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## The History and Development of the American Business Corporation before 1800

Lyle L. Mabe

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THE HISTORY AND DEVELOPMENT OF THE  
AMERICAN BUSINESS CORPORATION  
BEFORE 1800

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By

LYLE L. MABE

A thesis submitted in partial fulfillment  
of the requirements for the degree of Master of Arts  
Department of Economics and Business Administration  
Butler University

Indianapolis  
1934

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FOREWORD

An attempt has been made by the author in the pages which follow to show the development in a rather detailed manner of the American business corporation previous to and through the eighteenth century. The early chapters of this work have seemed advisable because they give the reader a general background which the author believes is beneficial in interpreting the latter part of the work.

The nature of this work shows that the primary object has been training in research and that the presentation of new facts has been subordinated.

The author is indeed grateful and appreciative of the many suggestions and criticisms rendered by Professor C. B. Camp, under whose guidance this investigation has been undertaken.

Introduction

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## I. Introduction

An innate instinct in mankind toward association is brought out in the early existence of collective associations of human beings. Almost intuitively mankind realizes that there is much which can only be accomplished through association and cooperation. The idea of a corporation, which is but another manifestation of the gregarious instinct in the human race, is not the product of any one nation or people, but has developed among many peoples in response to social and economic necessities. As human relations become more intricate and complex, the tendency to recognize artificial persons who are not human beings becomes more prevalent.<sup>1</sup>

Action in concert by great numbers of people, with a large amount of capital, can be attained only by governments, or by means of associations properly organized, with numerous officers and agents, whose powers and duties, and the rights of the members are defined, either by law or by articles of association, which may be enforced by efficient remedies.<sup>2</sup>

In ancient times corporations, joint stock-companies, and other organized associations were wholly unknown with the exception of a few which were of a political nature.

1. Wormser, Isaac M., Frankenstein, Inc., 1931, p.35.

2. Seaman, Essays on the Progress of Nations, 1852, pp.517-518.

In the olden days governments took it upon themselves to build roads and other great enterprises and improvements which they deemed necessary. It is certain that the ancients had no conception of the relatively modern mode of uniting together a great number of individuals each with large amounts of capital, to act in concert; hence, in those days great incomes were generally expended in keeping a large retinue of servants.<sup>3</sup>

As compared with those of our century, the inducements in the direction of economy and industry were in Roman times very insignificant. Nevertheless, it can be said that the union and organization of Christian societies and the Roman laws regulating their government and the management of their property probably suggested the idea of municipal corporations, of charters for colleges and other great objects formerly of private enterprise.

The corporation as an institution was well established and matured in England during the American colonial period. It is, therefore, not surprising that from a very early date the corporation has played a prominent role in American life. Public corporations were the first to spring up in the colonies; however, before the close of the colonial period in our history, a considerable number of truly private corporations had been established for religious,

3. Callender, G. S., Selections from the Economic History of the United States, 1765-1860, p.12.

educational, charitable, and business purposes. It is those corporations which were chartered for business purposes that will command our primary attention in this study.

In order to insure peace he subdivided warring factions into collective associations according to their trades, professions, and callings. However, the first corporate type of organization of which there is any record existed in the days of the Roman Empire. They were called "universitates" (from one whole out of many) and in other writings they are referred to as "collegia" (from being collected together).

These persons were required to form these corporations although it is recorded that after formation many existed with only one member.<sup>4</sup> All the attributes of modern corporations with respect to right of contract, ownership of property and real were possessed by the early Roman associations. In event of insolvency, however, it appears that the liability of individual members was unlimited. For many centuries after the fall of the Roman Empire little is known of corporations; nevertheless, we can be certain they were in existence in some form or other, as they emerged again at a later date.

The partnership, as a form of business enterprise has

4. Gamp, C. J., Theories of Corporate Personality (Manuscript in preparation). Original Source - Sohn's Institutes, Loeb's edition, Oxford, 1902 - The Early Roman Law - The Twelve Tables.

## II. The Evolution of the Corporation

Blackstone, in his Commentaries, states that it was Numa Pompilius (715-672 B.C.) who first conceived the notion of incorporation. In order to insure peace he subdivided warring factions into collective associations according to their trades, professions, and callings. However, the first corporate type of organization of which there is any record existed in the days of the Roman Empire. They were called "universitates" (from one whole out of many) at times and in other writings they are referred to as "collegia" (from being gathered together).

Three persons were required to form these corporations although it is recorded that after formation many existed with only one member.<sup>4</sup> All the attributes of modern corporations with respect to right of contract, ownership of property and seal were possessed by the early Roman associations. In event of insolvency, however, it appears that the liability of individual members was unlimited. For many centuries after the fall of the Roman Empire little is known of corporations; nevertheless, we can be certain that they were in existence in some form or other, as they emerged again at a later date.

The partnership as a form of business enterprise has

4. Camp, C. B., Theories of Corporate Personality (Manuscript in preparation). Original Source -- Schm's Institutes, Ledlies edition, Oxford, 1901--The Early Roman Law-The Twelve Tables.



three distinct shortcomings which unquestionably led to another form of enterprise to be discussed in the following pages. The three shortcomings to be noted are: first, limitations for amassing capital; second, easy disruption; third, lack of facility for centralized management. Thus the joint-stock company sprang up as early as 1555, as a means of furnishing the larger capital requirements, a more complex but yet centralized administration, and a stable organization which is essential to any successful business enterprise.<sup>5</sup>

The joint-stock company was a voluntary association of individuals for profit, having a capital divided into transferable shares the ownership of which was a prerequisite to participation.<sup>6</sup> In the United States at present there can be little distinction drawn between the corporation and joint-stock company since most of our joint-stock companies happen to be incorporated. However, the joint-stock feature of our business corporations must be kept in mind as an element which is not necessary to the corporation as such. In England and certain European countries examples can be readily given of unincorporated joint-stock businesses.

There are both economic and legal features essential to the modern type of joint-stock company. The capital is

5. Scott, W. R., The Constitution and Finance of English, Scottish and Irish Joint-Stock Companies to 1720, p.10.  
 6. Haney, Lewis H., Business Organization and Combination, 1934.

divided into equal shares being readily transferable and each share is indicative of the holder's participation in the income of the business as well as his risk. The legal aspects which are foremost are that the company is formed by contract among its members without a charter from the state and, furthermore, personal liability of all members exists in this type of business organization.

Thus the joint-stock company can be spoken of as an intermediary between the partnership and the modern business corporation. A wide gap is covered and, consequently, there are a number of joint-stock forms such as the common law and statutory companies. There are also such forms as mining partnerships and limited partnership associations which are often termed "quasi-corporations."

The common law joint-stock companies in England were companies of one capital which the members of the company held jointly. They traded as one individual and subsequently divided the profits. The ordinary common law joint-stock company differs in three distinct points from the partnership. In the first place its capital is divided into shares which may be transferred by the owner at will without the consent of the other members. Secondly, its affairs may be conducted by a board of managers or directors who may bind the company when acting within the scope of their authority, and, lastly, the joint-stock company is not dissolved by the death or incapacity of any member. Furthermore,

This is discussed in the following chapter.

the name of the company usually does not contain the names of any of its members since this type of organization usually embraces many individuals. Aside from these definitely stated differences, it is entirely correct to think of the common law company as a kind of partnership because its members do have the same rights and are liable to the same degree as are partners.<sup>7</sup>

On the other hand, the statutory joint-stock company is of necessity a quasi-corporation, having all the essential characteristics of the corporation with the exception of limited liability. However, in some states, the statutes may even provide for limited liability on the part of the members of the company.<sup>8</sup>

Taken as a group joint-stock companies differ from business corporations in the sense that the former are not clothed with a legal personality entirely separate and distinct from the natural persons who make up their membership.\* Consequently, they are less permanent than corporations. Secondly, joint-stock companies arise out of a contractual relation among their members and the relation they assume depends entirely upon their mutual agreement and not upon any grant of authority from the state. Finally, as has been pointed out, they are not entitled to limited liability unless specifically authorized by statute. Certainly the joint-stock

7. Haney, Lewis H., Business Organization and Combination, p.74.

8. Ibid., p.75.

\* This point is to be discussed in the following chapter.

forms involve a more personal relation among their members than does the corporation due to the fact that a complete and separate legal entity is not present as is in the case of the corporation.

Production on a large scale has been greatly promoted by the practice of forming a large capital by the combination of many small contributions, or in other words, by the formation of associations on the joint-stock principle.<sup>9</sup>

The advantages of the joint-stock principle as it has been utilized in business enterprise are numerous and important.

First of all, many undertakings require an amount of capital beyond the means of the richest individual or private partnership. For instance, no individual could have constructed his own railway from London to Liverpool at the time it was constructed. Again there are undertakings which individuals are not absolutely incapable of performing, but which they cannot perform on the scale and with the continuity which are ever more and more required by the needs of a society in an advancing state. Individuals are quite capable, for example, of dispatching ships from England to any or every part of the world. In fact, before joint-stock companies were heard of this very thing was being done. However, with an increase of population and transactions, as well as of means of payment, the public no longer is content

9. Mill, John Stuart, Principles of Political Economy, pp.182-3.

*of the United States, 1783-1880, p.31.*

with these occasional opportunities which may be offered; instead, they require a more complete and certain service which in turn requires a much larger capital and a much larger staff of qualified subordinates than can ever be commanded by an individual capitalist.<sup>10</sup>

There are still other cases in which the business might be perfectly well transacted with a moderate capital; nevertheless, the guarantee of a great subscribed capital stock is necessary or desirable as a security to the public for the fulfillment of pecuniary engagements. This is particularly true in cases when the nature of the business requires that great numbers must be willing to trust the concern with their money. Thus the joint-stock principle is shown to be eminently adapted to the business of banking as well as to the insurance business.

As the scheme of representative government in political organization can be traced, likewise the joint-stock scheme of business organization may be traced to many and early rudiments. As early as the twelfth century associations were formed in the Italian city-states among the subscribers to the public debts.

10. Callender, G. S., Selections from the Economic History of the United States, 1765-1860, p.31.

## III. Legal Concepts of Corporations

The early American corporation was then, as now, a group of individuals authorized by law to act as a unit. A corporation has been defined as a voluntary association endowed with autonomy and continuity of existence through a government-granted license or charter.<sup>11</sup> To express this idea in Roman law the most common term used was "universitas." A "universitas" might be either personarum or rerum, that is to say, might consist of an aggregate of persons or of things. The highest example of a universitas personarum was the Roman state itself; other examples were municipalities and private societies, on which the Roman law had expressly conferred corporate privileges.<sup>12</sup>

A fundamental principle has always stood out concerning the creation of corporations and that principle is that no corporation can be created simply by the act of private individuals; instead, that special privilege of incorporation must be bestowed upon a group of individuals by the state. According to the English law the right of incorporation was not an inherent right of a group of individuals but must be extended to them by the state. A corporation can sue and be sued in its registered name alone; it can be both criminally prosecuted and civilly sued. If found

11. Seager and Gulick, Corporation and Trusts, p.10.  
12. Funk & Wagnall's, New Standard Encyclopedia.

guilty as a result of a criminal prosecution the extreme penalty is an order of dissolution by the court. Should a corporation be made a defendant in a civil suit the court may award damages to the party winning from the defendant in the form of a fine.

The most fundamental of all the factors peculiar to a corporation is the factor of legal entity and there are many advantages which result from this concept.<sup>13</sup> The meaning of legal entity cannot be adequately demonstrated without returning for a moment to the nature of the partnership organization. In the eyes of the law, it must be remembered, there is no such concept as a partnership as an entity separate from its members. Consequently, the partnership dissolves upon the death or withdrawal of any member. Creditors cannot sue a partnership as such, neither can a partnership sue in its own name, because at law the partnership concept does not exist.

Unlike the partnership, the corporation exists as an entity without any reference to its membership, and it is commonly said that the state recognizes a corporate organization as having most of the attributes of a new person, fictitious in character, but for legal purposes as real as a human being.

We shall consider the theories underlying the giving of personality to groups and the historical development of

13. Cross, M. C., Types of Business Enterprise, p.53.

those theories in a general way. The theories readily divide themselves into three rather distinct groups: first, the legal fiction theory; second, the organic theories; and third, the institutional theories.

Natural persons are defined as human beings recognized by law as the subject of rights and duties. On the other hand, a juristic person is recognized by law, or rather created by law, as an entity to be a subject of rights and duties separate from those of his natural existence.<sup>14</sup> Jethro Brown in his Austrian Theory of Law has stated that personality is a legal conception. He says that a natural person is a legal conception, a physical reality, and a natural organism. Likewise a corporation is a legal conception, but neither a physical reality, nor a natural organism. Therefore when we say that a corporation is a person, we mean to imply that it is only a legal conception. Pope Innocent IV, using the terms "fictitious" and "pretended", decreed (1284 A.D.) that corporate organizations were not to be excommunicated. The reasoning behind his decision was that the innocent would be punished along with the guilty and it was for this reason that he ruled as he did. We find that from the time of this decree until the period of the Reformation in England the privilege of incorporating was shared by the Crown with the Pope. It

14. Camp, C. B., Theories of Corporate Personality, (Manuscript in preparation). Original Source -- Maitland's Introduction to Gierke's Political Theory of the Middle Ages, p.xx.



was during this period of history that the corporation sole, or the one-man corporation, developed and Blackstone holds that this type of corporate organization is entirely a product of English law.<sup>15</sup>

A legal fiction assumes something contrary to facts. A fiction is distinguished from a presumption by the fact that in the latter things are presumed which are likely to be true, but a fiction of law assumes for truth what is either false, or at least is as false as it is true. To go further a fiction may be distinguished from a falsehood in that the former is not intended to deceive. Someone has said that Adam Smith used a fiction when he laid down the proposition that it appears as if all economic and commercial behavior were directed solely by egoism. In the same way we may look upon the isolated state, the perfect market, a state society, and a Robinson Crusoe economy as fictional propositions.<sup>16</sup>

As more or less discussed in a general way in the preceding paragraphs this legal fiction theory which is the oldest theory of corporate personality has been pretty generally adopted in American jurisprudence. French jurists have also adopted it and it has been written into certain articles of French commercial law.

