AN ANALYSIS OF EARLY CORPORATION LAW
AND MODERN CORPORATE BEHAVIOR

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ABSTRACT

The modern business corporation and its relation to law form the basis for analysis in this thesis. By tracing the early idea of corporateness through to the New Jersey corporation law of 1896, the author illustrates the legal foundations of the modern business corporation structure. The behavior of the modern business corporation is then analyzed to explain how the law relates to this phenomenon. In light of the analysis, it is concluded that the modern business corporation resembles more the characteristics of a state within the State and, therefore, should be thought of as a political institution.
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PREFACE

In the past eight years this writer has been employed in industry. He has been in intimate association with people in both management and labor and has observed patterns of behavior that seemed inconsistent with the expected behavior of society in general. Although frustrating at first, it became a constant source of wonderment to see that those who held blind devotion to the organization rose to administrative posts while those who maintained a questioning attitude were passed over. It was not only the personnel situation that amazed this writer, but the internal organization of the company. The idea of terminating an employee and then giving him a hearing did not seem to fit in with the traditional concept of justice found in society. The ideas that profit was the only criteria of success of any organization, that employees were, for all practical purposes, merely numbers in a system of larger numbers, and filling out forms correctly was more important than what goals were actually being accomplished, all presented anomalies. These anomalies continually aroused the curiosity of the writer as to what their causes or explanations might be. As a student of Sociology some of the problems became clearer when they were analyzed as a product of social interaction, but the general aura of the organization presented a problem. This thesis is an attempt to seek some explanation of these phenomena through an investigation of the corporation. Although the experiences of this writer
may seem unique, it is felt that this thesis has satisfied many of the questions with which he has been faced in his limited experience. For this reason this presentation should not be construed as a completed study of the corporation. If the reader is faced with the problem of filling in some of the apparent voids in the analysis, it is not because they were not recognized but because the writer felt that they did not contribute to his purpose.
CHAPTER I

INTRODUCTION

The study of social relations in industry has been, on the whole, confined to analysis of relations between workers and management, workers and workers, or intramanagerial relationships. The Hawthorne studies\(^1\) were limited to the shop setting as a function of levels of productivity; Jones' *Life, Liberty, and Property*\(^2\) sought to differentiate attitudes toward private property by occupational or professional status. And Whyte's *The Organization Man*\(^3\) plus Moore's *The Conduct of the Corporation*\(^4\) take a close look at the values of management. All of these studies have embraced Blake's injunction to "Bring out number, weight & measure in a year of dearth" in that they fail to recognize that the social relations they investigated all took place within the institutional setting of the corporation. The corporation contains a working community of individuals who, in the process of their employment, develop attitudes, social identification, personal interaction, and stratification which is peculiar to that particular system. The predominant place of the corporation in American society has provided the members of its community -- stockholders, employees, managers, and directors -- with a ready-made system of behavioral procedures. The conclusions to the above mentioned studies merely reflect these procedures, but tell very little about how they became what they are. These procedures have attained the status of "folkways." They "are the 'right' ways to satisfy all interests,
because they are traditional, and exist in fact." In other words, the relations we find in industry reflect the cumulative folkways and this cumulation constitutes the institutional complex we call the corporation.

If we assume that the corporation is made up of various folkways then the analysis of these folkways becomes clearer. To quote Sumner again:

All the practical and direct elements in the folkway seems to be due to common sense, natural reason, intuition, or some other original endowment. It seems rational (or rationalistic) and utilitarian. Often in the mythologies this ultimate rational element was ascribed to the teaching of a god or a cultural hero. In modern mythology it is accounted for as "natural."  

The natural idea of the corporation may be found in practically any book in economics or law. The popular literature concerning the corporation is filled with legends and myths concerning the business of the past. The Carnegies, the DuPonts, the Morgans, the Rockfellers have been attributed with god-like powers that have made them "fathers" of our modern society. The corporation, as a direct descendent of these cultural heroes, has inherited much of the folklore attributed to these entrepreneurs. Weber's analysis of the relationship between Protestantism and Capitalism is reflective of this naturalistic principle of an earlier pre-corporate period. Instead of the culture hero, a God or His "works" is found to be the rationale for the capitalistic order.

