreements to expire in order to realign shareholding, or let the *compagnia* run for many years. Prominent examples include the great Medieval banking concerns, the *Compagnia dei Bardi* and the *Compagnia dei Peruzzi*, as well as mercenary enterprises, such as the *Compagnia di San Giorgio*. The *compagnia* could also be used for religious and cultural associations.[55] By the 15th century, merchants had devised another form of limited partnership, the *societá in accomandita*, to facilitate overseas commerce. Amongst others, the Medicis employed the *societá in accomandita* to open new branches of their bank in foreign cities. To shield their assets, the Medici served as limited partners while the local branch manager assumed the role of general partner.[56] Merchants in the Middle Ages thus used contractual tools to limit liability and other associated risk in their individual journeys, while businesses that stretched beyond single journeys opted for structures that simplified interacting as a single unit and provided limited liability for the parties through a variety of legal means.

Much like in the ancient world, Medieval cultural norms may have made the general adoption of legal personhood for business seem counter-intuitive. Theological concerns largely dominated economic thinking. Christian economic thought, whose philosophical roots lay in Judaism, praised work but criticised trade, material desire, and, above all, usury.[57] Set within the context of feudalism, which revolved around

[51] Harris (2007: 7).
[52] Pryor (1977: 26–30).
[53] Kuran (2005: 13).
[54] Hunt (1994: 11).
[55] Henderson (1994: 1).
[56] Hansmann *et al.* (2006: 1373).
[57] Backhouse (2002: 31–3).

war and piety, the honourable method of acquiring wealth in Europe remained the acquisition of land through valour in war, rather than commercial enterprise. Ministers in both the church and the state warned against the excessive desire for material wealth and promoted a life of austerity and privation (although not necessarily for themselves).

EMPIRE-BUILDING AND CORPORATIONS IN THE EARLY MODERN PERIOD

By the 16th century, the might and affluence of the guilds were declining in England and the Low Countries. Amsterdam eventually banned merchant guilds, Leiden shut down its craft guilds, and the English crown granted fewer charters outside London.[58] In an effort to justify their existence—to defend their private gains by way of public good—the guilds explicitly highlighted their philanthropic acts and welfare schemes, but to little avail.[59] Meanwhile, private business interests began to multiply outside of the guild system, and many more organisations sought formal incorporation, which, in England, could only be obtained by parliamentary statute or royal charter.[60] In a period of growing imperial aspirations, a number of states began to grant corporate charters to those interests that could advance the state's global ambitions. In particular, the rise of the common-law joint-stock corporation or chartered company led to the creation of the most important commercial entities the world had ever witnessed.[61] These predecessors of contemporary global companies received corporate status as well as monopolies on trade across vast swathes of territories and trade routes. Chartered companies waged wars with their own private armies and fleets, built forts and infrastructure, conquered territories, negotiated treaties, and in the case of the Dutch East India Company, even minted their own corporate currency.[62] To view the 'embarrassment of riches', as Simon Schama entitled the artistic legacy of the Dutch Golden Age that the Dutch East India Company (*Vereenigde Oostindische Compagnie*) financed, is to comprehend the enormous wealth that the chartered trading companies controlled at the peak of their powers.[63] Even so, throughout the Early Modern period, the corporate form continued to be used for municipal, ecclesiastical, educational,

[58] Ogilvie (2014: 172).
[59] van Leeuwen (2012: 63).
[60] Smith & Pettigrew (2017: 1) and Holdsworth (1922: 382).
[61] For further reading on the Early Modern period, see Carlos & Nicholas (1988, 1996), Evans (1908), and Jones & Ville (1996).
[62] Stern (2011: 1).
[63] Schama (1987) and Allen (2009: 20).

and charitable purposes, and these older, more common corporate forms continued to frame the legal understanding of commercial corporations.[64]