An ally of the legal fiction theory is the concept of

15. Camp, C. B., *Theories of Corporate Personality*, (Manuscript in preparation).

16. *Ibid.*

the state making a "concession" to an association of persons, making it a legal person. If we look upon the corporate charter as a concession on the part of the state then it is not difficult to see why the state has the power to revoke any charter which it may grant. Back in the Middle Ages jurists adopted this "concession" concept, but they insisted that all corporate groups had to be identified with some natural person. For that reason we hear of a concession which was made to the Governor and the Bank of England, a typical example of the various other concessions made by governments.

The legal fiction and concession concepts did explain the perpetuity of a corporation and its limited liability and these were the perplexing problems of seventeenth century jurists. Because a corporation does some of the things that a real person does, the law calls it an artificial person. To be sure, it does not possess all of the attributes but it does have most of the rights and duties of a person, subject to certain legal limitations.

The second group of corporate personality theories, the organic theories, rests upon the fact that in any association of human beings there exists a personality different from any individual or sum of personalities represented.<sup>17</sup> The group, in other words, represents an organism capable of

17. Camp, C. B., Theories of Corporate Personality, (Manuscript in preparation).

Original Source - M. J. L. S., Frederick. College of Law, Oxford Press, 1898.

doing things which individuals will not and cannot do. Psychologists often employ this theory in explaining the action of mobs and any other group action which differs radically from individual action. In this theory we see a decided contrast to the legal fiction or classical theory, because the organic theory does not recognize fictitious entities created by law, instead it recognizes concrete realities who own goods and who act as persons.

The influence of this theory upon English jurists and political philosophers has been very profound. Naturally, not all of them have accepted it, yet it has furnished a basis for their attacks upon the legal fiction theory. However, it is difficult to reconcile this group will theory or Willenstheorie, as it is sometimes called, to the modern practice of a corporation seeking a charter from the state. On the whole, the theory may have a great deal more value historically than it does scientifically.<sup>18</sup>

Several other theories of corporate personality have been advanced each of which falls in the grouping known as the institutional theories. In each of these theories the approach is made to the problem from the standpoint of creation, that is that corporations are created only by duly constituted authority. An institutional school of social scientists has advanced the idea that contemporary society

18. Camp, C. B., Theories of Corporate Personality, (Manuscript in preparation). Original Source -- Maitland, Frederick, Collected Papers, Oxford Press, 1896.

is a complex of institutions for organizing and regulating the behavior of individuals. Some of the various institution theories are known as the collective property theory, theory of trusts as legal persons, the juristic reality theory, and the autochthonous theory.

A word should be said about the last theory named in the preceding paragraph. The autochthonous theory is quite modern and does receive considerable attention in our times. The heart of the theory is that corporations exist today and were created in the earlier days because of a definite need for them. Those who adhere to this theory do not make any attempt to say why a corporate body was found; instead, they are primarily interested in how it was formed.

This group is the only group that is able to show that there is no unbroken chain of events connecting the Roman collegia with the guilds and joint-stock companies. Historical evidence points to the fact that the guilds sprang up and asserted themselves, obtaining rights and privileges in exchange for services and duties rendered, with absolutely no knowledge of their predecessors. Likewise there seems to be little, if any, historical connection between the English joint-stock companies and the guilds. It appears that each developed and prospered in response to a particular need existing at the time. With the development of extended commercial intercourse new and varied needs arose and new business organizations were formed to meet those particular

needs.

### III. Broad Meaning of the Term

To summarize, there is no one theory of corporate personality which is sufficient, in itself, to explain the modern American business corporation and the many legal questions relating to it. However, one thing is certain and that is the fact that corporation law is not the parent of the corporation but rather a later development.

All corporations formed with the primary object of securing pecuniary gain or avoiding pecuniary loss, for the benefit of the members. It is in this latter sense that the law will be applied in the following pages. In the early days those companies formed with the object of securing pecuniary gain or avoiding pecuniary loss, were oftentimes spoken of as "moneys" or "moneysed" corporations. At the present time we have a tendency to segregate public corporations, financial corporations, and public service companies from the field of so-called business corporations.

Previous to the opening of the nineteenth century the common law as developed with reference to corporations organized for religious or governmental purposes was likewise applied to those organized for business purposes. Legislative committees on corporations handled petitions for charters alike from towns, churches, banks, and manufacturing companies. In the case of New Jersey this practice lasted until nearly 1840. Differentiation came about only by slow degrees, as the numbers increased then general

statutes were III. Broad Meaning of the Term--  
 corporations. Business Corporation

There was scarcely any development of this term before the term "business corporation" has no precise technical significance. In the last century, or thereabouts, the term has been used in a narrow sense; but, in a broader and perfectly legitimate sense, it may be used to designate all corporations formed with the primary object of securing pecuniary gain or avoiding pecuniary loss, for the benefit of the members. It is in this latter sense that the term will be applied in the following pages. In the early days those companies formed with the object of securing pecuniary gain or avoiding pecuniary loss, were oftentimes spoken of as "money" or "moneyed" corporations. At the present time we have a tendency to segregate public corporations, financial corporations, and public service companies from the field of so-called business corporations.

Previous to the opening of the nineteenth century the common law as developed with reference to corporations organized for religious or governmental purposes was likewise applied to those organized for business purposes. Legislative committees on corporations handled petitions for charters alike from towns, churches, banks, and manufacturing companies. In the case of New Jersey this practice lasted until nearly 1840. Differentiation came about only by slow degrees; as the numbers increased then general

statutes were passed applying only to specified groups of corporations.

There was scarcely any development of this institution before 1800. It is therefore necessary for us to draw a line between those corporations organized for business purposes and those predominantly with other objectives. Such a division is not easily made. Due to the brevity of the charters and the lack of contemporary differentiation, the term "business corporation" will be used in this dissertation in its more inclusive sense.

the first stock companies under full char-

corporation - emergence. 18 American limited

1800	10
1810	12
1820	15
1830	20
1840	25
1850	30
1860	35
1870	40
1880	45
1890	50
1900	55
1910	60
1920	65
1930	70
1940	75
1950	80
1960	85
1970	90
1980	95
1990	100

#### IV. Colonial Business Corporations

On the other hand, there were business corporations of colonial origin which were both colonial in origin and in activity were few and on the whole of no great importance. Only as the colonial period drew to a close did several come into existence, and even these were hardly typical of present-day business corporations. There were in all but six corporations of strictly American origin or character during the days of colonial government.

At the opening of the eighteenth century, there were in England only three joint-stock companies under full charters for purposes of foreign commerce.<sup>19</sup> America claimed one of the three, the Hudson's Bay Company. This company had a crown charter from Charles II, confirmed for seven years by act of Parliament in 1690. The Ohio Company, composed partly of Virginians, was chartered in 1749 to promote land speculation and the Virginia assembly was compelled by the Crown to make this joint-stock company a grant of six hundred thousand (600,000) acres. The Susquehanna Company, formed in 1743, was without a charter although they sought one from the Crown and had the full consent and approval of the Connecticut legislature. Therefore, it operated as a mere partnership like nearly all the land companies of the eighteenth century. Some of these partnerships had nearly a thousand members while others had only

<sup>19</sup> Baldwin, Simon E., American Business Corporations Before 1789, p. 460.  
19. Anderson, History of Commerce, vol. II, p. 598.



two or three.<sup>20</sup>

On the other hand, there were numerous instances of incorporation or quasi-incorporation of proprietors of lands by the colonies for the purpose of improving their property by concerted effort. The earliest of these occurred in Massachusetts in 1652, when thirteen owners of land along Conduit Street in Boston were incorporated (although with no company name) to enable them to supply houses on that street with water.<sup>21</sup> The Massachusetts General Court voted that certain specified inhabitants of Conduit Street, Boston, "shall be a corporation and incorporated into one body or company." Water was of value in eliminating some of the dangers of fire as well as its value for daily use in the colonists' families. Each owner of land along the street had an equal share in the undertaking. The proprietors were to elect annually two of their number to be "wardens or masters of the said waterworks for the ensuing year," and these wardens were virtually managers of the whole business on behalf of the company. Other proprietors of lands on the same street or elsewhere were permitted to enter the corporation, with the consent of the wardens and company, and on condition of paying their reasonable share of the expense. Since the company lacked a corporate name, which was one of the formal requisites for adequate incorporation,

20. Devlin, J. S., Essays in the History of American Corporations, vol. 1, p. 450.

20. Baldwin, Simon E., American Business Corporations Before 1789, p. 450.

21. Ibid., p. 451.

it was not thoroughly entitled to corporate rank.<sup>22</sup> There appears to be a difference of opinion among authorities on corporate development concerning the water company of Boston. Davis declares that the company never accomplished the object intended at the beginning while Baldwin states equally clearly that the undertaking was successfully prosecuted. Fishing and whaling companies were numerous in the colonies and it was a typical joint-stock company that was set up in New York in January, 1675. Each of the shares of this company had the par value of ten pounds and the company was given recognition by the council.<sup>23</sup> This New York Company "for Settling a Fishery in these Parts" is cited by Baldwin in his work on business corporations as the first business corporation but Davis, on the other hand, states that the fact of incorporation is not clear. Davis has found that the only record of this fishing company is contained in the minutes of the New York City Council and the minutes of the council were badly mutilated in the Albany capitol fire in the year of 1911.

Second in Baldwin's list of colonial corporations of strictly American origin comes the Free Society of Traders in Pennsylvania (1682). It was chartered by Governor Penn

22. Davis, J. S., Essays in the Earlier History of American Corporations, vol. I, p.89.

23. Ibid., p.92.

1789, p.453.  
254 1715, p.453.

soon after he had received his patent and it received extraordinary privileges.<sup>24</sup> The subscription agreement was drawn up in March, 1682, in London where the patent of grant of incorporation had been issued and the first officers were elected in the same city. Nevertheless, it was to be distinctively an American company having its seat at the capitol of Pennsylvania where every meeting was to be held with the exception of the first which took place in London as mentioned above. A capital stock of five thousand four hundred (5,400) pounds was subscribed under the date of April 26, 1682. At all meetings subscribers for fifty (50) pounds were to have one vote, those subscribing for one hundred (100) pounds, two votes, and those subscribing for three hundred (300) pounds or more were allowed to cast three votes; however, the provision was made that no one could cast over one vote unless he resided in Pennsylvania or owned one thousand (1,000) acres of inhabited land there. The articles of association under the patent provided that the first general assembly held in Pennsylvania should be asked to ratify it, but it does not appear from any records obtainable that any application was made either then or at a later date for any such legislation.<sup>25</sup>

In a few years the society was practically out of business except as an owner of real estate. There were no

24. Baldwin, S. E., American Business Corporations Before 1789, p.453.

25. Ibid., p.453.

dividends being paid to the shareholders after a few years and as a result, in August, 1704, some of the English shareholders applied to the provincial council asking them to issue an order demanding that the managing officers of the society render an account. Nothing more has been discovered as yet concerning the society and its doings until a bill was recorded by the provincial assembly in 1721. This bill demanded that the officers of the Free Society be brought to an end and a distribution of whatever remained be made to the shareholders on an equitable basis. Thus, after a struggle of forty years under adverse circumstances, the Free Society of Traders in Pennsylvania passed out of existence. The society really had only a very brief active career, but lingered on in a dormant, inactive condition until 1723.<sup>26</sup>

During the eighteenth century and previous to the American Revolution, the New London Trading Society claims our first attention. Only after certain of its proposed characteristics and purposes were put out of sight was it established and within a year after it came into existence its active career was suddenly brought to an end by an act of the legislative body. There were other corporations which, though they were perhaps less pretentious, yet they were more enduring and survived the Revolution. This was

26. Baldwin, S. E., American Business Corporations Before 1789, p.455.

true of a group of wharf proprietors in New Haven and another similar group in Boston. In Rhode Island there were three rather small water companies and in Philadelphia there existed a mutual fire insurance society, all of which emerged again after the Revolution. These were the only fully American corporate business associations which developed in those English colonies which were to become a part of the United States.<sup>27</sup>

These pioneer business corporations, though few in numbers, certainly are of interest in an historical account such as this. It is to be noted that their significance, even in their own time, was only slight and that they were distinct exceptions in the field of business rather than the rule. In general, it may be said these earliest corporations were predecessors and not true prototypes of the modern business corporation.<sup>28</sup> In this group only the local public service corporation is well represented, and there is not a single example of the various types of corporations we find employed in business in the latter part of the century such as bank, highway and transportation companies as well as manufacturing and mining companies.