The purpose of this thesis is to investigate the origins of the modern corporation through its manifestations in law. Law, in its institutional form, may be said to be the reflector of society in that a law that is not self-inforcing is not a law at all. But, there are
different types of law. There is common law, which is based upon centuries of experience crystallized into customs and sanctioned practices. Common law is the codification of folkways and as such can be said to be a measure of the beliefs and ideas of a society. But, what about constitutional law? Constitutional law defines the fundamental principles of organization. This organized establishment may only be amenable to control by a small segment of society, yet if constitutional law provides sanctions for its enforcement it can force a majority of society to conform to its dictates. Theoretically, enacted or statutory law is supposed to take care of this condition. It is through statutory law that modification is made of constitutional law to make it conform to "the will of the time." Even here there may be modification through administrative or judicial law which determines, through case decisions, the application of law.  

These types of law all played an important role in the development of the modern corporation. In fact, if we define the corporation as "... a voluntary association endowed with autonomy and continuity of existence through government-granted license or charter," we see that the existence of the corporation is crucially dependent on the chartering functions of statutory law.  

But why study the corporation? Peter Drucker has said:

What we look for in analyzing American society is therefore the institution which sets the standard for the way of life and mode of living of our citizens; which leads, molds and directs; which determines our perspective on our society; around which crystallize our social problems and to which we look for their solution. What is essential in society is, in other words, not the static mass but the dynamic element; not the multitude of facts but the symbol through which the facts are organized in a social pattern; not, in other words, the average but the representative. And this, in our society today, is the large corporation.
The corporation sets the standard for American society through its economic and social influence. It crystallizes our social problems in that it offers a clear-cut conflict between older systems of thought concerning private property, inheritance, ownership and control, and responsibility and the new concepts of the same symbols embodied in its charter principles. We look to it for solutions because we cannot look elsewhere.

Why study the relationship between the corporation and law? The modern corporation may be said to be an example of contractual relations. The charter of a corporation as granted by law is a contract between the corporation and the state, the stockholders and the corporation, and between the stockholders. Under former systems of business relationships a formal, written contract was not necessary. Partners merely agreed to certain relationships and responsibilities and upon the death or withdrawal of one of the partners the partnership was dissolved. Under modern corporate law the death of one stockholder does not affect the continuity of the business relationships. This has been guaranteed by a contract and this contract is a product of law. These contractual relations, impersonal and "rational," are the substitutes for the older familialistic relationships found in precorporate society and, in fact, are the rigid guideposts of modern corporation behavior.

The study of the relationship that exists between corporation law and corporate behavior does not and cannot be restricted to the analysis of these two respective disciplines. Law is not mutually exclusive from social, economic, and political behavior. The different types of law, common, constitutional, etc., are all threads in the
fabric of society. Corporate behavior involves not only economic and social behavior but is reflective of technological and philosophical aspects of society. If we assume that society is a moving equilibrium in that its parts form a complex of relations that must be functionally interrelated, we must view the corporation and its growth as being emergent in nature rather than spontaneous. This means that the corporation, in its modern form, is the product of older cultural forms, but not in the same relationship. In this sense the corporation may be thought of as an invention; the parts that made its present structure have been available for a long period of time, yet the relationship between these parts is only of recent origin.

Keeping this in mind the analysis of the corporation will involve three distinct steps. The first step is to search out the earlier institutional sources of the modern corporation; step two will involve the synthesis of these parts; and step three will be to show the form that this synthesis has taken in modern society. The first step is historical in nature and the materials presented comprise a summary, based on documentary sources, of legal thought and philosophy; the second step will be the application of these legal and philosophical premises to the changing circumstances of the business world. Step three is descriptive in nature, presenting the structural aspects of the modern corporation. Although this material could be presented from either end of the historical spectrum, this writer has chosen to maintain historical continuity and follow the three steps in their chronological order.

Chapter II, "The Idea of Corporateness," will be an examination
of early ideas and concepts concerning the idea of incorporation. Chapter III, "The Corporation in New Jersey," will illustrate these ideas in their relation to applied problems that faced New Jersey up to the beginning of the 20th century. Chapter IV, "The Modern Business Corporation," will describe the modern corporation structure and its relation to its community. The conclusion will attempt to analyze the relationship between the law from idea to application, to this modern structure.
CHAPTER II

THE IDEA OF CORPORATENESS

The idea of corporateness extends as far back into history as man has formed groups and associations. The corporation is not a unique form of relationship, but rather a developed form of association; it is not so much a particular class of associations as associations of all kinds in a particular stage of growth. Law, as a system of social relations, has reinforced this idea of corporateness by recognizing as subjects of legal rights and duties "persons" who are not human beings. Sir Henry Maine traced the idea of corporateness back to primitive societies, with their view that society was composed of an aggregation of families whose life was perpetual and inextinguishable. These early kinship relations assumed that acts of individuals could not exist apart from the acts of the aggregate so that if an individual erred it was the tribe or group that was punished or held responsible. The group was then the smallest social unit capable of acting in the social system; instead of perceiving the individual as separate functioning units of society and capable of behavior, a group whose character was fictitious in nature was the only vehicle through which social behavior could take place.