The term 'joint-stock' originated in naval voyages, as partners pooled their assets together to carry out trade voyages with commonly owned stock.[65] The first joint-stock corporation appeared in Britain in 1551, with the formation of the Muscovy Company (chartered by Mary I in 1555) and later the Levant Company in 1581 (chartered by Elizabeth I in 1592). They were soon followed by the infamous English East India Company in 1600 and the Dutch East India Company in 1602, which traded in textiles and spices, amongst other valuable commodities. The Dutch East India Company was, at its peak, probably the largest corporation of its time as well as the first to list its shares on an official stock exchange. In the course of its trading activities, the *Vereenigde Oostindische Compagnie*'s powers included the right to wage wars and colonise territories as well as to imprison and execute people. At one point in the 18th century, the English East India Company, for its part, had a private army larger than the permanent British army.[66] Eager to emulate their success, other East India companies were soon created in Denmark, France, Portugal, and Sweden. Other famous examples of companies that were chartered by the English Crown include the Hudson's Bay Company (chartered in 1670), which became the largest transatlantic fur trader and seller of real estate. It governed vast tracts of North America and remains active today as a Canadian department store chain. The Royal African Company (chartered in 1660), for its part, facilitated the slave trade, and the Massachusetts Bay Company (chartered in 1629) laid the foundation for the modern Commonwealth of Massachusetts.[67] Chartered companies thus emerged throughout much of Europe during the 16th and 17th centuries and began to put down roots in North America, as well as operating throughout the rest of the world.

Although rooted in the long history of the corporate form, chartered companies marked a distinct break in its historical evolution since some privately owned business pursuits could now be granted incorporation. Their exclusive right to incorporate, which included monopoly rights had to be justified by some degree of social purpose. Social purpose, however, within the context of the nascent nation state, mercantilist thought, and imperial competition, took on new meaning. Governments believed that corporations would increase national prestige, defeat rival nations in trade, increase economic prosperity at home, and acquire, manage, and populate overseas territories. Chartered companies would thus provide domestic employment opportunities, new

[64] Smith & Pettigrew (2017: 4).
[65] Hein (1963: 143).
[66] Wagner (2017: 108).
[67] See also Pettigrew (2013).

goods to their home economies, and vast tax revenues while host states provided them with logistical and diplomatic support. As both a product and a driver of empire, the chartered trading company was explicitly understood to provide a vital social function. Promoters of the chartered companies used these many justifications to legitimate their monopoly privileges and corporate status, while simultaneously warning of the selfish aspirations of those who promoted free trade.[68]

Apart from their perceived public utility to the nation state, chartered companies like the East India Company also engaged in domestic actions that they believed had a social purpose.[69] Like the guilds before them, corporate directors believed that underwriting social goods, within the state that chartered them, was essential to their political and civic relationships. The rhetoric of their founding charters was thus framed by notions of public good for their European constituencies, and company minutes often referred to their philanthropic activities. As historians William Pettigrew and Asa Brock argue, 'the early modern corporation was an instinctively and inherently social entity'. Their socially beneficial activities were not simply for public relations but were the very reason for their continued existence.[70] In addition to the company's actions, the East India Company's directors were some of the largest donors to charitable causes in London and donated funds to relieve poverty, build hospitals, and establish schools, amongst other good causes. Their accumulation of private wealth had to be offset by generous actions of public benefit in order to assuage the core cultural concerns of the era and demonstrate their dedication to improving their societies.

Granting exclusive corporate status to individual business concerns, however, was not without controversy. Adam Smith was one of the staunchest critics of the chartered companies. In promoting the value of free trade, and in concert with his criticism of the guilds, Smith argued against any form of monopoly that curtailed commerce and led to market inefficiency. He also worried about the scale and power that the chartered companies had achieved. Smith explicitly rejected the long-standing argument that the costs of private exploitation by corporations were more than balanced by the wider social benefits to society. Furthermore, Smith was gravely concerned by their dangerously intimate relations with domestic governments and their inherent lack of national loyalty, which he feared might be lethal in combination. Adam Smith wrote that:

> a merchant, it has been said very properly, is not necessarily the citizen of any particular country. It is in a great measure indifferent to him from what place he

[68] Smith & Pettigrew (2017: 5–6).
[69] Smith (2017: 66).
[70] Pettigrew & Brock (2017: 34) and Smith, (2017: 65).