However, if we exclude the Boston water company because of doubt as to its right to be classed as a corporation, and

27. Davis, J. S., Essays in the Earlier History of American Corporations, vol. II, pp.4-5.

28. Ibid., p.5.

if we exclude the Free Society of Traders in Pennsylvania because of its English origin and charter, then it would seem that The New London Society for Trade and Commerce in Connecticut, (1732-1733), deserves to be called the first American business corporation.

Nine years after the Free Society of Traders in Pennsylvania was dissolved by legislative act came the first New England charter. The New London Society for Trade was soon turned by its promoters into a land bank. It was the first purely trading company chartered in any colony and the last. After 1741, when the Bubble Act of 1720 was extended to cover the American colonies by act of Parliament, it must be remembered that not even a joint-stock association for business purposes of more than six persons, and having shares which were transferable, could be formed in the colonies. When the question of overtly incorporating the Free Society of Traders was presented to the assembly, particularly in 1733, that body, after some deliberation, decided that it had not the authority requisite to incorporate such a "society." However, a little later, when the company pleaded that it was a "fraternity" and not dissolvable, the assembly denied the plea.<sup>29</sup>

The New London Society for Trade was indeed a distinctly Connecticut institution, both in its origin and in its act of authorization; and whether its purposes actually

29. Davis, J. S., Essays in the Earlier History of American Corporations, vol. I, p.87.

included the carrying on of trade as well as the issue of bills of credit, its business nature is obvious. The only doubt arises concerning the question whether this society was really made a corporation by the assembly. In 1733 the assembly decided that it had not the authority requisite to incorporate such a society; nevertheless, the act of authorization later certainly bestowed many of the attributes of a corporation, but its terminology is not absolutely convincing. On the other hand, the early passing of the company makes a true statement as to its "corporateness" impossible.

The next business corporation in America was likewise chartered in Connecticut; however, it was not destined to be brought to an end by legislative act within one year of its establishment as was the first corporation, the New London Trading Society. This second business corporation was concerned with a New Haven enterprise. The Union Wharf Company of New Haven secured a charter from the assembly, May 22, 1760. As a corporate body the company continued its career of feverish industry alternating with discouraged inactivity. Mr. Thomas R. Trowbridge, in his "History of Long Wharf in New Haven," has stated that up to 1799 there were no dividends paid to the owners of the wharf. He has found that every dollar of the company's earnings had been expended toward repairing the wharf and in the extension of it.

The charter for the Union Wharf Company was for the encouragement of what was really a matter of public enterprise. Due to the fact that New Haven had a shallow harbor a long wharf was indispensable for the development of its trade. The work of constructing such a wharf had been begun by a few public-spirited citizens, but death had lessened their number and the heirs of those who had passed away took little interest in such a project. Therefore, to give permanence to the undertaking and to enable the majority of the owners to enforce proper repairs, a charter seemed necessary and it did prove very effectual.<sup>30</sup>

The third business corporation of American origin and chartered in the states was The Philadelphia Contributionship for the Insuring of Houses from Loss by Fire. This mutual insurance company, formed in 1752 and incorporated by the Pennsylvania assembly, February 20, 1768, is the business corporation with colonial charter having the greatest lasting significance. The chartering of this insurance company was the outcome of a scheme primarily designed to secure householders against risk by fire, rather than to open an avenue for profit on invested capital. In other words, the charter gave corporate form to a voluntary association which for sixteen years had been in existence for mutual protection of its members.

30. Baldwin, S. E., American Business Corporations Before 1789, p.456.



The original plan was to issue seven-year policies after the deposit of a gross premium. The interest coming from this gross premium was to go to the company, but the principal remained the property of the depositor and was subject only to the risks of the business. At the termination of these seven-year policies, the proportion of the losses and expenses of the company which the various deposits ought to bear was determined and a new start made on the basis of this account.<sup>31</sup>

Each depositor was liable to his fellow-members for losses to the amount of his deposit and half as much more. Since policies were issued only to members such a limitation on each member's personal loss could be effectually made. The members held a meeting each month and if any member failed to attend he was fined for not being present. The fines which were collected from time to time were used in setting up milestones on the roads leading into the city.<sup>32</sup>

This company was set on foot by Dr. Franklin who headed up its original board of directors. For a long period of time the company allowed its surplus to accumulate and it was questionable whether it could do otherwise. In 1895, that question was finally brought before the courts and it

31. Baldwin, S. E., American Business Corporations Before 1789, p.456.

32. Ibid., p.457.

was decided that dividends could be lawfully declared in favor of the members, if the directors saw fit.<sup>33</sup>

Although there seems to have been no expectation of direct pecuniary gain on the part of the "contributors" our present custom of counting mutual insurance companies among business corporations may perhaps justify its listing here.\* The company prospered, and until the year 1786 was without rival in Philadelphia. Alone of all the colonial business corporations it has had a continuous existence into the present century.

The next business corporation chartered in America was quite similar to the Union Wharf Company. It was chartered by the Massachusetts General Court, July 14, 1772, and was known as The Proprietors of Boston Pier, or the Long Wharf in the Town of Boston in New England. Its history, prior to and after incorporation, was not greatly different from that of the New Haven company and it proved equally efficient in securing the ends in view.

In 1772 and 1773 there were three water supply companies chartered by the Rhode Island assembly. They were then called "fountain societies." The first of these three was known as Field's Fountain Society. This group was chartered by the Rhode Island assembly in May, 1772. They

33. Baldwin, S. E., American Business Corporations Before 1789, p.457.

\* Since the decision of the courts in 1895 it has been in every sense a business concern.

built by contract, in the summer of 1772, a wooden aqueduct three-fourths of a mile long, conveying fresh water to that part of the town of Providence called the Point. In spite of the cost the proprietors felt well repaid by being the first in the colonies who ever attempted and effected an affair of this kind.

In 1772 and 1773 the Rhode Island assembly chartered two additional water supply companies quite similar indeed to the one mentioned above--Field's Fountain Society. The first of these was chartered by the assembly in October, 1772, and was known as Rawson's Fountain Society. This company was located in Providence similar to Field's Society. Cooke's Fountain Society at East Greenwich was the second of these water supply corporations and it was chartered by the Rhode Island assembly in October, 1773.

Taking the three "fountain societies," as they were generally called, as a whole, it may be said that their charters definitely conveyed all the customary general powers of corporations. Provision was made for the annual election of necessary officers, always including a committee charged with "the whole ordering and management of every matter and thing respecting said works," as a typical charter read. Power was also given to dig in the highways to lay aqueducts and pipes. The necessary funds for general expenses were to be met by assessments, and the individual members were permitted to convey the water from the main

aqueduct to their houses at their own expense. It is not clear that the original intention was to furnish water to other persons than the members themselves, or that pecuniary profit was anticipated; but these things were certainly within the powers of the proprietors.

The very limited number of chartered enterprises just described seem to be the total of the incorporated American colonial business organizations. A very thorough search of colonial records would possibly reveal other examples of business corporations, but it is certain the number would still remain small.

Alongside of these corporations, and immediately preceding them, were a large number of unincorporated associations, partnerships, societies, groups of "undertakers," and so-called "companies" formed for a great variety of business purposes. Many of these were called "companies"; several secured from the assemblies more or less substantial privileges; and, especially in the case of the drainage associations of Pennsylvania and New Jersey, elaborate acts were passed defining their mode of organization and activity. Yet in the eye of the law probably all were mere partnerships. Fishing and whaling companies were numerous as also were mining companies, which were chiefly for producing iron or copper. These were, therefore, all forerunners of the business corporation.

A semi-public corporation was constituted by act of

the New Jersey assembly, June 20, 1765. It was called The Trustees of the Road and Ferries from Newark to the Road leading from Bergen Point to Jersey City. This corporation consisted of a self-perpetuating body of nine trustees. To them was entrusted the duty of putting and keeping in good condition that part of the highway between Philadelphia and New York. They were empowered to receive donations and to take tolls and rentals, subject to regular accountability to a county board of reivew. In 1776, these same trustees were invested with the perpetual title to the ferries over the Passaic and Hackensack rivers along this route. The corporation remained in existence at least until 1815, but after the completion of bridges over these two rivers in 1795 the ferries were of no importance any longer and the corporations virtually became extinct.

Another organization worthy of mention was so-called "society of merchants" which was formed in New York City in 1768 and given the name of The New York Chamber of Commerce. The purpose of this group was to promote and encourage commerce, support industry, adjust disputes relative to trade and navigation and procure such laws and regulations as were found to be necessary for the benefit of trade in general. In 1770 this society found little difficulty in persuading the governor to grant a charter of incorporation and it thus became the first incorporated Chamber of Commerce in the world. The published records of its earlier

years show that before the Revolution it led an active existence, and like only a few of its contemporary corporations, it has maintained that uninterrupted existence to the present day.

The military companies, organized in Rhode Island in large numbers on the eve of the Revolution, had some of the earmarks of corporations. They petitioned for charters of incorporation. They were given perpetual succession, empowered to make rules and orders for their government, and were given a formal "company" name, yet the acts do not specifically call them corporations. The question of their legal status does not appear to have been passed upon; however, it seems that a strong argument might easily be made to prove them genuine corporations.

Several "marine" societies were also incorporated in the interest of navigation. There were three of these incorporated in the province of Massachusetts--one in Boston, another in Salem, and a third in Marblehead. The main object of these societies was to bring seamen together in a friendly way for mutual aid and assistance in case of need. Due to the ends in view in organizing these societies they must be classed as social rather than business corporations and need not claim our attention further.

In bringing to a close the remarks concerning the true business corporations, and other unincorporated groups, in the American colonies it must be shown from what source they

received their charters. The right to incorporate, though seldom explicitly delegated to colonial proprietaries, governors, or assemblies, was exercised by all of these without much interference from the crown, often with its sanction and encouragement. However, in the case of the "charter colonies" this right was exercised with caution till near the close of the colonial period.

We can understand why caution had to be exercised in the charter colonies if we recall that they were existing as corporations themselves by virtue of charters given them by the Crown. Their powers of legislation, as a matter of fact, were based upon their right and power as corporations to pass by-laws for their better government. An established principle of English law was that one corporation could not make another corporation. This unqualified statement appeared in the first English book devoted to the law of corporations which was published in the year of 1659. This same principle of law was repeated in two decisions covering the city of London rendered about 1700. In presuming to pass acts of incorporation, therefore, these charter colonies operating in America were acting in direct contradiction to this principle.<sup>34</sup> In view of this fact, and the eagerness with which unwarranted acts by the governing bodies of the colonies were seized upon by their enemies

34. Davis, J. S., Essays in the Earlier History of American Corporations, vol. I, p.20.

to justify the cancellation of their charters, it is very easy to see why they always acted cautiously in matters of incorporation. *America, where difficulties hindered*

Most of the corporations active in America during the colonial period originated and were chartered in America by the proper authorities here; nevertheless, there were over a dozen operating here under charters obtained in England. The business corporations chartered during this early period, it is to be noted, were indeed of an elementary type.

It is significant that during the colonial period no general incorporation act permitting freedom of incorporation in accordance with its provisions was known in America. As a matter of fact, general incorporation acts did not appear until near the middle of the nineteenth century. The early corporations were distinctly exceptions in the business world rather than the rule. They were predecessors rather than prototypes of the present-day business corporation. Likewise, the joint-stock company was a predecessor of the modern corporation. These unincorporated companies long remained the English form for such joint-stock enterprises as were beyond the limits of ordinary partnerships. However, in the colonies these were comparatively few in number. Their scarcity may be explained in part by the fact that the Bubble Act of 1720 was extended to the American colonies in 1741; but the chief cause, perhaps, was the fact that the economic and psychological conditions did not



require or favor their development.

Small-scale enterprise was still the order of the day, particularly in America, where difficulties hindered cooperative action. Political conditions operated rather to check than to promote the intercourse of men of affairs, especially between men in different colonies. Independence, which was a general characteristic of all American colonists, was a noteworthy factor in the slow development of corporate enterprise. The technique of using the elements of large-scale enterprise, which are machinery, power, and labor, was still undeveloped and with such a large area to subdue in the most elementary fashion the colonists could hardly make very large strides in technical progress. Furthermore, there was neither a large supply of capital nor of labor which sought employment at that time.

In the mother country, moreover, the corporate form was at that time being applied to a very limited extent to business enterprises. The most prominent examples of English business corporations of the day were the privileged and monopolistic companies for foreign trade and certainly there was no small degree of prejudice existing against them and their activities.<sup>35</sup>

As a matter of fact colonial corporations did increase more rapidly in number in the last two or three decades

35. Davis, J. S., Essays in the Earlier History of American Corporations, vol. II, p.6.

before the Revolution. All but one or two of the colonial business corporations were chartered after 1760. Thus, the development of corporations in the colonies was a fairly normal one, hampered very little by Crown interference or parliamentary restrictions; but instead, checked chiefly by the simplicity of social and economic traditions. At any rate the growth of business corporations toward the end of the colonial era is prophetic of the larger growth which takes place during the post-Revolutionary days.

