

T&JIF

Christianity & Economics 2

The Corporation

Piet-Hein van Eeghen

M.Econ (Stell.), D.Com (Unisa)

April 2008



© Piet-Hein van Eeghen

T&JIF

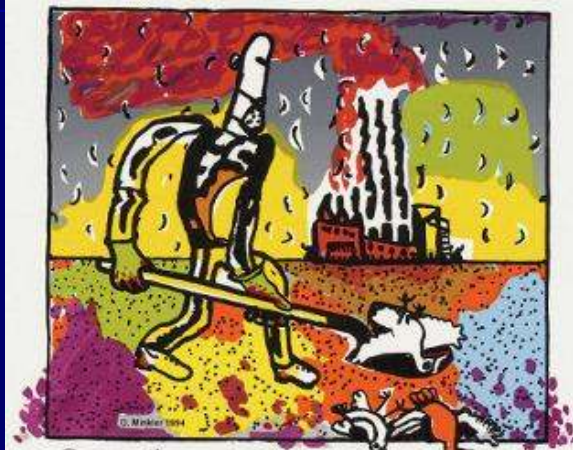
Conditions of Use

This material is the intellectual property of Piet-Hein van Eeghen, who may further develop and/or publish some or all of this material in the future. Please respect his intellectual property rights to this material. Do not edit or alter this material in any way, and obtain permission from him at veeghph@unisa.ac.za before quoting this material.

© Piet-Hein van Eeghen

T&JIF

Definition of Corporation



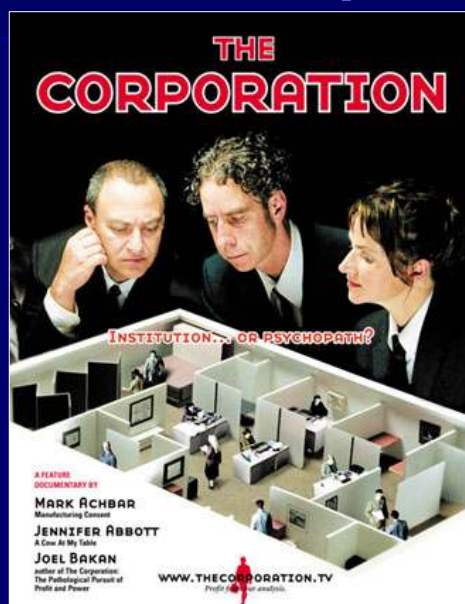
Corporation, n. An ingenious device for obtaining individual profit without individual responsibility.

Ambrose Bierce 1842-1914

© Piet-Hein van Eeghen

T&JIF

Nature of Corporation



© Piet-Hein van Eeghen

Nature of Corporation

- Corporate personality



- Where an organisation obtains rights and powers as a legal entity on its own
 - The incorporated entity is a legal person separate from its office bearers and its owners
 - Incorporated = "embodied" (latin: corps, body)
- Corporate business firm: asset ownership
- Separation of ownership (shareholdership) from control (management)

© Piet-Hein van Eeghen

Nature of Corporation (cont'd)

The state = the original incorporated entity

- *Aside: Where does state power/authority ultimately reside? Who is the sovereign?*



- Not the King as a person, ruling by "divine right". Rex Lex: The King is law. No monarchical absolutism.
- Not the people themselves through some "social contract". The "will of the people" is not the ultimate authority. No democratic absolutism.

© Piet-Hein van Eeghen

T&JIF Nature of Corporation (cont'd)

- Where does state power ultimately reside? (cont'd)



- *But:* God expresses His will in law. God and his law are the ultimate sovereign with whom rests state authority (Lex Rex). "The Rule of Law".
- Fundamental idea of God's law for the state (I suggest) :
 - protect and institute the principle of personal responsibility
 - ensure an optimal spread of natural resource benefits to all who have citizen rights
 - a kind of constitutional law (ground law/grondwet) : can give rise to secondary law
- God's law: Capable of being recognized and accepted by all (a kind of natural law)

© Piet-Hein van Eeghen

T&JIF Nature of Corporation (cont'd)

- Where does state power ultimately reside? (cont'd)

- If the law is sovereign, the state must be an impersonal legal entity ruled by law (recognition that the power comes from God).
 - State power resides in the *office* not the *person*.
- Modern states recognise the "rule of law", but make the law (constitution) changeable in accordance with "the will of the people" and "the spirit of the age".
 - Legal arbitrariness.
- Danger of legal absolutism:
 - You got to be very sure.
 - But again: God's law is capable of being understood by all!



© Piet-Hein van Eeghen

T&JIF Nature of Corporation (cont'd)

- Hence, business firms were given corporate status as a state concession, on the basis of the firm performing a state-like function or serving a clear public interest.
- Derived features: Limited liability and perpetuity/immortality.
- Original idea of corporations: Impersonal collectives for public interest.

© Piet-Hein van Eeghen

T&JIF Nature of Corporation (cont'd)

Morton J. Horwitz (Harvard legal historian):

"The corporation ... was the most powerful and prominent example of the emergence of non-individualistic or, if you will, collectivist legal institutions. ... In all Western countries ... theories of corporate personality were associated with a crisis of legitimacy in liberal individualism... "

© Piet-Hein van Eeghen

T&JIF Nature of Corporation (cont'd)

- Oscar Handlin:
 - "[A]t its origin ... the corporation was conceived as an agency of the government, endowed with public attributes, exclusive privileges, and political power, and designed to serve a social function for the state."
- Henry C. Adams:
 - "[Corporations were originally] arms of the state ... created by law for the purpose of attaining public ends through an appeal to private interest."