> carries on his trade; and a very trifling disgust will make him remove his capital, and together with it all the industry which it supports, from one country to another.[71]

Smith also expressed concern regarding the effects of the chartered companies' operations in the territories in which they operated and the pernicious effects of economic imperial domination. He wrote that the 'government of an exclusive company of merchants is, perhaps, the worst of all governments for any country whatever.'[72] As political scientist Sankar Muthu argues, Adam Smith thus believed that the chartered trading companies could not, 'even in the best circumstances, be made to turn their activities toward anything even resembling the public interest, except perhaps when their commercial interests happen by chance to overlap with broader social needs.'[73] It is perhaps no coincidence that the foundations of modern economic thought lay in Adam Smith's criticism of the largest corporations of all time.

Since incorporation remained a limited privilege, entrepreneurs, merchants, and business people continued to employ a variety of alternative forms. One popular legal structure that was used in England was the common law trust, originally devised in the Middle Ages to transfer property. Landowners transferred their title to a trustee, who would return it to whomever was deemed a beneficiary at the appropriate time. The trust's beneficiaries were usually family members of the original landowner, who could thus avoid fiscal and military obligations that were tied to landownership and inheritance. This loophole began as an informal and unenforceable agreement, but it became increasingly popular in the 14th and 15th centuries. Amongst other attributes, the trust enforced strong entity shielding, since the property held in trust could not be used to offset any personal debts of the trustee and could be subdivided into shares.[74]

The trust eventually became a means to organise business activities. Following the Glorious Revolution, and as economic growth accelerated during the financial and scientific revolutions of the ensuing decades, the number of new business ventures grew rapidly and entrepreneurship flourished. Some ventures became chartered companies while others became 'unincorporated companies' that were based on the law of trusts.[75] Trusts were a way of achieving some of the benefits of incorporation without the need for a state charter. They became increasingly popular for business activities in the 17th and 18th centuries, until Parliament passed the Bubble Act in 1720 following the collapse of the South Sea Company.[76] The Act, which had been passed under pressure from the defunct South Sea Company in order to inhibit competition, made

[71] Smith (1776: iii, iv).
[72] Smith (1776: iv, vii, ii).
[73] Muthu (2008: 201).
[74] Morley (2016: 2151–2).
[75] Morley (2016: 2157–8).
[76] See also Patterson & Reiffen (1990).

all entities 'presume[ed] to act as a corporate body', with tradable shares, 'for ever be deemed illegal and void'.[77] This provision was mostly ignored, however, and unincorporated companies became increasingly common as Parliament continued to restrict incorporation for all but the largest businesses.[78] By the middle of the 19th century, there were ten trusts for each corporation in Britain. As the popularity of these unincorporated companies began to worry Parliament, pressure began to mount from the business community to find better solutions.[79]

FREEDOM TO INCORPORATE AND BE SOCIALLY RESPONSIBLE IN THE MODERN ERA

As the Enlightenment and Liberalism chipped away at the theological and feudal constructs of the preceding centuries, monopolies began to fade away. The Hudson's Bay Company was the last to give up its monopoly privileges in 1868.[80] Contemporaneously, the British Parliament repealed the Bubble Act in 1825, after its brief and panic-inducing re-implementation at the beginning of the 19th century.[81] In 1837, following pressure from the growing business community, the English Board of Trade asked legal reformer Charles Bellenden Ker to lead an inquiry into allowing individuals to associate in trade with limited responsibility. Yet, the resulting system, whereby the Crown granted an increasing number of charters to businesses, was so costly, inconsistent, and prone to abuse that it led to the creation of a register of companies.[82] The Registration Act of 1844 permitted anyone in Britain to register a corporation with the Registrar of Joint-Stock Companies. All new companies formed for profit with tradable shares or which had more than twenty-five members had to incorporate, while existing businesses could incorporate if they wished. This was the first step in the revolutionary liberalisation of the incorporation procedure in the United Kingdom that would spread across the world.[83]