We know that the right to incorporate groups was very seldom, if ever, definitely delegated to any of the colonial proprietaries, governors, or assemblies; however, this right was exercised by many of these without a great deal of interference from the Crown, often with its sanction and encouragement. However, power of incorporation was no doubt possessed by these colonial authorities without any express delegation of it from the mother country except in the case of charter colonies. In those few colonies it was necessary to exercise extreme caution in the matter of incorporation until the close of the colonial period.

Most of the corporations, business and otherwise, which were active in America during the colonial period originated and were chartered in America by the authorities here. However, there were more than a dozen who operated here under charters secured in England. It may be said that the majority of this latter group were either the original colonizing

companies or had to do with the government of an established colony, and in the latter case it is obvious that corporate privileges should be obtained from the supreme fountain of authority.<sup>36</sup>

Almost invariably charters were granted on petition of the parties interested. The only exception to the above statement was in the North Carolina colony where the Governor (Governor Dobbs) forced charters upon towns and counties which were perfectly willing to go on without them.

When judged by twentieth century standards, active private and public corporations chartered in the colonies were negligible in number. The business corporations, to be sure, were of a decidedly elementary type, but some of the other types chartered in the colonial period were quite similar to those of that particular type existing in our own day.

The lack of uniformity which we find in the distribution of corporations in the colonies is undoubtedly caused in some degree by the diversity to be found in the methods of incorporation. The most common method employed was by charter from the governor with the approval of the council in the royal colonies, and by act of the various assemblies in other colonies. Furthermore, there was no general

36. Davis, J. S., Essays in the Earlier History of American Corporations, vol. I, pp.104-5.

incorporation act permitting freedom of incorporation in accordance with the provisions of such an act existing in the days of the colonies.<sup>37</sup>

During the Revolutionary War corporations of any kind were chartered in the "states" and only one was created for any business purpose prior to 1763. The state legislatures were too busy with war measures and besides the times were too unsettled for new business ventures. The first few years of our political independence were in the main spent in making independence secure. Then came a few more years darkened and confused by differences and rivalries between the original states.<sup>38</sup>

After the war the need for business enterprises of stability and considerable scale was plainly evident to the states. Means of communication and banks were seen to be of prime importance and liberal manufactures came to be thought of as almost equally important. For many enterprises of these types it was desirable that incorporation, with the privilege of limited liability and the conditions of more stable organization, should be sought. Capital, accumulated during the war, was available for investment, and turned to property other than real estate was undoubtedly larger than before the war. The disbanding of the army left a surplus of labor and of the same time there came a new era of peace and stability. The day

37. Davis, J. S., Essays in the Earlier History of American Corporations, vol. I, p.106.

Business Corporations Before  
1763, p. 40.

## V. Post-Revolutionary Business Corporations

During the Revolution few corporations of any sort were chartered in the "states" and only one was created for any business purpose prior to 1783. The state legislatures were too busy with war measures and besides the times were too unsettled for new business ventures. The first few years of our political independence were in the main spent in making independence secure. Then came a few more years darkened and confused by differences and rivalries between the original states.<sup>38</sup>

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38. Baldwin, S. E., American Business Corporations Before 1789, p.449.

was one of bold experimentation and enthusiastic exploitation of new methods. Already one gigantic speculation had been successful--the achieving of independence. Finally, the physical ease of securing charters was far greater in the new states than in England, even greater than in the colonies. Legislatures were not overworked and did business free of charge and with reasonable promptness, whereas both the cost and the delays incident to securing royal charters always tended to discourage application for them.

Together these various factors brought about a considerable extension of corporate enterprise in the field of business before the end of the eighteenth century. Ninety per cent of the charters granted prior to 1800 for business corporations were granted after 1789.

A number of colonial corporations were in existence when the Declaration of Independence was adopted. Naturally, the legality of their basis for existence under the new regime was soon open to question. However, in most cases the legislatures were willing to reestablish the old corporations on new charters substantially identical with their old charters except in mere formalities or modifications which seemed desirable to all concerned. It so happened that the few business corporations which lived through the Revolution had received their corporate privileges from provincial legislatures rather than from the

Crown or proprietary authorities. Thus no objection was raised against their continued existence under the original acts of incorporation, since the new legislatures were the direct successors of the colonial assemblies.

It was not until 1819 that it was finally decided that Congress also did have the power to pass acts of incorporation. By the decision of Chief Justice Marshall, in the famous case of *McCulloch vs. Maryland*, the constitutionality of such acts was affirmed. However, corporate privileges have been throughout our nation's history and remain to this day almost solely the gift of state legislatures.

During these early years before 1800 incorporation for business purposes was almost entirely by special act. In other fields freedom of incorporation was early extended and general incorporation acts became more numerous as the years passed.

For a business purpose there seems to be but a single instance where freedom of incorporation was granted before the end of the eighteenth century. By an act of February 21, 1799, the Massachusetts General Court allowed persons interested in establishing water companies to apply to a justice of the peace in the county where the aqueduct was to be located, stating the name of the association and the objects of the proposed meeting. The justice of the peace was then authorized to issue a warrant to some proprietor directing him to call a first meeting. When the proprietors met they

were to become a corporation, with power to arrange for future meetings, power to elect a moderator and directors, and other less important privileges were granted them. Real estate, "necessary for the purpose of their institution," to a maximum of \$30,000, might be held. Towns were to have privileges of drawing water, free, for the extinguishment of fires.

Nevertheless, it was not until 1811 that freedom of incorporation was extended to any important class of business corporations and not until the forties did such acts become common in the United States.

In surveying corporate charters granted during the eighteenth century, it is significant that only two per cent of them were granted before the Revolution; eighty-eight per cent were granted after 1790, and three-fifths of these in the last five years of the century. During the eighteenth century the dominant type of business corporation in America was the highway company. Highway companies constituted nearly two-thirds of the total number while financial corporations come next claiming twenty per cent of the total number. Business corporations proper added up a little less than four per cent of the total number.

From 1781 to 1800, following the colonial period, the crests of the waves of business activity came late in 1784, in 1792, in 1795, and again in 1799. It might also be said that the troughs of depression came in 1786, 1793, and 1797.



It is noteworthy that there is a definite correspondence of the chartering of business corporations with such general business conditions.

partly responsible for the conditions which in 1781 de-  
 manded that the **A. Banking Companies** be established.

The colonies were without any sort of banks of discount and deposit. There were a few so-called banks, but the term ordinarily meant mere batches of bills of credit issued by public authority. Mr. A. O. Eliason, in his work called The Rise of Commercial Banking Institutions in the United States explains the tardiness of the rise of commercial banks in this country on the ground of "peculiar conditions of colonial trade of industry." He brings out the fact that there were no manufactures at that time requiring extensive capital and banking facilities and the merchants did their banking in England. Other retarding factors were unwholesome banking traditions as existed in the colonies, popular fears of special privileges, prejudices against moneyed institutions, and the suspicions of the home government concerning any financial moves on the part of the colonies.

The narrow minded policy of the British government in attempting to keep colonial America bound in swaddling clothes after it had outgrown them, so to speak, must have been the driving force back of Robert Morris' efforts in

in the United States, pp. 54-55.

1763 and 1774 to establish a commercial bank in America. Foreign mercantile relationships were badly disrupted during the Revolution and this condition was without question partly responsible for the conditions which in 1781 demanded that the Bank of North America be established.<sup>39</sup>

Robert Morris, who was Superintendent of Finance for the federal government, presented to Congress on May 17, 1781, a plan for a commercial Bank of North America, which should attract private capitalists, by the prospect of direct pecuniary advantage, to lend more effective aid to the state. Within just a few days Congress voted approval of the plan for the bank and on December 31, 1781, that body passed a brief incorporating act. At that time Congress recommended that the states grant a monopoly to this bank during the war and further desired the passing of laws by the states for the punishment of any person who should attempt to counterfeit the notes of the bank. The receipt of the bank's notes for public dues of the United States was also concurrently authorized. On January 7, 1782, the bank began business.

In view of the doubtful validity of a congressional charter the bank sought and secured acts of incorporation from several of the states. Rhode Island and Connecticut

39. Eliason, A. O., The Rise of Commercial Banking Institutions in the United States, pp. 54-55.

both passed acts in January, 1782, recognizing the bank. Massachusetts, Pennsylvania, New York, North Carolina, and New Jersey later during the year passed similar acts. These acts of the several states did not in any case grant a formal charter, but all granted the desired monopoly.

The bank promptly loaned heavily to the government, but by January 1, 1784, the debt was wiped out and thereafter the government did not ever become a subscriber to the bank. After this date the stock was held largely by Philadelphians. Although the bank met with serious difficulties in its earliest days, it was from the outset financially profitable as well as serviceable to national, state, and city governments and to commercial interests. The first half year netted four and one-half per cent and dividends for 1783 and 1784 averaged fourteen per cent. However, the monopoly assured the bank during the war by the acts passed by the various states had by this time expired by limitation. Because of the business boom under way in the states in general and due to notable success of the bank, there were movements in many other states to establish banks of a similar nature. The rise of banking institutions in Boston, New York and Baltimore affected but little the Bank of North America since it had failed to make any appreciable use of its monopoly privileges in other states. It became a national bank in 1864, retaining its original name.

In February, 1794. Of the proposed capital of \$500,000.

In 1784 the Bank of New York was founded largely as a result of the satisfaction given by the Bank of North America. It had a hard fight against the coldness of the legislature. Repeated attempts to secure a charter were unsuccessful until 1791 because of opposition to the ones back of the bank. The specie bank, however, did not wait for a charter. The cashier of the bank, William Seton, a former merchant, having a letter of introduction from Hamilton, went to the officials of the Bank of North America to secure some information in the forms of business. When Seton met Governor Morris, he found the latter eager to have the New York bank become a branch of the Bank of North America. However, a deaf ear was turned on the proposition and after some delay Mr. Seton secured the information and forms which he desired. The bank suffered some criticism because here as elsewhere the customers were often greatly irritated by the insistence of the bank that they meet their obligations promptly.

Like the Bank of North America, the Bank of New York still continues its prosperous career. In 1853, its capital was increased to \$2,000,000, and in 1859, to \$3,000,000. In 1865, it became a national banking association, and in 1878, reduced its capital again to \$2,000,000. In 1915, its surplus and undivided profits amounted to more than twice the capital stock figure.

Boston merchants secured a charter for the Massachusetts Bank in February, 1784. Of the proposed capital of \$300,000,

which was made up of \$500 shares, \$255,500 was immediately subscribed and paid in. The business activity which had given rise to this bank and the two previously described continued for some months after the opening on July 5, 1784. In fact, the first \$200,000 printing of notes soon proved inadequate to meet the needs and late in the year additional notes in small denominations were printed. It is recorded that the first six months' business yielded a dividend of four per cent.<sup>40</sup> However, Boston was hit hard by the depression which followed the boom and debtors found themselves unable to pay; consequently, the bank was in sore straits. Certain measures were immediately taken to bolster up the bank and it safely emerged from the crisis soon finding itself earning moderate dividends on its moderate capital.

Agitation for a bank in Baltimore began as early as November, 1782, when certain interested persons secured the passage of a favorable bill through the Maryland Senate, but the House immediately rejected it. Two years later in 1784, subscriptions for a \$300,000 specie bank were solicited and the Bank of North America was cited for the purpose of illustrating the advantages coming from the establishment of banks. From the agriculture and speculative classes opposition soon arose and it was pointed out that only

40. Davis, J. S., Essays in the Earlier History of American Corporations, vol. II, p.47.

seventeen persons had subscribed to the shares. Nevertheless, the House committee acted favorably on a petition for a charter, but in some way the bill was laid aside until the next session. Due probably to a trade depression, the bill was not reconsidered at the next session and in the absence of a charter the directors took no further action at that particular time. It was not until in the spring of 1790 that there came any great revival in trade in and around Baltimore.

With little opposition, The President and Directors of the Bank of Maryland was quietly chartered in November, 1790, to establish a bank in Baltimore. Thus the four chief mercantile cities of the Union were provided with banking facilities. Proposals were made as early as March, 1784, for the establishment of a bank in Providence, Rhode Island, having a capitalization of \$150,000 divided into shares of \$300 each. Three men were appointed to solicit subscriptions but they only succeeded in obtaining \$30,000 and, consequently, the project was cast aside for a period of about seven years. Outside of these five centers, no other banks appear to have been seriously considered before the establishment of the new federal government under the Constitution of 1787-88.

The notion of a thoroughly national bank, to which the Bank of North America had seemingly aspired, but which it had never become, gained some currency as the stronger

central government became assured with the Constitution of 1787-88. After a great deal of opposition Hamilton's bill passed both Houses early in 1791 and, after getting the opinions of the Cabinet members on the point of constitutionality, President Washington signed the act chartering the President, Directors and Company of the Bank of the United States. This bank was intimately related to the government, although the government stock holdings were sold between 1797 and 1802. Heavy loans were made to the Treasury, its notes were accepted for customs duties, and it was the principal depository of federal funds. It cooperated with the mint in handing over foreign coins and bullion for recoinage and was the principal source of supply of metal for coinage. After 1800, it was utilized to facilitate collection of public revenues and it likewise aided the Treasury in foreign exchange transactions. It had a profitable, serviceable career for twenty years when, for reasons not at all reflective upon its character, Congress refused the bank a new charter.<sup>41</sup>

Up to 1789 only two banks had been chartered, although the Bank of North America had six different charters. One other bank had been established without a charter. At the end of 1790 a bank was incorporated to supply Baltimore, the last of the four large commercial centers to acquire

41. Holdsworth, J. T., First Bank of the United States, pp.44-45.

a bank. In 1791, three were chartered, including the established Bank of New York. In 1792, eight more banks received charters and at least three others went into active operation without incorporation. Four more, including one established in 1792, were chartered in 1793. Thus, within four years the number of banks had increased from three to twenty. It is clear that this movement came as a result of the rising tide of commercial and speculative activity which marked the years from 1789 to 1792. This business boom brought the need for additional lending power and greatly increased the profitableness of the established banks.