© Piet-Hein van Eeghen

T&JIF History

- Earliest business corporations: Medieval guilds and Colonial trading companies (e.g. Dutch East India Company)
- Examples of public purpose: Infrastructural works and public utilities (water & electricity)
- Banks with public purpose: Payments and Clearinghouse banks
- Abuses: used for purely private interest
- Adam Smith (1776)
- Generalised incorporation laws (around 1860)

© Piet-Hein van Eeghen

T&JIF How is the Principle of Personal Responsibility violated?

- Merit of private ownership:
“[It] provides for a marriage between decision-making and cost bearing.”
(Pejovich).
- Imbalance between the rights and duties of ownership:
 - Position of corporate shareholder.
 - Position of corporate management.



© Piet-Hein van Eeghen

T&JIF How is the Principle of Personal Responsibility violated? (cont'd)

Arthur Bryant:

“The historic justification of private property has been that it fostered responsibility and acted as a bulwark against tyranny. It was now [i.e. after the British parliament passed generalised incorporation laws in 1862] being used by the individual to purchase freedom from responsibility.”



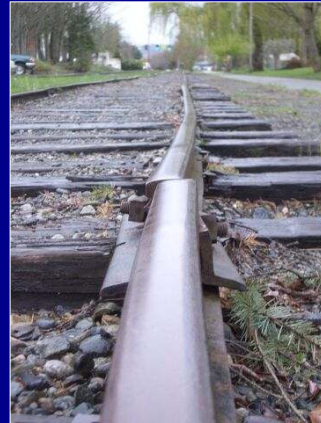
© Piet-Hein van Eeghen

T&JIF

How is the Principle of Personal Responsibility violated? (cont'd)

Andrew Fraser:

"Corporate law has been designed to facilitate a legalised flight from responsibility by those who nominally own the corporate system."



© Piet-Hein van Eeghen

T&JIF

Effects on capitalist practice

- Amplified size
 - Easier to bring large amounts of capital together
- Amplified market power and concentration of control
 - Amplified size
 - Ease of merger and take-over
 - Conglomeratisation



© Piet-Hein van Eeghen

T&JIF

Effects on capitalist practice (cont'd)

- Amplified strength of profit motive
 - Bridge the gap between ownership and control: lowest common denominator
 - Difficult to mobilise shareholders against profit maximisation
- Amplified growth orientation
 - Increased size: increased ability to apply capital-intensive technology
 - Risk protection: increased ability to take on risk
 - (Flexibility of fiat money)



© Piet-Hein van Eeghen

T&JIF

Effects on capitalist practice (3)

- Amplified speculativeness of stock market
 - Increased marketability of ownership stakes
 - Risk protection



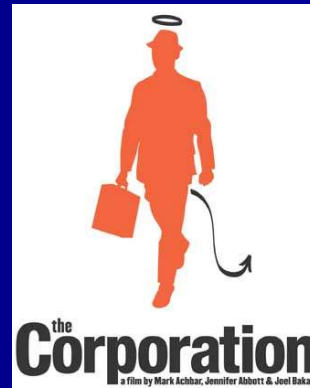
© Piet-Hein van Eeghen

T&JIF

Effects on capitalist practice (4)

JR McCullough (classical economist) about the passing of generalised incorporation laws by the British Parliament in 1862:

“Were Parliament to set about devising means for the encouragement of speculation, over-trading and swindling, what better could it do?”



© Piet-Hein van Eeghen

T&JIF

Selective allowance

- Not a blanket ban on all incorporation of private business.
- The business must be of genuine public concern.
- “Public sphere”: Land and land-related infrastructural works.
- “Public works”: Roads, canals, bridges, power lines, communication infrastructure, etc.
- Precisely the activities which require more capital than what private people can bring together by way of a non-corporate partnership.

© Piet-Hein van Eeghen

T&JIF

Likely Effects of Reversal

- All other firms: only proprietorship or partnership (including banks) allowed.
- Capitalism will become:
 - Smaller: less concentrated
 - Gentler: less narrowly profit-oriented
 - Less growth-oriented: less productive, less wasteful
 - More stable
 - More equal

© Piet-Hein van Eeghen

T&JIF

Likely Effects of Reversal (cont'd)

- Requires more entrepreneurship, but the demands on entrepreneurial skills are less: jobs more easily created.
- Requires less capital: jobs more easily created.
- Even so: can generate sufficient wealth
 - Transport and communication still capable of being provided by corporations
- More personal freedom, but: the burden of personal responsibility must be borne.

© Piet-Hein van Eeghen

Further Reading

- Piet-Hein van Eeghen (1997) "The Capitalist Case against the Corporation", *Review of Social Economy*, 55: 85-113.
- Piet-Hein van Eeghen (2005a) "The Corporation at Issue, Part I: The Clash with Classical Liberal Values and the Negative Consequences for Capitalist Practice" *Journal of Libertarian Studies*, 19 (no 3): 49-70.
- Piet-Hein van Eeghen (2005b) "The Corporation at Issue, Part II: A Critique of Robert Hessen's *In Defence of the Corporation* and Proposed Conditions for Private Incorporation" *Journal of Libertarian Studies*, 19 (no 4): 37-57.

© Piet-Hein van Eeghen

The views expressed in this presentation are not necessarily those of TGIF.

© Piet-Hein van Eeghen