The Registration Act of 1844 was soon supplemented by the 1855 Limited Liability Act and finally consolidated in the Joint Stock Company Act of 1856.[84] Robert Lowe, the Liberal Member of Parliament for Kidderminster and Vice-President of the Board

[77] 6 Geo. I, c 18, para. 18.
[78] Dale (2004: 135–7).
[79] Morley (2016: 2160).
[80] Hein (1963: 137).
[81] Todd (1932: 46–7).
[82] Levi (1870: 3).
[83] For further reading on the Modern era, see Dalzell (1987), Franks *et al.* (2014), Johnson (2010), and Levy (2014).
[84] Vict. 8 & 9. Cap. 133. 14 August 1855.

of Trade, who was pivotal in the passing of the 1856 Act, argued that general incorporation with limited liability was 'in favour of human liberty' and that people should 'be permitted to deal how and with whom they choose without the officious interference of the state'. In any case, he believed that this 'experiment should be tried' and that government should 'arm the courts of justice with sufficient powers to check extravagance or roguery in the management of companies, and to save them from the wreck in which they may be involved.'[85] Under the new law, British businesses no longer depended on Parliament to incorporate, and business corporations no longer had to demonstrate any explicit link to social purpose, regardless of how tenuous.

On the other side of the Atlantic, the United States also began to liberalise its incorporation laws. Partly, this was because the American federal government had devolved the chartering of corporations to the states, which were more open to granting charters.[86] To take one example, in 1811, the state legislature in New York allowed the free incorporation of manufacturing companies for a period of twenty years. New Jersey followed New York's innovation in 1816, and Connecticut allowed for the free incorporation of any business pursuit in 1837.[87] The liberalisation of common law in Britain and the United States further formalised the separation of social purpose from the activities of the business corporation. Particularly important was the 1881 case in Britain of *Hutton v. West Cork Railway Co.* The judge, Sir Henry Cotton, ruled that the principle of *ultra vires*, or going beyond the scope of its powers, was applicable to corporations. In his words, this principle implied 'that charity [had] no business to sit at boards of directors *qua* charity.'[88] Thereafter, several courts in Britain and the United States reinforced this principle, thus making corporate donations more complicated.[89] In an extraordinary volte-face, the corporate legal form that had originally been designed for public benefit was thus now legally prohibited from funding charitable institutions, because doing so allegedly ran counter to the interests of its shareholders. In the United States, subsequent case law also complicated the legal status of corporate philanthropy. The principle of *ultra vires*, regarding corporate philanthropy, was finally put to rest in the 1953 Supreme Court decision of *A.P Smith Manufacturing Co. v. Barlow et al.* following a decision by the firm to donate money to Princeton University.[90]

[85] HC Deb, 1 February 1856, vol 140, col 131.
[86] Blumberg (1986: 587).
[87] Hovenkamp (1991: 11–13).
[88] Sharfman (1994: 236).
[89] Sharfman (1994: 238).
[90] For information on three important subsequent cases in the United States, *Steinway v. Steinway and Sons* (1896), *Worthington v. Worthington* (1905), and *Brinson Railroad v. Exchange Bank, et. al.* (1915), see Hall (1992: 31) and Sharfman (1994: 245–55).