Nearly all of the eighteenth century banking institutions were very successful. In size, the Bank of the United States was by far the largest with a capital of \$10,000,000. Next came the Bank of Pennsylvania with a capital of \$2,000,000, and the Manhattan, with a total capital of the same amount, followed by a group consisting of the Union of Boston, the New York, the North America, the Baltimore, and the Columbia at Washington, each with a capital of a million dollars or thereabouts. The small institutions, with less than \$100,000 capital, were at Gloucester, Bristol, Westerly, and New Haven. In all, the paid-in banking capital in 1800 was perhaps between twenty-two and twenty-four millions. Typical dividend rates for the period from 1782 to 1800 were eight to ten per cent per annum, usually paid semi-annually.



Charters of the banks differed in the various states; nevertheless, they did show a tendency to follow the same form in any one state. The charter of the Massachusetts Bank of 1784 was very loose. No term of franchise, no capital, no par value of stock, and no creditors were mentioned. Each share of stock was to receive one vote and the legislature was given the power to appoint a person to examine the books and records of the bank at any time. It was further stipulated that none of the funds of the corporation were to be used in trade and commerce. Besides the Massachusetts Bank and the Bank of North America by its earlier charters, the Bank of Maryland(1790), the Union Bank of Boston (1792), and the Rhode Island and Connecticut banks had no time limits fixed in their charters; however, the Connecticut charters in 1795 and after reserved to the state the right to alter or to repeal charter provisions. In other cases a twenty-year period was quite common, such as the Bank of the United States had. The Bank of North America (1787) was chartered for fourteen years and several banks in Massachusetts were limited to ten years on a single charter.

Cases were rare, indeed, where there was extended liability of stockholders. Beginning with the Nantucket Bank the directors were required to make a statement either annually or semi-annually, or oftener should it be requested,

*Corporations, p. 11, 116.*

*Leila, Jr., Bank of North America, 1787.*

to the governor and council, of the capital, debts, deposits, notes, and the amount of cash on hand. Debts were not to exceed twice the capital stock, plus any amount of money actually deposited in the bank for safe keeping, and the directors were to be personally liable for any excess loans.<sup>42</sup> In the case of the Bank of Alexandria, Virginia (1792), it was stated in the charter that the stockholders would be liable after the directors, in proportion to their holdings, in case the debts were allowed to exceed four times the capital funds.

State participation in banking came mostly in the nineteenth century; nevertheless, in quite a number of bank charters granted in the period under consideration a certain number of shares were reserved for state subscription should it desire to participate. There are a few noteworthy examples of government subscriptions to bank stocks. For instance, as has already been brought out, the Confederation government under Robert Morris subscribed in 1782 to the extent of \$254,000 in the Bank of North America.<sup>43</sup> Again in 1791, there was a \$2,000,000 subscription by the Federal government to the Bank of the United States and this was further supplemented by many smaller subscriptions from some of the states. The state of Pennsylvania, Davis records,

42. Davis, J. S., Essays in the Earlier History of American Corporations, vol. II, p.106.

43. Lewis, L., Jr., Bank of North America, p.41.

subscribed to the extent of \$1,000,000 to the Bank of Pennsylvania in 1793.

Altogether there can not be much doubt about the fact that the banks were the most important and the most successful of the eighteenth century business corporations. Even though they were somewhat late in appearing, they certainly established themselves on a solid footing in a very brief period. Finally, it can reasonably be inferred that their experience definitely tended to promote experiments with the corporate form of enterprise in other fields, and that the availability of banking resources likewise indirectly aided such an extension.

#### B. Corporations for Improving Inland Navigation

Of extreme importance in a young country is the development of transportation facilities. In the early stages of the development of a nation sites may be wisely selected and unimproved natural highways utilized thus avoiding serious difficulties only to be forced to cope with them at a later period. With an increased population and with more intensive cultivation and economic specialization there comes a need for artificial highways or artificial improvements of natural highways. In America such a need had asserted itself in the colonies previous to 1776 and efforts had been directed in that general direction. However, all

such projects in the early period were on a very small scale and furthermore, they were invariably local in character. Undoubtedly the Revolution focused the attention of the citizenry, upon the dire need for a great deal of development along this line, partly because of military requirements. As a matter of fact, the Revolution caused what many authors have termed an intellectual awakening. This awakening was made possible by the intercourse of some of the country's ablest men who were able to survey conditions and needs from a national viewpoint rather than from a local point of view.

Between 1760 and 1775 several moves were made in the direction of improving communication by water. As early as March, 1761, the Pennsylvania legislature appointed commissioners to make the Schuylkill river navigable. In 1769, the American Philosophical Society was induced to order a survey for a canal to connect the Delaware and Chesapeake bays and a favorable report on this project was handed in by the committee appointed by the Society. However, before the war, interest was chiefly centered on those projects which were for the improvement of navigation on the Potomac. Members of the Ohio Company were especially interested in such an enterprise as were the landowners and merchants along the lower Potomac.

Early in 1772 George Washington presented a bill in the Virginia House of Burgesses, of which he was a member,

"for empowering Trustees (to be chosen by the subscribers to the scheme) to raise money by way of subscriptions and lottery, for the purpose of opening and extending the navigation of the Potomac from the Tidewater to Fort Cumberland; and for perpetuating the tolls arising from vessels to the adventurers in the scheme." This measure soon passed; however, it was not an act of incorporation, but is interesting as closely approaching such an act. Provision was made for organization when a majority of the stockholders thought a sufficient sum subscribed, by electing from the subscribers a president and eleven trustees or directors. This body was then authorized to contract for constructing the works and to call on the subscribers for their payments. Other minor provisions were contained within the act such as rights of eminent domain, annual meetings required, and others. At the same session at which this act was passed, the Virginia assembly passed similar acts to provide for the opening of James River through the falls from Westham to Tidewater and for cutting canals from the James to the York.

Activities in the direction of improvements of this nature were suspended during those trying years of the American Revolution. Several projects were revived; however, after peace was restored and within a few years many others were proposed, yet few were carried out to completion.

It is to be noted that several of the projects were to be large enterprises which would call for capitals of almost \$100,000 and would be of nation-wide importance.

On December 26, 1783, the Maryland assembly granted the first full and complete canal charter, to the Proprietors of the Susquehanna Canal. Within the next six years several thousand pounds were expended in this enterprise. In 1784, a company for opening the Potomac River was chartered by the state of Maryland and on January 5, 1785, the Virginia assembly also passed an identical act. The legislatures of the two states even went further directing state subscriptions of fifty shares each, making one-fifth of the total stock proposed. The state of Virginia further directed fifty shares to be subscribed and paid for on behalf of General Washington, as a testimonial of their appreciation of his work.

However, there were three forms of unexpected difficulties which soon dampened the enthusiasm surrounding these projects: difficulties of labor, of management, and of finance. These difficulties were not peculiar to this type of enterprise, but they deserve mention chiefly because of their prevalence and prominence in many of the corporate enterprises of the period prior to 1800, particularly in connection with canals and manufactures.

In the case of the Potomac project, the Board of

Directors began at first by hiring all free white people who applied for a job. It adopted what it considered a liberal wage policy, supplementing the money wages which the laborer would receive with "good and substantial provisions . . . . and a reasonable quantity of spirits."<sup>44</sup>

Those who proved themselves most expert in boring and blowing rocks received higher wages because of the "toilsome character of the work," as the Board expressed it. The work had barely gotten under way, however, when labor troubles began to manifest themselves and the working force was immediately enlarged by the use of servants and slaves. Then there were three classes of laborers being utilized, the result being that the labor troubles were not at an end. Groups developed clashes between themselves and many of the servants ran away. As years passed difficulties were minimized but the labor problem was never solved satisfactorily.

Those in charge of the project did not at first fully appreciate the problems which would evolve about management, both from the standpoint of engineering and superintendence. The engineering problem, to be sure, was not intricate, yet the science had not at that date been developed sufficiently to overcome even the minor obstructions which had to be conquered. Little was known here concerning

44. Davis, J. S., Essays in the Earlier History of American Corporations, vol. II, p.126.

the principles of lock construction. The problem of management in a corporation had yet to be solved and the New Jersey Manufacturing Society learned this in a costly manner about this same time.

The most important or fundamental difficulty of the period, nevertheless, was that of finance. Perhaps first-class engineering and managerial talent could have been secured for the Potomac project, as well as others attempted at the time, had ample funds been available. The labor problems connected with such projects could likewise have been lessened if not entirely erased from the picture.

In nearly all the principal canal undertakings prior to 1800 the difficulties, the time, and the cost of construction proved to be materially greater than had been anticipated. Only two or three of the corporations attained their objects before the eighteenth century closed and several abandoned their projects after sinking a fair sized amount of capital. Every company encountered some sort of a delay and as the century closed many had opened only a small part of their undertaking, struggling to complete it.

Only a very small number of the canal companies could be called financially profitable and even a smaller number yielded profits in the long run sufficient to warrant the investment. Many very able and competent men including Patrick Henry and George Washington proved to be poor prophets on the subject of canals. Almost invariably



expenses were underestimated, obstacles either completely overlooked or minimized, and prospective income greatly exaggerated.

Each state chartered her share of the companies for improving inland navigation during the period before 1800. Viewing the efforts to improve navigation as a whole, it is clear that this branch of enterprise did call forth more corporate charters, more other legislative acts, and more state support and encouragement than did any of the other branches. The Americans found the making of a canal far from the simple and easy task which Adam Smith described and the corporate form proved unequal to the task.<sup>45</sup>

#### C. Toll-Bridge and Turnpike Companies

The most successful of the early corporations, after the banks, were the toll-bridge companies. These required only a limited amount of capital for construction and likewise a minimum of working capital. The returns coming from the toll-bridges were fairly sure. The problem of management was extremely simple once the structure was built. The only problems of finance to worry about were the cost of repairs due to ice or freshets and sometimes the cost of rebuilding when such hostile agents caused total

45. Davis, J. S., Essays in the Earlier History of American Corporations, vol. II, p.185.

destruction.

Numerous forerunners of the business corporation can be found, even in colonial days, in the toll-bridge companies. Sometimes the state made a grant of funds for the building of the bridge, conditioned on the raising of subscriptions from private individuals; or grants of lottery privileges were made, the managers of which were to build the bridge as well as collect the funds.

The first incorporated toll-bridge company was The Proprietors of the Charles River Bridge. For fifty or sixty years a permanent structure connecting Boston and Charlestown had been talked of, but always it was deemed impracticable. The act of incorporation was passed by the legislature of Massachusetts on March 8, 1785, and the bridge was opened in July, 1786.

From the outset the bridge was a success financially as well as commercially. It had far more local significance since its engineering success paved the way for other ventures of similar nature. Its clear promise of financial success, justified by the dividends of its early years, drew attention to the possible profits awaiting claimants in similar fields. Thus, the construction of this first bridge led directly to a very rapid extension of toll-bridges constructed and controlled by business corporations.

The following year, 1787, a charter was granted to the three partners. The total cost had been approximately \$16,000.

Proprietors of Malden Bridge, which became the second Boston bridge. It spanned the Mystic at what was known as the "Penny Ferry." There was considerable opposition prior to the issuance of a charter on March 1, 1787. One hundred and twenty shares of stock were soon subscribed and in April construction was begun under the supervision of Lemuel Cox and Jonathan Thompson. Construction continued throughout the summer and on September 29, 1787, the bridge was opened officially. This bridge was 2,005 feet long, exclusive of the abutments, thirty-two feet wide and had one hundred piers.

In November, 1787, a charter was granted to The Proprietors of Essex Bridge for building a bridge over the Charles River, connecting the town of Beverly with Salem. During the preceding months a furious controversy had raged concerning the choice of locations for the bridge. Finally, the Massachusetts General Court sent out a committee to investigate the matter and this group of men reported as in favor of the structure at Beverly Ferry.

Subscriptions were readily secured for two hundred shares of stock and the corporation was organized at Salem, December 13, 1787, with George Cabot as president. Work was begun on the project May 1, 1788, and within a period of five months the bridge was formally opened. It was fourteen hundred and eighty-four feet long and had ninety-three piers. The total cost had been approximately \$16,000.

Like the two previous companies this company also prospered and for several years its stock sold for around five times the original par value.<sup>46</sup>

Following a four-year lapse, four additional charters were granted during the enthusiastic year of 1792 and still others were sought. First came the Newburyport bridge over the Merrimac. Unlike the earlier bridges this was built with solid masonry piers and with two arches of what then seemed considerable size, in fact, the largest on the continent. The cost of the bridge turned out to be almost twice as much as the estimate, which was in round numbers \$36,000. So the proprietors immediately asked the legislature to liberalize the charter allowing them fifty years instead of thirty years without regulation of tolls. This request the legislature granted and some further improvements were then made on the bridge. Since the average gross receipts were more than \$4,000 per year, for the first ten or fifteen years, it can be presumed that good dividends were paid.