The habitual behavior of man and nature became part of the codes of society. These codes supported the idea that a supernatural presidency is supposed to consecrate and keep together all the cardinal institutions of those times. The Family, the Race, and the State became
subject to ceremonies and rituals which reinforced the idea of sanctity and unity of the association. In the physical world and in the world of man these recurring forms of behavior could only be accounted for by assuming a personal agent. The wind blowing and the sun's rising were personified as having divine origin. Fictional persons were created who could account for any recurring phenomena. Kings and chiefs were assumed to be divinely inspired when they made decisions. The idea of divine authorship and inspiration of a corporate representative led to the early idea of "corporations sole" or the idea that the corporation has existence in the perpetuation of the established leader. Actually, this perpetuation is in the form of a perpetual office rather than a person. A king or bishop does not have unlimited life, but the offices of kings and bishops do. It would be presumptuous to assume that the biological inheritance of an office would lend any continuity to the idea that kings all had divine inspiration. Kings, as natural persons, are subject to a variety of human idiosyncrasies in behavior as ordinary people so that the judgment of kings must be supplemented by the decisions of groups of men. These groups of men - councils, priests, boards of directors or whatever their name might be - still continued to use the idea of a divine origin as a vehicle of their decisions. The king as a corporation was this early vehicle and as such was a legal fiction. The legal fiction idea here is used to signify, "any assumption which conceals, or affects to conceal, the fact that a rule of law has undergone alteration, its letter remaining unchanged, its operation being modified." The fiction performs two duties in society. It satisfies the desire for improvement, while at the same time does not
offend the propensity that institutions have to resist change. The fact is that the law has changed; the fiction is that it has remained the same.

The early use of fictions maintained the idea of the family as the smallest unit in society and as such may be considered the first corporation. The idea of the "personality" of the family may be observed today in the Christian idea of family as being a unit, marriage as a combination of two persons into one, and the sacred character of the family unit. This idea spread to the Clan and the State. The clan is a grouping of families, and if the analogy of corporateness is extended to this unit of society, we see that a clan can be responsible for action on the part of the family. The idea of inheritance of sin is an application of this idea of clan corporateness in that the clan can be held responsible for actions it committed through the agency of one or more of its members. The State as a corporation assumed many of the attributes of the family. The Roman concept of Patria Potestas or power of the father superimposed its authority over the historical patriarchal authority of the family. It was through the mechanisms of granting citizenship that members of the Roman State became part of a large family. In fact, the State assumed the role of surrogate parent whose authority and "right" was to be extended to all future generations.

With the decay of the Roman system and the rise of the feudal system we note an atrophy of the corporate idea. The State, based as it was on primitive usages, exerted control and order on its members. Without the State civilization found its way to a stage of disorder and
lack of security. Feudalism replaced this older form of law and order by imposing an inflexible system of security - for the most part physical security, safety of life and limb. What it could not do was to incorporate expansion into its system of social relationships. If we assume the corporation to be an association in a particular stage of development it is obvious that a system where development has stopped cannot support the idea of the corporate form of association.

The corporation may be said to have been instrumental in the downfall of feudalism. The concept of corporateness in the form of the State broke the individual autonomy of the feudal manors. These local units were replaced by corporate forms of relations whose life was limited to the fulfillment of its duty to replace the feudal units. The corporation was a transitional instrument that was destroyed when the State could absorb these activities into its own structure. It is here that we note that the early corporations of England were of limited life and limited scope of activity. Some of these corporate activities were to prove so effective in their provisional duties that the State modified its own structure and made them a permanent form of association.

The idea that the State could sanction corporate bodies grew out of the idea of contract. In primitive society the members of the family could not make a contract with one another. The family could contract with other families, chieftain with chieftain, and clan with clan, but in effect these contracts were not binding on either party. One of the main features of the rise of civilization has been the obligation of contract. The idea of contract is found to be more
prevalent in those cultures that assume the individual as the smallest social unit. This is a shift from status to contract. Under primitive systems, the family, as the smallest social unit, bound the individual members through the status of the family. The assumption of individual competence has changed the archaic position of slaves to a contractual relation between servant and master and in modern times to the relation between employee and employer. The status of women from tutelage to free contractual members of society supports this same tendency of social change. The contract idea is one of the essential elements of the modern corporate form in that the contract of formation of this association is between the state as a corporation and a fictional person designated as a corporate being.