The advent of general incorporation signified the end of the formal link between business corporations and social purpose, but it did not mark the death of the informal, voluntary relationship between them. Businesses, as well as individual business people, continued to involve themselves in social welfare in a number of ways. In addition to corporate and private philanthropy, businesses engaged in a constellation of activities that eventually became known as 'corporate social responsibility'. In the 19th century, in the United States, for example, the corporate executives of Macy's, the department store, contributed to orphanages and other charities; the DuPont family, who made their fortune in explosives, provided death benefits for workers killed in industrial accidents; and New York life insurance companies fought the spread of tuberculosis.[91] In Britain, around the same period, the Cadbury brothers, manufacturers of chocolate and cocoa products, built housing and dining facilities for their workers, while in Germany the large steel manufacturer, Krupp established a health insurance plan for workers as early as 1836, followed by a pension plan and life insurance later in the century. Krupp also built a hospital and free housing for retiring employees. These voluntary efforts, which became relatively common in Germany, in turn facilitated Bismarck's passage of his landmark social welfare plans that included health insurance, accident insurance, and old age and invalidity insurance for workers.[92] The paternalistic and corporate welfare initiatives that were common among 19th-century industrialists had their roots in the social purpose long expected of corporations by the state.

As corporations became larger, they presented state authorities with new, and seemingly intractable, problems. In the United States, one of the most troubling was the concentration of economic and political power within just a few firms. The integration of mass production with mass distribution beginning in the late 19th century resulted in many small firms going out of business. By 1904, after a period of dramatic consolidations, 318 firms allegedly controlled nearly 40 per cent of America manufacturing assets.[93] Industrial consolidation meant that American behemoths such as U.S. Steel and General Electric, like Siemens in Germany, integrated vertically, decreasing corporate competition within the value chain.[94] In the United States, where central government was weak and the country's domestic market enormous and growing, executives found ample opportunities to expand across state lines without much interference from the federal authorities.[95] The relatively large scale of American industrial companies, in combination with a weak safety net, naturally raised important

[91] Carroll (2008: 23).
[92] Husted (2014: 127–34).
[93] Lamoreaux (1985) and Chandler (1962).
[94] Hannah (1999: 253–4).
[95] McCraw (1995: 301–2).

questions about the social obligations of industrial corporations, given their disproportionate influence on the wider economy.[96]

Only a relatively few corporations became gigantic, and the phenomenon occurred only in specific industries such as steel, oil, and chemicals.[97] But even so, the power and influence of large corporations became a constant problem in US politics.[98] Courts and state legislatures tried to curb the cartels and giant corporations. In 1890, the US Congress enacted the landmark Sherman Antitrust law that eventually allowed the government to break up the country's largest corporation, John D. Rockefeller's Standard Oil, followed by the explosives manufacturer, DuPont de Nemours. Congress passed additional legislation to tame big businesses, but disagreements over what policies would protect and enhance a 'competitive' marketplace placed constraints on reformers.[99] (In fact, over the years most antitrust prosecutions were not of big corporations but of groups of small companies that were engaging in collusive behaviour.)[100] In the tradition of Adam Smith, in pursuing antitrust, the American government explicitly endorsed the efficient provision of goods by corporations over a social compact like that adopted in Germany. [101]

Overall, and despite a few well-publicised clashes with their workforces, American owners and managers went largely unchallenged. There were almost no regulations for environmental protection except at the local or state level, and the federal government often hindered the development of strong worker unions.[102] The US Great Depression marked a turning point. Beginning in the early 1930s, the American federal government began placing robust constraints and mandates on corporations for the first time and ultimately legitimised unions with the National Labor Relations Act in 1935. In addition, more corporations offered pensions and health insurance, in part because of new tax exemptions for employer-provided benefits. (Their largesse was confined to the largest companies, however; extremely competitive and fragmented industries such as textiles and apparel found it more difficult to offer generous benefits.)[103] By the turn of the 21st century, corporate social responsibility programmes thrived within large American corporations, but their focus had changed. Corporations continued to take their environmental responsibilities seriously (partly because of significantly increased legal liability), and they helped to fund more health, education,

[96] Galambos (1975).
[97] Chandler (1990).
[98] Sklar (1988).
[99] Keller (1994).
[100] McCraw (1984).
[101] Dore (2000).
[102] Hoffman (1997).
[103] Klein (2004).

