

Citizen Power or Corporate Power

Have corporations become too powerful? This is a relevant question during these times of the rapid increase of corporate consolidations, movement of factories and money, lobbying and PAC contributions, tax breaks, deregulation, internal regulation of pollution, involvement in health care, prisons, and education, and legal free speech and intellectual property protections.

“Corporatization” of our society is not inevitable or irreversible. Corporations were not supposed to reign. The early history of the United States and of Ohio is of citizens clearly defining and closely controlling corporate behavior. It is a history that is outlined in a new publication *Citizens over Corporations, A Brief History of Democracy in Ohio and Challenges to Freedom in the Future*, produced by the Ohio Committee on Corporations, Law and Democracy.

The American Revolution was not a revolution simply against a tax on tea or the King of England. It was also a revolution against the British “crown” corporations that ran the colonies -- like the Massachusetts Bay Company, Maryland Company, Virginia Company and Carolina Company.

Following independence, the colonists “constitutionalized” or “democratized” these corporations, converting them into states with elected representatives. From their experiences, the colonists knew to keep corporations on a short leash. Therefore, they entrusted the essential task of corporate control to the one group who was closest to the people -- state legislators.

When Ohio became a state in 1803, the state legislature acting on behalf of the public used their power to create and define corporations. Early Ohio acts creating corporations one at a time stipulated rigid conditions. These privileges, not rights, included:

- *limited duration of charter or certificate of incorporation,*
- *limited amount of land ownership,*
- *limitation of amount of capitalization, or total investment of owners,*
- *limitations of charter or specific purpose (to amend its charter, a new corporation had to be formed),*
- *the state reserving the right to amend the charter or to revoke them.*

In many instances, after a corporation built a turnpike and once the corporation recovered its costs and a fair profit, the charter certificate of incorporation was dissolved and the turnpike became a public road. In other instances, the charter exempted the poor, voters and churchgoers from turnpike tolls.

A second way people exerted power and control over corporations through the Ohio legislature was by repealing entire or portions of corporate charters that violated terms of their incorporation. From 1839-1849 the legislature effectively dissolved several enterprises. Turnpike corporations and banks were the most common targets; others included silk and insurance corporations.

In an 1842 act to repeal the charter of the German Bank of Wooster, the state legislature stated:

It shall be the duty of the court of common pleas... or any judge of the supreme court...to

restrain said bank, its officers, agents and servants or assignees, from exercising any corporate rights, privileges, and franchises whatever...and force the bank commissioners to close the bank and deliver full possession of the banking house, keys, books, papers, lands, tenements, goods, chattels, moneys, property and effects of said bank, of every kind and description whatever...

From the 1830's through the 1912 Constitutional Convention, the Ohio Supreme Court and various lower courts ruled on hundreds of cases that affirmed the sovereign rights of people and their elected representatives to define corporations and their actions. Cases ranged from sweeping decisions on corporations in general; to more specific decisions on an entire category of corporations (like railroads); to very specific decisions addressing a particular corporation. Many decisions reinforced previously passed state laws or provisions of state constitutions. In one case, the Ohio Supreme Court stated,

The corporation has received vitality from the state; it continues during its existence to be the creature of the state; must live subservient to its laws, and has such powers and franchises as those laws have bestowed upon it, and none others. As the state was not bound to create it in the first place, it is not bound to maintain it after having done so, if it violates the laws or public policy of the state, or misuses its franchises to oppress the citizens thereof.

State courts imposed penalties for abuse or misuse of the corporate charter that were often more severe than a simple plea bargain or fine. They included ousting the corporation of its claimed privileges to perform certain actions. The most severe penalty, common from the mid-1800's through the 1920's, was to revoke the corporate charter and dissolve the corporation itself. The legal device used to achieve these penalties was a quo warranto proceeding.

The most well-known quo warranto case in Ohio history involved the efforts by two Republican Ohio Attorneys General to oust the Standard Oil Company, the most powerful U.S. corporation of the time, of its corporate charter for forming a trust. In the 1892 argument to revoke its franchise, Ohio Attorney General David Watson argued,

Where a corporation, either directly or indirectly, submits to the domination of an agency unknown to the statute, or identifies itself with and unites in carrying out an agreement whose performance is injurious to the public, it thereby offends against the law of its creation and forfeits all right to its franchises, and judgment of ouster should be entered against it.

In a 1900 ruling to dissolve a dairy company, the Ohio Supreme Court said,

The time has not yet arrived when the created is greater than the creator, and it still remains the duty of the courts to perform their office in the enforcement of the laws, no matter how ingenious the pretexts for their violation may be, nor the power of the violators in the commercial world. In the present case the acts of the defendant have been persistent, defiant and flagrant, and no other course is left to the court than to enter a judgment of ouster and to appoint trustees to wind up the business of the concern.

Corporations didn't take all this citizen self-governance and revocation business sitting down. Corporations fought back against legislative and judicial charter revocations and limitations, confronting the law at every point. They hired lawyers and created law firms. Corporations rewrote the laws governing their creation. They advocated replacing specific chartering rules with general incorporation laws (as Ohio did in 1842) with minimal reviews, perpetual life spans, limited liabilities and decreased citizen authority. Judges redefined corporate profits as property. The courts declared corporate contracts and the rate of return on investment as property. Judges and the legislature redefined the common good to mean

corporate use of people and the earth to maximize production and profit.

In Ohio, laws and court cases favorable to corporations were passed and decided over a period of decades. If corporations couldn't get favorable treatment by the legislature, they focused their energies on the courts where they had a greater chance for success.

The corporate counter attack to citizen aspirations and values for self-governance achieved a significant victory in 1886. That year the U.S. Supreme Court (including three Ohioans) ruled in *Santa Clara County v. Southern Pacific Railroad Corp.* that a corporation was a natural person under the U.S. Constitution, protected by the 14th Amendment. It was the 14th Amendment, passed in 1868, which provided freed slaves rights of due process and equal protection under the law ó rights of persons.

With corporate profits, consolidations, tax breaks and political influence at or near record levels today, it is time to reexamine the fundamental relationship between citizens and corporations. Challenging corporate "rights" is a legitimate and essential task of self-governing people. The time has still not yet arrived when the created is greater than the creator. We Ohioans must learn our history and use it to rethink and reassess our actions today. What is left of our democracy is at stake.

The Ohio Committee on Corporations, Law and Democracy is a group of citizens from across Ohio concerned with the growing power of corporations to govern and the dangers this poses to democracy in the state and nation.