The most important of the four charters granted in 1792 was the charter granted to the West Boston Bridge Company. Work was begun on the causeway July 15, 1792, and on the woodwork February 8, 1792. By October of the same year one

46. Stone, E. M., History of Beverly, p. 110.

thirty-five hundred foot span was passable and the following month the entire structure was open for public use. However, the project, which represented an expenditure of \$76,000, was not unsuccessful, yet in the later years of its existence it sustained such severe competition that in 1846 the proprietors sold out to a competing company.

The remaining companies chartered in the year of 1792 were The Proprietors of the Middlesex Merrimack River Bridge and a company for bridging the Connecticut at the Great Falls between Montague and Greenfield. The \$8,000 wooden structure of the former company came to be known as the Pawtucket Bridge, extending from Lowell to Dracut at the head of Pawtucket Falls. This company prospered greatly, earning dividends averaging more than twenty-four per cent in one thirty-year period; but the latter company, the Connecticut River Company, made no progress and little more under a new charter granted in 1796.

Petitions were presented to the General Court in February, 1793, for four more bridges over the Merrimac. As a result, in March, acts of incorporation were passed incorporating the proprietors of Andover Bridge and Haverhill Bridge. An organization was soon effected for the Andover project and the bridge was completed within a relatively short time on a site now within the city of Lawrence. Until early in the spring of 1799, when it was injured somewhat

by floating ice, the bridge was used constantly. Nevertheless, after assessing the proprietors \$8 per share, the bridge was repaired and again served the community. It is not certain just how profitable this bridge was in its earliest years, though the historians of the county report that after 1807 it did a large business.

The Haverhill Bridge was not begun before 1794 as the proprietors were engaged in obtaining suitable alterations in their charter. Some difficulty was encountered in securing prompt payment of subscriptions; but on November 18, 1794, the bridge was opened with great ceremony. It was eight hundred and sixty-three feet long and had three arches. The stone piers were forty feet square and the bridge itself was thirty-four feet wide. The newspapers said, "The strength, elegance, workmanship, and situation of this bridge is not equalled in America, and perhaps not excelled in the world."<sup>47</sup> The first quarterly dividend was declared February 18, 1795, a second on May 18, and there seems to be no reason to doubt the continued profitableness of the bridge.

Immediately following the two bridges discussed above came a petition early in 1794 for power to bridge the Merrimac at Sweets Ferry in Haverhill, connecting with West Newbury. Those men who presented the petition were incorporated as the Proprietors of Merrimack Bridge. On November 26, 1795,

47. Columbian Sentinel, Nov. 12, 1794. (Quoted in Davis, J.S., Essays in the Earlier History of American Corporations, vol. II, p.214.)

the bridge was opened with appropriate ceremonies and was the largest on the river by several hundred feet. However, the bridge was not completed for some time as some dissension arose and the original board of directors resigned. After considerable delay a new board was elected in the spring of 1796 to clean up the finances and complete the structure. Competition of other routes and the costliness of this large structure prevented the bridge from ever becoming profitable, and after a few years it was allowed to go out of repair. In 1818, it was swept away by the ice.<sup>48</sup>

Charters to bridge companies became fewer after 1795. In 1796 a new charter was granted to The Proprietors of the Connecticut River Bridge for a bridge near Deerfield. But this, like the charter of 1792, did not become operative, primarily because capital was not attracted.<sup>49</sup>

The Proprietors of the New-Bedford Bridge were incorporated in 1796 to bridge the Acushnet River connecting New Bedford with Fairhaven and Oxford. The bridge was completed about 1800 at a total cost of \$30,000. It was over four thousand feet long, including the abutments and the two islands crossed. Probably great numbers of people were pleased when a flood washed it out in 1807 since there was opposition due to the fact that it obstructed the channel.

48. Coffin, Joshua, History of Newbury.

49. Sheldon, George, History of Deerfield, vol. II, p.916.

in no small degree.

By way of summary, there were fifteen charters for toll-bridge companies granted for the construction of bridges in Massachusetts. Eleven of these bridges were in eastern Massachusetts and several were notably successful. Of the four bridges to be built in western Massachusetts, only one was completed and it was small, being only moderately successful. The other three were apparently not even floated.

Up until 1800 Maine had chartered twelve toll-bridge companies. Maine, being merely a district of Massachusetts, meant that her charters came from the hands of the General Court.

New Hampshire was the leading state in incorporating bridge companies, in absolute numbers as well as in proportion to its size. From 1792 to 1800 nineteen companies were chartered which was more than one-fourth of the number chartered in the United States during the same period. However, it is significant to note that New Hampshire's companies, even though more numerous than those of Massachusetts, were on the whole smaller, less conspicuous, and less successful.

In general the bridge companies of northern and western New England found much more difficulty in securing capital, were slower in completing their structures, and were less successful than the companies near Boston. The trouble in



securing capital was due partly to the smaller supply of it available near at hand and its timidity in venturing far from the large centers, except for special attraction, and partly to the smaller amount of travel, upon which success depended. The relatively smaller success of the bridges erected reflects the special importance of the second factor. The many delays in completing structures were due in part to the delay in securing capital and also due in a large measure to the poor management secured, especially in the smaller towns. Inasmuch as there were numerous charters granted to toll-bridge corporations we may believe that the promoters were daring in the face of failure and that the legislatures were ready to encourage them.

In Rhode Island there were only three toll-bridges chartered prior to 1800, but when one views the size of the state and its topographical conditions it is easy to understand why such a few companies were chartered by this state.

Connecticut, though from 1795 a leader in the turnpike company movement, had few bridge companies. Again only three were incorporated, and but one of these clearly completed its object before the end of the eighteenth century. In October, 1796, the first bridge charter was granted to The Company for Erecting and Supporting a Toll Bridge from New Haven to East Haven. When the bridge was completed the total cost amounted to over \$60,000, which amount was

much greater than had been anticipated. After a period of some months, when it was determined that the tolls yielded only  $4\frac{1}{2}$  per cent on the cost of the bridge, the company was permitted to increase its tolls. This first increase came in May, 1799, and a further increase was granted in May, 1805. The Proprietors of Niantic Toll Bridge, in New London County, were incorporated in 1797 and in 1798 a charter was granted to a Company for Erecting and Supporting a Toll Bridge, with Locks, from Enfield to Suffield. However, this structure was not completed until in November, 1808, and then it was without the locks. Outside of New England toll-bridge corporations were much less numerous. There seems to have been none in Delaware, North Carolina, Georgia, or Tennessee, but New York, South Carolina, and Kentucky each had one.

In general it may be said that the toll-bridge companies performed important services in many states and were highly regarded both by legislatures and by investors. The type of enterprise was one for which the corporation was peculiarly fitted, and it was one field in which corporations usually justified expectations.

The bridge companies varied greatly in size; however, few could be called large. The Massachusetts charters fixed no capital, but the investment usually amounted to less than \$50,000, and was frequently under \$10,000. The most costly bridge completed in the eighteenth century

was the New Brunswick Bridge costing over \$80,000. The Piscataqua Bridge ranked next in point of cost as its total cost was between \$60,000 and \$70,000. It is true that several of the toll-bridge companies had specific authority to raise over \$100,000, but none of these ever completed its undertaking before the close of the eighteenth century. The majority of the toll-bridges constructed in the century under discussion cost less than \$20,000 each.

Turnpike corporations followed both canal and bridge companies as it was only in 1794 that the turnpike movement began in earnest. These corporations were offspring of the same general movement for improved communication. In some places there was considerable prejudice in favor of water communication and the people generally regarded the establishment of roads as "public goods" to be the subjects of public management. This existing opinion certainly did its part in causing a delay in the entrance of the private corporation in this particular type of enterprise. On the other hand, it is highly probable that an impetus to the private toll road was furnished by the success of the toll-bridge companies and the ill success of the navigation companies. Nevertheless, the history of the turnpike corporations largely belongs to the nineteenth century.

The available records concerning such turnpike companies as existed in the eighteenth century are especially

scanty; therefore, only a brief and inadequate survey can be attempted in the following paragraphs.

The first turnpike company was the outgrowth of the agitation for improved internal communication in Pennsylvania. In April, 1782, the Pennsylvania assembly incorporated The President, Managers, and Company of the Philadelphia and Lancaster Turnpike Road. On June 4, books were opened in Philadelphia and Lancaster for subscriptions of six hundred and four hundred shares, respectively, of \$300 each. In order to reduce the likelihood of speculative subscriptions, which had recently played havoc with several promising companies, the law provided for a deposit of \$30 cash for each share subscribed. In spite of this, twenty-two hundred and seventy-six shares were subscribed in Philadelphia alone and \$68,280 in cash was deposited. Much to the amazement of the populace, over five thousand persons were present and eager to subscribe.

Early in August organization was completed and arrangements were made to begin work on the road-bed but execution of the project was somewhat hampered by opposition of property owners. Many owners of land objected to the exercise of the right of eminent domain while many thrifty Pennsylvania Germans and other wagoners were antagonistic to the idea of paying tolls. Nevertheless, the road was completed in 1794 at a cost of \$465,000, averaging \$7,500 a mile for the sixty-two miles. The road-bed was paved

with stone and overlaid with gravel.

After completing the road the company continued to encounter a hostile attitude on the part of the people concerning toll charges. Perhaps with a view to changing this attitude, an act of April, 1795, forbade the company to demand or receive tolls "from or for persons living on or adjacent to said land, who may have occasion to pass by the said road, upon the ordinary business relating to their farms or occupations, and who shall not have any other convenient road or way by which they may pass." That trouble continued is evidenced by an act which was passed in 1798 establishing penalties for the evasion of tolls and the defacing or destroying of signboards or milestones. The act further authorized the company to establish scales to ascertain the weights of vehicles in order that the toll charged might be on an equitable basis.

A charter was sought for another road leading from Germantown to Reading at the same time the Lancaster pike was chartered. Opposition delayed the securing of the charter and the company was not able to secure a charter until the latter part of March, 1798. In the meantime a few other turnpike companies were chartered in Pennsylvania but they will not be included in our discussion since construction was not begun until the opening of the nineteenth century due to the delays encountered in securing subscriptions to such enterprises. Therefore, Pennsylvania's

turnpikes previous to 1800 were limited to a single completed enterprise.

Rhode Island was the second state to charter a turnpike company and later in the century established one other similar corporation. These two turnpike companies had long complicated names and due to the fact that they proved to be relatively insignificant they will not be discussed in this paper.

Connecticut, while not the pioneer, was nevertheless the real leader in the turnpike movement. Beginning in 1795 with four companies she chartered six in each of the two years 1797 and 1798, two in 1799, and five more in 1800--twenty-three in all, as compared with nine for Massachusetts and thirteen for New York.

In the northerly states there was also considerable turnpike enterprise. Although Maine was without any corporations of this sort, Vermont had chartered nine such corporations which was nearly half of all her eighteenth century corporations. Four rather important turnpike companies were likewise chartered in New Hampshire prior to 1800.

The six turnpike companies south of Pennsylvania were confined to the states of Virginia and Maryland and it is noteworthy that not a single road chartered in the latter state was ever built, primarily because the required amount of capital could not be raised.

It can not be ascertained exactly why, in the south, where canal and navigation enterprises flourished, there were so few corporate toll bridges and toll roads. The numerous charters to private canal companies would seem to be indicative of the fact that there was not very strong prejudice against the imposition of tolls; however, it is true that the tradition of public building and control of land highways was much stronger than in the case of waterways, and business enterprise was not active enough to press into that field.

As a rule, the turnpike companies were not obligated to build new roads, but to put existing roads in good repair and to keep them up in good condition with the aid of the tolls received. Nearly all the companies attained their immediate objects and continued for a long time to take toll, to the irritation of those who were forced to use their highways.

The charters of the canal, bridge, and turnpike corporations were quite similar, although there were considerable variations in different states. Provision ordinarily was made for forfeiture of the charter and sometimes also of improvements made if the work should not be completed within a specified time; however, time extensions were freely granted. After a charter had been granted in New York two years was commonly allowed for the company to begin work

on the project while in Massachusetts three to six years were allowed for beginning. The usual time allotted by the majority of states for completion of the projects, once they were started, was five years. In a few of the Connecticut turnpike charters Davis has discovered an uncommon requirement which compelled the company to give bond to the state treasurer in amounts varying from \$10,000 to \$50,000 and to forfeit the bond in case the road was not completed within a fixed time. No such forfeitures, however, have been recorded in the histories. In the case of turnpike companies it was frequently provided that the road should be inspected by a temporary commission, appointed by the governor, before turnpike gates could be set up for taking toll.

In general, the turnpike companies were small enterprises with capitals of less than \$100,000. Rarely were the roads which they built or maintained over seventy miles in length and commonly were only twenty or thirty mile stretches. The first companies appear to have been the largest as The Philadelphia and Lancaster Company (1792) had a capitalization of \$300,000, which was soon enlarged approximately fifty per cent. The Germantown and Reading pike was larger yet, being authorized to raise \$500,000. On the other hand, New York's largest company, the Great Western (1797), was allowed to raise only \$80,000. Other turnpike companies were capitalized at much smaller figures



than the latter company mentioned above.