Whatever the purpose of its creation, the basic idea in each case has been that the corporation is a person distinct from its members, coming into existence as the result of the exercise of the State's sovereign power. At first it was always created by the king in the exercise of the royal perogative, the right to establish corporations being one of the majora regalia of the crown. In later days the legislature assumed the right to create corporations by special act, and at a still later day under general acts of incorporation. But whatever the mode of incorporation, the corporation as created was a person in the eyes of the law, with the right to own property, to enter into contractual relations with other persons and to sue in the courts.

The idea of corporateness is perhaps best known through the decision of Justice Marshall in the Dartmouth College case (see Appendix). What Marshall had decided was that the nature of the corporation
in 1819 was the same as it was under English common law. Not only had
he reiterated the Greek and Roman thought on the subject of corporateness, but he reaffirmed the position that the corporation existed apart
from the members and its life was unlimited.

The task now is to illustrate how the idea of corporateness
was extended and applied to the American business corporation. The
New Jersey law will be examined because its legal premises are the
standard form of corporation law in the United States.
NEW JERSEY CORPORATION LAW MAY BE DIVIDED INTO TWO GENERAL CATEGORIES. THE FIRST OF THESE COVERS THE WHOLE PERIOD OF TIME BEFORE 1875 AND THE SECOND FROM 1875 TO 1896. THIS FIRST PERIOD MAY BE THOUGHT OF AS THE SPECIAL CHARTER ERA. THESE SPECIAL CHARTERS WERE GRANTED BY THE LEGISLATURE WITHOUT CONSIDERATION FOR CONSISTENCY IN EITHER THEIR IMPLICATIONS OR CONTENTS. EACH SPECIAL CHARTER WAS UNIQUE. THE LIMITATIONS, POWERS, AND PRIVILEGES OF EACH BUSINESS BEING INCORPORATED WERE DETERMINED BY ONE LEGISLATURE. IT WAS THUS THE JOB OF PROMOTERS TO SECURE WHATEVER RIGHTS AND PRIVILEGES THEY COULD FOR THEIR CLIENTS. THE LEGISLATURE, ON THE OTHER HAND, FELT THAT THROUGH THE SPECIAL ACT OF INCORPORATION THEY WOULD BE BETTER ABLE TO SCRUTINIZE THE FORMATION OF COMPANIES IN THE PUBLIC INTEREST BEFORE THEY COULD DO BUSINESS.

THE FIRST SPECIAL INCORPORATION WAS "THE SOCIETY FOR ESTABLISHING USEFUL MANUFACTURES" IN 1791. THIS COMPANY WAS CONCEIVED AND FINANCED PRINCIPALLY BY NON-JERSEYMEN AND WAS INTENDED TO BE NATIONAL RATHER THAN STATE IN ITS SCOPE. ALEXANDER HAMILTON, TENCH COXE, AND OTHERS WERE ACTIVELY INTERESTED IN ESTABLISHING THIS CONCERN. IN TURN, THE STATE OF NEW JERSEY APPEARED INTERESTED IN THE DEVELOPMENT OF THEIR OWN MANUFACTURING "SOCIETIES" THAT COULD COMPETE WITH THOSE ALREADY...
established in New York and Pennsylvania. Hamilton's reasons are expressed in the prospectus circulated in September of 1791, a portion of which reads as follows:

There is scarcely a state which could be insensible to the advantages of being the scene of such an undertaking. But there are reasons which strongly recommend the State of New Jersey for the purpose. It is thickly populated - provisions are there abundant and cheap. The State having scarcely any external commerce and no waste lands to be peopled can feel the impulse of no supposed interest hostile to the advancement of manufactures. Its situation seems to insure a constant friendly disposition." 2

The state was evidently pleased with this attempt to compete with New York and Pennsylvania as the charter provided the company with the outright ownership of thirty-six square miles of land upon which it founded the city of Patterson; the right of eminent domain over land or property titles necessary for its purposes; exemption from taxes for ten years; and perpetual tax exemption stakes for its goods, profits, and chattels. 3

Because of New Jersey's geographic location - centrally located between New York City, Philadelphia, and Washington, D. C. - it was logical to the foreseeing businessman to assume that transportation was to become the key to future control of the state. Because of the largesse given to Mr. Hamilton and his associates in the special charter granted in 1804, it became possible for them to purchase lands along the New Jersey shore and through the use of a special form hold the ferrying right to these lands if the corporation might later sell. 4 This company was known as the "Associates of New Jersey." The ability to extend one's charter became a very important factor in later corporation law considerations in New Jersey. Suffice here to state that this ability gave legislative sanction to business practices that were not clearly
recognized until the later period of corporate development.