and infrastructure programmes in developing countries. But American corporate executives deployed fewer resources to raise the living standards and security of their workers, especially when compared to the period between 1950 and 1980, the heyday of worker-oriented, industrial paternalism. Instead, corporate executives treated labour as a commodity whose costs they needed to control.[104] 'By the early 1990s', as Archie Carroll writes, 'the social contract between America and the "good corporation" was disappearing. ... The corporation's economic performance is no longer measured in jobs created, but in financial wealth generated for shareholders.'[105] As global competition increased due to declining trade barriers, corporate critics complained of a race to the bottom for workers' wages, even as the competition to generate greater profitability led to rivalry among international governments to provide more favourable corporate tax regimes.[106]

The explicit social mission of corporations may have faded, but modern business magnates, like countless philanthropists before them, continued to endow private foundations with their wealth. For example, the Ford Foundation (established in 1936) and the Bill and Melinda Gates Foundation (2000), both based in the United States, and the Wellcome Trust (1936) and Garfield Weston Trust (1958), both based in the United Kingdom, were each endowed by their founding families with the equivalent today of billions of dollars in assets. From the financial side, the growing trend of social impact investment and non-financial shareholder activism have complemented the older tradition of personal philanthropy. Some corporations, often Northern European, even became intrinsically linked to a wider social purpose by becoming foundation-owned firms, such as Ikea, Heineken, Bosch, Zeiss, Maersk, and Lidl.[107] This development was followed by the very recent phenomena of benefit corporations, low-profit limited liability companies, social purpose corporations, and, in the UK, community interest companies, which remove all ambiguities regarding the goal of the corporation as well as its rights to dispose of its assets for a social purpose.

The 19th century also produced a myriad of ideological and practical alternatives that helped to mitigate the commercial corporation's growing power. The concept of industrial democracy, for example, includes practices and institutions such as trade unions, works councils, and other participatory management practices that are also dubbed 'co-determination'. These practices are particularly common in Germany, where workers' committees were first successfully introduced as voluntary entities in 1892 and then made compulsory in 1905. They then expanded during the First World

[104] Eichar (2015).
[105] Carroll *et al.* (2012).
[106] Piketty (2013: 515).
[107] Hansmann & Thomsen (2017).

War and the Weimar Republic until Hitler curtailed them, along with all trade unions. Germany would not re-establish workers' committees and trade unions until after the Second World War.[108] Finally, in 1976, the German government passed the *Mitbestimmungsgesetz* or Codetermination Act requiring that any German company with over 2,000 employees have half of the members of their supervisory boards composed of workers' representatives. In this regard, and many others, Germany's system of corporate governance, state-supported cartels, and worker co-determination provides an alternative 'variety' of capitalism that sets corporations in a distinctly different context. Germany also pioneered a corporate structure that was arguably more suited to the needs of small and medium enterprises and minority shareholders, the *Gesellschaft mit beschränkter Haftung* or GmbH in 1892, which was then introduced to Britain in 1907 as the private limited company, the *Société à Responsabilité Limitée*, or Sarl, in France in 1925, and only much later appeared in the United States.[109] These structures allowed smaller companies to enjoy the benefits previously confined to bigger commercial concerns and became widespread soon after their legislative implementation.[110]

Many other alternative structures endure that explicitly favour corporate stakeholders other than owners. One configuration involves the ownership and management of a corporation by its workers, which can take the form of a workers' cooperative. Famous examples include the Co-operative Group in the UK, founded in 1844, which currently has over four million members, and the Mondragon Corporation in Spain, one of that country's largest corporations, not to mention the importance of agricultural cooperatives in New Zealand. Another example in the UK, the John Lewis Partnership, became a trust in 1929 and started distributing profits to its employees, since John Spedan Lewis, the founder's son, believed that aligning his staff's interests with the business would increase its overall profitability. Full ownership of the John Lewis trust was eventually transferred to the employees themselves in 1950. Corporations can also be owned by their consumers and organised as consumer cooperatives and credit unions. The other major alternative has been the state ownership of corporations, which is common both in socialist and mixed economies. Extreme examples include the Soviet Union, where all industries were run by the state, while mixed examples include contemporary France, where the government owns stakes in a number of corporations. If the corporation remains central to the structure of private business into the 21st century it is not because there were not alternative structures available but despite them.