Pennsylvania charters, generally speaking, were elaborate and detailed; Massachusetts charters gave the proprietors much leeway, being silent even as to the authorization of capital. It may be said that in most states charter provisions were much looser and allowed more freedom than did the bank charters. Ample powers of eminent domain were freely given by all states. However, the companies were made more liable in case of illegal taking of toll, or for obstructions of the highway. Policies as to the term of franchise, rates of tolls and profits, and relinquishment of the works varied greatly among the states chartering these companies. Perhaps the most common policy was for the state to grant a perpetual charter but limit the rate of dividend, as in the case of the Massachusetts turnpikes, the rate was limited to twelve per cent. Sometimes a perpetual charter was given, subject to the regulation of tolls after a period of possibly twenty, thirty, or fifty years. This was the common policy pursued in granting charters to Massachusetts bridge companies. In some cases the franchise was limited to a definite period of years. Upon the expiration of the period of time set forth in the charter the document would further state that the project should be "delivered up on good repair", or, in other words, that the project should revert back to the state from which it

received its right to operate in the beginning.

Two other policies concerning the term of franchises should be mentioned. In some cases the charter stated that after a certain period of years, upon paying the company the total amount of its outlays and a certain percentage per annum upon those outlays, less profits already divided, the state could buy out the company. In the majority of such charters of this nature the company was allowed to earn twelve per cent per annum on their investment. Finally, in some charters, principally Connecticut turnpike companies, the provision was made whereby the enterprise would revert back to the state as soon as the tolls had repaid the advances made by the proprietors plus a certain percentage per year, which percentage was usually set at twelve per cent.<sup>50</sup>

In some cases the various legislatures inserted rather unusual provisions into certain charters. For example, in chartering the Lancaster and Harrisburg turnpike (1796) the legislature reserved the right to take possession of the road at any time after the year 1825. The sum which the state would pay for the road was to be a sum agreed upon by ten persons, five of whom were to be appointed by the state and five by the selling company.

In examining the Pennsylvania charter granted for the

50. Davis, J. S., Essays in the Earlier History of American Corporations, vol. II, p.228.

construction of the Germantown and Reading turnpike it has been found that it contained a provision requiring that all profits in excess of nine per cent be appropriated to retire the stock of the company at par. As soon as the stock was completely retired the road became free for all who desired to travel on it.<sup>51</sup>

It may be said that there was a disposition on the part of legislatures to assure the company, in so far as it lay in the power of the legislature, such returns as were deemed "fair to the investor." Provision was made in many charters that when tolls did not yield an income equal to a stated percentage (usually six per cent) of the total outlays on construction and repair, increases in rates might be authorized to bring dividends up to the minimum. Coupled with this was a provision that tolls should not exceed a liberal maximum which even ran as high as twenty-five per cent in rare instances.

#### D. Insurance Corporations

Of the remaining types of the eighteenth century business corporations to be discussed we find that the insurance companies were the most important, aqueduct companies the most numerous, and manufacturing companies the most interesting. The transition from the non-corporate to the

51. Pa. Statutes at Large, XV, p.419.

corporate form is clearly noted in each of these three groups.

Two branches of the insurance business had grown to considerable importance by the end of the eighteenth century. Marine insurance expanded with the growing commerce of American merchants even before, but especially after, the American Revolution. Fire insurance, though much less widespread, became more and more vital as the population increased and crowded more into towns. A third branch, life insurance, scarcely deserves mentioning and other forms are almost negligible.

Several of the regularly chartered insurance companies had authority to insure lives. The Insurance Company of North America probably made as much use of this power as any company before 1800. In a word, the life insurance business in America prior to 1800 was insignificant in amount. Perhaps it should be mentioned that there were two charitable-religious organizations early in the eighteenth century which were virtually life insurance companies but they were for Presbyterian and Episcopal clergy, respectively. The growth may have been retarded in the case of life insurance companies by the serious variations in the death rate which were due to prevalent epidemics; nevertheless, this type of insurance was not yet developed abroad and its phenomenal spread has occurred only in the nineteenth century.

The marine insurance business started back in 1721 when John Copson advertised in Philadelphia his intention to open a marine insurance office in that city; but if he did so, he soon abandoned it. Numerous other examples may be found as this type of insurance business was gaining a foothold in America. Especially in commercial centers were these early partnerships found, yet they apparently never sought corporate privileges. Commonly these offices served merely as a meeting place for those merchants who desired insurance and other merchants quite often composed the partnership. The agent in such cases was little more than a secretary. The first incorporated company to undertake marine insurance appeared in 1794, with powers ample to enable it to write other types of insurance as well.<sup>52</sup>

There are definite reasons why the corporate form did not come into use earlier in connection with marine insurance. In the first place the possible loss was limited rather definitely in each case by the length of the voyage and the value of the ship as well as the cargo. This type of insurance was peculiar to the active merchant class and the risks were so scattered that a group could easily be formed to bear them. A large capital was not needed for this type of business. There would be nothing gained from continuity of existence, and there was no occasion for

52. Davis, J. S., Essays in the Earlier History of American Corporations, vol. II, p.233.

formal organization previous to the time when merchant importers became so numerous that a specialized capitalistic organization had an advantage.

Fire insurance, on the other hand, was not only needed by the merchant importer but by other merchants as well as householders. This hazard was indefinite as to time and to extent. A distinct advantage accrued from a large membership in this type of insurance and because of larger membership the necessity for central management was greater. However, this management was only of a routine nature and did not involve any problems too difficult for the eighteenth century business corporation.

The first fire insurance company known as The Philadelphia Contributionship for the Insuring of Houses from Loss by Fire, was granted a charter by the Massachusetts assembly in 1768. Benjamin Franklin was subscriber and one of the first directors. Operations were continued during the Revolution, and the company continues its existence today.

The second fire insurance company, likewise mutual, arose out of discontent with the policy adopted by the former company of not insuring or reinsuring houses having trees planted in front of them. In October, 1784, a new society was under way, formed largely of seceders from the old company. Thus, in February, 1786, a charter was secured for the Mutual Assurance Company for Insuring Houses

from Loss by Fire. It was organized on much the same basis as the older company and likewise has enjoyed a long and successful existence.

Other mutual fire insurance companies were chartered during the nineties. The Baltimore Equitable appeared in 1794 and in the same year The Mutual Assurance Society Against Fire on Buildings was also chartered. Several of these eighteenth century mutuals are still in existence and are doing a good business.

In May, 1787, the Maryland assembly chartered The Baltimore Insurance Fire-Company, the first to be organized on a joint-stock basis. When losses occurred, the acting trustees were to call on the subscribers of the stock to pay to the treasurer, by a specified day within a month, sums in proportion to their holdings and sufficient in all to pay the loss. There was a process provided for enforcing prompt payment. Thus, it will be noted, no paid-up cash capital was required. Dividends were to be declared only once in five years. On this basis the company was established, but found its basis unsatisfactory. Therefore, in 1791, it was rechartered as The Maryland Insurance Fire Company. The capital was now fixed at \$30,000 to \$60,000 in \$300 shares. Shareholders in the former company were to have six weeks' preference in subscribing to the new stock.

The next company developed from a tontine association,

which was itself in part an insurance device. During March, 1792, subscriptions were solicited for The Universal Tontine; however, the agents early in November reported no new subscriptions. They declared at that time that tontines in general appeared to be in disrepute and that many who had already subscribed were dissatisfied and wanted the Association dissolved or the funds appropriated to some other use. Later the subscribers agreed to convert the organization into the Insurance Company of North America and a constitution was adopted November 19, 1792, but it was not chartered until April, 1794.

Stock subscription books were opened one day after the constitution was adopted and within two weeks two-thirds of the entire capital of \$600,000 (in \$10 shares) was subscribed. Therefore, on December 1, organization was effected and \$4 per share called in. Immediately a charter was sought from the legislature and the argument presented to the legislature was that with the increase in the national commerce local underwriters were too few in number. It was pointed out that the proposed company would benefit not only the mercantile class but the community at large. Nevertheless, there was considerable opposition which came from other merchants and underwriters and although a bill was favorably reported for chartering the company on April 1, 1793, the assembly adjourned before it could be voted upon.

In July, 1793, a six per cent dividend was declared



on the paid-in capital and six months later a similar dividend was declared. Opponents to the company were soon transformed into would-be competitors by the immediate financial success of the enterprise.

The North America Company at first concentrated upon marine insurance; later writing policies for the insuring of the contents of buildings against fire, which existing fire companies were not insuring. Only town risks were taken at first but in March, 1795, fire policies were extended to include risks within a radius of ten miles surrounding Philadelphia and in April, 1796, the policies included the entire United States. At the present time the Insurance Company of North America has a paid-up capital of over four million dollars and net ledger assets of about twenty millions which proves it has been a thoroughly successful organization.

The Insurance Company of the State of Pennsylvania was also chartered in April, 1794, with an authorized capital of \$500,000 in \$400 shares. This company has remained a friendly rival of the Insurance Company of North America down into the present century.

In December, 1795, the state of Maryland chartered two rival companies for marine insurance, with capitals of \$300,000 and \$500,000, respectively. Three years later New York followed suit by granting charters to the New York Insurance Company and the United Insurance Company of the

City of New York. At the close of the century other states chartered a few insurance companies which were relatively unimportant.

To summarize, by the close of the eighteenth century there were eleven mutual fire insurance companies and twenty-two stock companies which were in active operation. They were writing both fire and marine insurance, but the latter variety predominated. Very naturally all were found concentrated in the populous mercantile towns such as Baltimore, Philadelphia, Boston, and New York. Most of these early companies were purely local enterprises, but some of the fire companies secured business from outlying towns and county districts.

It must be remembered that a close relation existed between the insurance companies and the banks, chiefly because premiums were usually paid with notes and because the insurance companies had large funds which they needed to invest or have safely kept. Bank stock furnished an investment along with national debt, and the bank vaults were the safest place for temporary surpluses. Massachusetts insurance companies were required to invest their funds in stocks of the United States or Massachusetts or stocks of the Bank of the United States or incorporated banks of the state. Pennsylvania charters were similar, yet allowing a little wider leeway, making the stock of any corporation chartered by the state an eligible investment.

The charters of the insurance corporations were less elaborate than those of the banking and highway companies; the mutual charters were especially simple. After 1790 the term of the charter was usually limited to some definite period never exceeding twenty years. The directors specified varied greatly in number, in fact, from nine to twenty-four. Reserves were seldom mentioned in the earlier charters; certain of the later charters, on the other hand, did stipulate that after losses impaired the capital the impairment must be made good before dividends could be paid. Massachusetts adopted the policy of requiring statements to be sent to stockholders once in every two or three years and likewise statements to the legislature when required.

These regulations constituted the closest supervision established for any class of corporations prior to 1800, even more than for banking, bridge and navigation companies. Yet a great deal was left to each company to regulate to suit itself entirely.

#### E. Water Companies

Companies for supplying water were almost the sole representatives during the eighteenth century of the local public service corporations. These early companies were numerous only in Massachusetts and were of minor importance financially.

As has already been stated four water companies had been incorporated in colonial days and at least two of them outlived the war. It was not until December, 1792, that a charter was given to the Baltimore Water Company, the first water company chartered after the war. This long period after the Revolution until the Baltimore Company was chartered is not easily explained. It would appear that as the population increased the accessible water supplies would become inadequate for home use as well as for fire fighting. On the other hand, it is probable that the Rhode Island companies had not been especially successful and had not inspired any imitation. The low state of development of hydraulic engineering, moreover, was a second adverse factor to the earlier appearance of water companies after the Revolution. It will be remembered that previous to the nineteenth century bored saplings were most commonly used for water pipes. These made a great deal of trouble as they rotted very easily thus causing leaks. As so often has happened, the slow development of the water companies was another instance where economic progress has waited on technical advancements.<sup>53</sup>

There were a considerable number of small unincorporated associations, but Massachusetts was foremost in chartering

53. Davis, J. S., Essays in the Earlier History of American Corporations, vol. II, p.248.

water companies, leaving to her credit a total of sixteen created by special charter during the period prior to 1800. In fact, the pressure for corporate privileges for this purpose was so great that the General Court in 1799 passed a general incorporation act for aqueduct corporations only. This was the only general incorporation act of any nature passed in the eighteenth century. Upon examining the census statistics of 1800 we find that many of the companies were established in small towns, while many of the larger towns had none.

Briefly stating the whole situation, it may be said that there was no clear general tendency toward the establishment of water supply corporations in the eighteenth century. The advantages coming from the smaller companies were not greatly appreciated and there was no widespread imitation. Wherever unincorporated associations were established incorporation appears not to have been worth the bother of obtaining it in these instances. Those charters that were issued were exceedingly brief and simple. Commonly no specification was made as to directors, capital stock, or par value. Powers of eminent domain were rarely given. It was assumed that in the main the water users would be the members of the corporations, their dividends were rarely mentioned, and assessments on shares were spoken of as "taxes." In brief, the water-supply companies were, generally speaking,

cooperative rather than capitalistic, similar in this respect to the mutual insurance companies.

which sprang up in large numbers during the eighteenth century.

#### F. Manufacturing Corporations

The period to which this work is confined was a period of only tentative beginnings for manufacturing companies. The period was one of experiment in applying a corporate device for which the economic conditions were not ripe.

Throughout the eighteenth century household manufacture was widespread in America. Some manufacturing was organized upon the so-called "domestic system," with a capitalist entrepreneur dealing with numbers of home workers. In America, as in England, the great bulk of manufacturing enterprises, as they emerged from the household stage, were individual or partnership undertakings. None of these unincorporated enterprises ever attained large scale.

Of equal importance as predecessors of manufacturing corporations were the associations of tradesmen and manufacturers and the more capitalistic associations formed for the promotion of manufactures and the useful arts. Most important of these was 'The Pennsylvania Society for the Encouragement of Manufactures and the Useful Arts,' formed in August, 1787. While the direct effect of associations of this nature was small, certainly they paved the way for larger efforts.

Most important as forerunners of the manufacturing corporations were the unincorporated joint-stock companies, which sprang up in large numbers during the eighteenth century. Where the single entrepreneur caught a clear vision of profits, even in the face of considerable risk of failure and loss, he would adventure heavily with his own funds and efforts. On the other hand, where the outcome, no less desirable, seemed more doubtful; where the possessor of the idea lacked the skill necessary to initiate the business or the leisure time to conduct it; and where a public interest seemed to be involved, the formation of a joint-stock company was a natural resort.

Most of the joint-stock associations never sought corporate privileges. Several which became corporations passed through an earlier stage of non-corporate existence. One of the earliest of the pre-corporate associations was The Associated Manufacturing Iron Company of the City and County of New York. By act of April 28, 1786, the legislature granted the associates limited liability, for seven years, for debts contracted in the company name, provided that a duplicate of the subscription agreement and an up-to-date list of the subscribers, with their holdings, should be filed within four months and kept on file in the office of the clerk of the city and county. It is extremely doubtful if this association ever sought incorporation. Clearly it was never granted, nevertheless, one of the most prized of all corporate

privileges limited liability, was granted to it.

There were a great many other small unincorporated joint-stock associations, generally of very minor importance, scattered throughout the states. A great many cotton and woolen mills came into existence, but flourished only temporarily.

The first incorporated company for manufacturing purposes was concerned with silk. Thirty-two Mansfield inhabitants solicited a charter in September, 1788, and in January, 1789, were incorporated The Director, Inspectors and Company of the Connecticut Silk Manufacturers. This, however, was not a typical business corporation, instead it was much more like the ancient "regulated companies." The members lived close together and seem to have desired corporate privileges chiefly to secure the power of making by-laws for regulating themselves about "the raising and manufacturing" of silk.<sup>54</sup> The company inspired no imitators and seems to have played no appreciable part in the rise of manufacturing corporations.

The Beverly Cotton Manufactory was the second incorporated company for manufacturing purposes. Early in June, 1788, the legislature was petitioned for an act of incorporation. On February 3, 1789, a simple act was passed incorporating The Proprietors of the Beverly Cotton Manufactory.

54. Davis, J. S., Essays in the Earlier History of American Corporations, vol. II, p.270.



They were limited in the amount of real estate and personal property they could hold.

The next manufacturing corporation, which was the second Massachusetts manufacturing corporation, grew out of the coming to America, in 1793, of two Yorkshire woollen manufacturers, Arthur and John Scholfield. Their machinery and products attracted favorable attention immediately and a company was readily formed to finance their efforts. A charter was obtained in January, 1794, without any difficulty for The Proprietors of the Newbury-Port Woollen Manufactory. Shares were provided for, although without a specified par, and the company was limited in the amount of real estate and personal property it could hold. This adventure was not successful and the Scholfields sold out in 1799. Most of the manufacturing corporations and perhaps the majority of the unincorporated joint-stock manufacturing enterprises were concerned with textile manufactures. There is not much necessity for inquiring why there were no more manufacturing corporations in the century, in view of the fact that failure soon overtook practically all that were chartered, as well as most of the companies which remained unincorporated.

As Jefferson had stated, it was almost impossible that manufactures should succeed in America because of the high price of labor. Labor was dear since there was great demand

for labor in agriculture. But the dearness of labor was not the sole handicap by any means. The lack of machinery was a contributing factor. Great Britain used the utmost efforts to prevent the exportation of both machinery and models and when machinery was smuggled out efforts were made to have it either destroyed or returned. The lack of capital was also another factor that handicapped the growth of manufactures, taking the industry as a whole. Finally, skilled masters of the manufacturing arts were lacking in this country. Few Americans had any training in this line of work and could get practically no training abroad.

Certainly the failure of the manufacturing corporations in the eighteenth century was not due to lack of encouragement by the legislatures. There is no evidence of refusal to grant charters which were seriously sought for this purpose. Bounties were often granted as a form of encouragement to manufactures. The poll tax of the workmen as well as property taxes were often abated in the case of workmen in these factories. In several instances subscriptions were made by the state to the shares of corporations. Thus, we may conclude that there is no doubt that the manufacturing companies, corporate and voluntary, failed rather in spite of appreciable encouragement than because of legislative hostility or indifference. The advantages of the corporate enterprise in the raising of capital and the greater possibility of continuous life were more than offset

by the less personal interest and control and the low stage of development on the part of management. It is said that the directors of one of these early manufacturing corporations became weary of their job after about two years and hired an individual to run the business as if it were his own. The corporation certainly met with no more success, possibly not as much as did the unincorporated manufacturing associations.

Thus, we find that previous to the opening of the nineteenth century the time was not yet ripe for the extension of the corporation beyond the field of the financial and public service industries and the experiments which were made in other fields had a tendency to discourage further attempts.

#### G. Miscellaneous Corporations

It is rather difficult to ascertain the miscellaneous corporations for business purposes. There were several associations chartered in Connecticut and Massachusetts which were primarily for protection of the rights of owners of adjoining properties. Since they were not chartered for the purpose of securing pecuniary gain they cannot be called business corporations as they have been defined in a very liberal sense in an early chapter in this work. There were a few companies which obtained charters whose purpose was

to grant lands on easy terms to manufactures in order to induce them to settle in a particular state. Again these cannot be classed as business corporations as they were not going to attempt manufacturing themselves.

Various local histories record certain chartered canal companies which must not be included as business corporations since in some cases no toll was allowed to be collected and in others where toll was collected no dividends were ever allowed to be paid.

To raise capital for the construction of buildings the joint-stock company form was most frequently used. Corporate privileges in these instances, it appears, were never sought.

There was only one corporation chartered for purposes of agriculture in the eighteenth century. It was authorized in Pennsylvania in March, 1793, under the name of The President, Managers and Company for Promoting the Cultivation of Vines. The capital was fixed at \$10,000 made up of \$20 shares but this amount was not raised and full incorporation was not effected. However, in the opening year of the following century obstacles had been removed which hindered the securing of subscriptions to the capital stock and the company was fully incorporated. Any progress which the company made has not been recorded.

The Company for Procuring an Accurate Map of the State of New Jersey should be included as a business corporation.

It was a semi-official scheme, incorporated in 1799, to secure a good map of the state without throwing the entire cost on the public treasury. The Corporation was given the exclusive right for fifteen years of selling within the state a new map to be prepared, on condition that two thousand shares be subscribed and that the maps be published within four years. The scheme did not work, however, and within a year after the charter was granted the trustees reported that such a discrepancy existed between the subscriptions and the prospective expense of surveys that the project appeared to be impracticable.

There appears to be only a single incorporated land company which seems strange, indeed, at a time when land speculation was flourishing. This only company of the century was chartered by Connecticut in 1796 and was called The Proprietors of the Half Million Acres of Land, Lying South of Lake Erie. Two factors were adverse to incorporation of land companies. In the first place, there was a great deal of popular prejudice against land speculators which had its effect in the securing of charters. Probably the most important reason was that there was no particular need of the corporate form in this type of business. A large capital was not needed, the management problem was not complicated, and, lastly, the business in each case was expected to be short-lived.



## VI. Concluding Observations

It has been definitely pointed out in this historical investigation that in no case where there was a strong demand for the privilege of incorporation was that privilege denied by the state. Prior to the Revolution the securing of a corporate charter for a business purpose involved oftentimes considerable cost, delay, and political maneuvering; nevertheless, those groups who were able to show that their enterprise would benefit the general welfare, in addition to the pecuniary gain to be derived, were granted a charter. Of prime importance as retarding factors in the chartering of business corporations during the eighteenth century were the social and economic conditions of the time.

During the colonial period assemblies were ready to pass acts of incorporation in favor of any business corporation having a worthy purpose. They went further by authorizing state subscription to the capital stock of certain enterprises and in some instances other special inducements were offered in the way of certain tax exemptions. It was not until after the close of the Revolution, which released a considerable amount of labor and accumulated capital, that the corporate form showed any marked increase in numbers in America. After the war, barriers which limited social intercourse between statesmen and other men of affairs were lifted. Means of communication were greatly

facilitated and free unlimited expression of ideas abounded. With this possible exchange of ideas came more unified methods and procedures in business and social matters. Coupled with this was the general tendency for business management to become more of a profession and this was favorable to the development of corporations as previous to the war efficient management was lacking in many cases.

The effect of the Industrial Revolution cannot be overlooked as it contributed greatly to the need for the corporate form of business enterprise. The age of specialization and mass production which had its beginnings in the last two decades of the eighteenth century opened a vast field to the corporation. The factory system which supplanted the domestic system with its handicraft methods brought with it a need for the amassing of large sums of capital for the purchase of machinery and construction of factories.

In the eighteenth century, however, the time was not yet ripe for the appearance of many manufacturing companies and those chartered met with little or no success. The lack of machinery, the high price of labor, the lack of skilled workmen, and the lack of efficient management were factors which led such companies to failure. In the following century, nevertheless, each of the adverse factors was minimized. Thus, the corporate form with its ability to raise enormous amounts of capital and with its aspects of



perpetuity and autonomy flourished as never before.

There have been several general tendencies in corporate development as it has taken place in the field of business in America. Such tendencies should be clearly stated in concluding this dissertation.

The first tendency which is worthy of note is that the act of incorporation, which has always been a privilege to be bestowed by the state, has gradually shifted from its original source. In the early days of the colonies that right was exercised solely by the Crown. However, a little later that right was delegated, either to the colonial governors or assemblies, and now it is almost universally controlled by the lawmaking power often vesting much discretionary authority in elected or appointed officials.

Another tendency which has developed among all legislative bodies is one of liberality. In the eighteenth century no general incorporation acts were passed for any important type of business enterprise. General incorporation acts made their appearance near the middle of the nineteenth century when the general attitude of legislatures was greatly altered. No longer did they attempt to decide whether the proposed enterprise was for the public welfare but left that matter for the business men themselves to decide. Adam Smith's suggestion that the public interest and the private interest coincide appears to have been adopted by the legislatures. It is possible that a complete survey

of all American business corporations down to the present time would warrant a refutation of that assumption made by the "father of political economy."

Perpetual life is a common characteristic of all corporations at the present time, whereas, in the eighteenth century provisions in the charter usually limited the corporation to a certain specified number of years.

In the period of years investigated previous to 1800 there were no instances of ultra vires acts, although in the earlier years companies were chartered for a specific purpose. This fact has played its part in checking certain tendencies in corporate development. However, at present, corporations escape any limitations by applying for all-embracing or "blanket" charters which has been a relatively recent development.

Historically, limited liability, the most prized of all corporate possessions, has been the principal distinction between joint-stock companies and corporations. There were, however, a few statutory joint-stock companies in England which enjoyed limited liability; but, in the main that institution has been utilized with the corporate form of business organization. Limited liability has been essential in the development of economic life in America since the owners of capital have not been willing to gamble with their funds in the many virgin fields of endeavor which were necessary in reaching our present status. Whether limited

liability is essential in this century is entirely another question, but we may be assured that it did serve a definite need at the time it was put to use. It was rare even for banking companies in the eighteenth century to be denied this privilege.

For the most part those types of business enterprise which showed minor development in the eighteenth century were those requiring large amounts of capital, an agent which was scarce at that time. However, there are a few instances where other factors came into play. Turnpike companies, for example, were not especially successful because public opinion considered the construction and maintenance of roads a public function not to be put in the hands of private enterprise. Furthermore, canal and navigation companies might have met with greater success had manufacturing been developed. As it was, there was no constant flow of raw materials and finished goods of the bulk type which were essential to the success of these companies. It would seem, therefore, that many of these projects were quite visionary rather than undertaken in answer to a specific need. It has been previously pointed out that there were certain definite reasons why manufacturing companies met with ill-fate before 1800 other than for the reason of the scarcity of capital funds.

The latter part of the nineteenth century and the present one have developed the need for the modern holding

company arrangement. Certainly no such super-corporations existed in the eighteenth century as corporations were then being created to hold and control real property and not intangible property for which the holding company is peculiarly fitted.

In conclusion, it is my conviction that the corporation has developed in response to a definite need in society. Inasmuch as government changes in reaction to economic needs and development so do the forms of business enterprise change. Therefore, I should not hesitate to explain the corporation and its present attributes on the basis of the autochthonous theory rather than to attempt to link it with the several forms which were its predecessors.

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