[108] Müller-Jentsch (2008: 260–73).
[109] Guinnane *et al.* (2007: 4).
[110] See also Hannah & Kasuya (2016).

THE CORPORATION IN SOCIETY

While this abbreviated account cannot fully cover the vast topic of the corporation's historical role in society, it has attempted to trace the development of the corporation, and its relationship to some notion of social purpose, from antiquity to the present. Regulators and the wider public now view corporate behemoths as existing primarily for their shareholders. According to this perspective, the drive for short-term profits has led such corporations to abandon their focus on stakeholders, ignoring their employees and local communities. The relentless search for profits drives corporate executives to engage in 'regulatory arbitrage': to seek, for example, the most welcoming tax jurisdictions and, in doing so, to withhold the benefits that tax revenues could provide to local communities. But the notion of shareholder supremacy, and the focus on short-term profits to the detriment of a corporation's larger social responsibilities, is not the greater part of the history of the corporate form. Re-engaging with its long history demonstrates that social purpose was not incidental to the privilege of incorporation; instead, social purpose was inseparable from the right to incorporate. Ever since its origins in antiquity, public authorities have bestowed legal personhood on institutions with an explicit social purpose, such as public administrative bodies, charities, and universities. State authorities also expected a positive social impact from commercial entities like the Roman *societates publicanorum*, the Medieval guilds and the Early Modern chartered companies, whose private benefits were less obviously in the public interest. Although the definition of social purpose changed over time, legal personhood remained a gift of the state and as such those who benefitted from its privileges were expected to contribute to the wider society. Social purpose has thus been intrinsic to the corporation for most of its existence.[111]

We can trace the historical moment when 'the corporation' severed its relationship with social purpose to the 19th century. Business owners could now freely incorporate and enjoy the same legal privileges that a church or a charity had enjoyed for centuries. Liberalising the incorporation procedure did not mean that commercial corporations were intrinsically moral before, or that they were necessarily devoid of social purpose thereafter. The continuation of corporate social responsibility as well as corporate and private philanthropy has demonstrated that for-profit corporations continue to take their responsibilities to employees and communities seriously. But the absence of an explicit obligation to provide social purpose, complemented by a profit-maximising ideology and apparent examples of corporate excesses, has made it harder for corporate executives to justify their corporate privileges to the general public. It is this

[111] For further reading on the corporation in society, see Gomory & Sylla (2013), Henning (2011), Mayer (2013), and Muchlinski (2010).

relatively recent, and immensely successful, 'experiment' in free incorporation that has led the wider public to reassess the historical relationship between legal personhood and social purpose.

As proof that the modern corporate form was not an inevitable development, we can note that, in the absence of general incorporation, business owners employed alternative legal arrangements throughout history to mitigate the risks and uncertainties associated with commercial activity. Most commonly, through private contractual arrangements, investors and their partners could limit their financial exposure or liability as well as define agency and provide entity shielding without the need for a corporate charter. Limited liability, which is sometimes singled out as the root of corporate evil because it diminishes the responsibility of owners, is thus not exclusive to the corporation and has been easily replicated in voluntary private arrangements that sometimes operated as de facto corporations.[112] The sophistication of these tools may also be part of the explanation as to why partnerships and trusts continued to be widespread even after general incorporation laws had been enacted.

Despite a vast amount of scholarship on the subject, there is clearly still a great deal of work to be done to better understand the historical role of the corporation in society. Notably, as historians have worked to globalise their research, the broad comparative relationship between commerce and social welfare mediated by the corporation still eludes us. In the Medieval Islamic world, for example, the *waqf*, which became widespread from the 9th to 12th centuries, was used to provide a range of public services, including mosques, hospitals, and schools. Yet the *waqf* was never a legal person and was controlled via a founding deed in perpetuity.[113] Similarly, cases like the *sreni* in Ancient India indicate that there may be more research to be done regarding the existence of legal personhood outside of the Classical Mediterranean world. Questions also remain as to how and why commercial tools like the *commenda* or the guild spread across the world. Family-owned businesses, too, deserve more scholarly attention because they often prioritise continuity over short-term profits and pay close attention to their reputations within their communities. Whether these traits are peculiar to family ownership might be answered by a comparative history of family businesses around the world. The global history of the relationship between business, the corporation, and social purpose is thus far from complete.

If one set of historical questions is rooted in Antiquity and the Middle Ages, another set is closer to the present. Much of the criticism of the corporation revolves around its supposed evolution as the perfect vehicle for investors, but not for the

[112] Weinstein (2008: 189–227).
[113] Kuran (2005: 785–834).

stakeholders in wider society.[114] And yet, as the public corporation has reached its apparent apex, its numbers have been dropping—and not simply because of increased industrial concentration. Family businesses around the globe remain hesitant to adopt the public shareholder form, proponents of private equity have increasingly argued for its superiority by avoiding public markets, and many new technology companies are adopting special classes of shareholding and even delaying going public in order to avoid becoming like the Anglo-American public corporation—the dominant model for the rest of the world at the end of the 20th century. Can history provide an alternative ecology that better reflects this changing financial world? Will the emerging corporate landscape look more like the early corporate arrangements of the 19th century or the global chartered trading companies of the 17th century? Will a rise in nationalism like the one that occurred in the 19th century lead to the revitalisation of national corporate champions like those in Germany under Bismark, or to favoured conglomerates like those in Japan and Korea in the 1980s and 1990s? Will societies opt for public models of ownership instead of private ones in those industries thought to serve a public purpose? It is clear that capitalism is not converging on a single model, but will the resulting varieties of capitalism revolve around the nation, the market, or new technologies? History may yet offer alternative roles for the corporation in society.

The question that remains is: what can history teach us about the corporation in order for us to create or imagine a better future? Legal personhood, and the associated benefits of convenience, perpetuity, and risk mitigation, remains bound by national and local legislation. Given the corporation's deep historical roots in social purpose, it seems reasonable to suggest that a responsibility to the wider public should be recognised in its legal status. This responsibility, which can be expressed through the payment of taxes, charitable contributions, preservation of the environment, and the adherence to law, can be encouraged or enforced in a myriad of ways. The state can enact regulations, create tax incentives, encourage corporate social responsibility through public pressure, or devise alternative legal models. Each of these options, however, presents trade-offs. Excessive regulations risk destroying economic innovation, taxes often lead to abuse and jurisdictional arbitrage, while reliance on corporate responsibility may well lead to inconsistent results that respond, at best, only to those issues driven by public opinion without government oversight. It is clear that, even if governments were to severely restrict the right of incorporation, executives would devise alternative ways of achieving the same end far removed from public supervision. And yet a more diverse ecosystem of business forms, including ones that explicitly prioritise social ends, could well result from our greater willingness to engage in such experiments and trade-offs.

[114] Hurst (1970).

Acknowledgments

The authors would like to thank Professor Colin Mayer for his unflagging support, two anonymous reviewers for their very thoughtful comments, the participants of a productive conference call hosted by the British Academy, and the attendees of a special session at the Business History Conference in Baltimore, Maryland for their many suggestions on an early draft. Financial support was provided by the British Academy's Future of the Corporation project and the Global History of Capitalism project in the Oxford Centre for Global History.

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To cite the article: Leonardo Davoudi, Christopher McKenna and Rowena Olegario (2018), 'The historical role of the corporation in society', *Journal of the British Academy*, 6(s1): 17–47.

DOI https://doi.org/10.5871/jba/006s1.017

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Journal of the British Academy (ISSN 2052–7217) is published by
The British Academy—the national academy for the humanities and social sciences.
10–11 Carlton House Terrace, London, SW1Y 5AH
www.britishacademy.ac.uk