In spite of these "liberal" incorporation enactments, any attempt to create industrial or business combinations appeared abortive until after the War of 1812. The S.U.M. failed in its manufacturing attempt after three years, and there wasn't any rush on the legislature to provide special charters to other business ventures in the state of New Jersey. Although the legislators may have been willing, the stage of factory development was not able to utilize these legal means to foster its growth. During the period from 1791 to 1812 only three manufacturing charters were granted while 47 charters were granted for transportation and communication. In general the laws of this period resemble the earlier joint-stock companies found in England that were created and sanctioned by the Crown for specific purposes. In effect, these companies or business ventures carried out plans of the government, such as road building, canal dredging, etc., on a limited life basis or until the project had been completed. The general policy that encouraged the incorporation of all types of business ventures continued until the end of the 1830's. There was apparently little pressure for general legislation concerning manufacturing enterprises because there was little demand by businessmen. Religious and educational organizations had had general laws pertaining to their incorporation as early as 1786 because the legislature had been pressed with a number of demands that would have made it inconvenient for them to consider each one separately. General incorporation law was an innovation at this time. The only state to have this type of statute was New York in 1784. As we shall see later the repetitious character
of legislative incorporation influenced the movement for general incorporation statutes for business or manufacturing organizations in the latter period of corporate development in New Jersey.

The War of 1812 saw an increased demand for incorporation as foreign trade had been cut off, and in 1816 a law was enacted establishing a general incorporation procedure for certain types of manufacturing companies. This law resembled the New York law of 1811 in that it limited the life of the corporation to five years. Also the type of products that the corporation may manufacture was limited to woolen, cotton or linen goods, glass, bar iron, anchors, mill irons, steel, nail rods, hoop iron, and iron mongery, sheet copper, sheet lead, shot, white or red lead. The differences between the law of New Jersey and New York were that the New Jersey law demanded a minimum of ten persons who might file while New York set the minimum at five persons. On dissolution, the New York law limited the responsibility of stockholders "to the extent of their respective shares of stock in the said company, and no further," while New Jersey added an amount equal to "the dividend and profits they may have received thereon." One further addition to the New Jersey law was that it required the president and directors of the company to see that children employed by them were educated one hour a day and attended religious worship on the Sabbath.

The law drew little attention when it became enacted and three years later it was repealed, two years before its expiration. Because of the depressed conditions after the war, it is doubtful that there was much faith left in the corporations that had sprung up during the war period and now were in a state of decay. Although there were no
special charters granted during this period, there is little evidence that any applications had been made. 10

It was during this same period that we note the first incorporation of a railroad. In 1815 the legislature granted a charter to the New Jersey Railroad Company. 11 This company, although short-lived, expressed the need for transportation that was not dependent upon water as a means of conveyance.

Another influence of the New York General Incorporation Act of 1811 was the adoption of the double liability clause into New Jersey law. A textile concern at Patterson was the first manufacturing concern created after the New York law to incorporate the concept of double liability into its charter. This practice continued until 1824 and, as mentioned above, was included in the general act of 1816. From 1824 to 1834 this clause only appeared in six of the 32 manufacturing companies' charters. In the years to follow the issue of double and extended liability became a political "football," vacillating between double liability and limited liability. In general, after 1850 the tendency in New Jersey was away from imposing extended liability on stockholders in non-banking corporations chartered by special acts. 12 The purpose of this liability clause was to make the stockholder and/or the directors responsible for all debts incurred by the company. This, in effect, put the corporation on equal footing with private non-corporate businesses, such as partnerships where each partner is responsible for the combined debts of the organization.

In 1819 the Dartmouth College decision (see Appendix) made it clear that the corporation's charter might well be examined more
closely by the legislature. This decision set the proper relations between the state and the corporation. What it establishes is the idea that a charter of incorporation is in the nature of a contract between the state and the incorporators, and that, therefore, states are precluded from altering or amending charters of incorporation unless they expressly reserve this power - by the 10th section of Article I of the Federal Constitution, which provided that "No State shall ... pass any ... law impairing the obligation of contracts." This, in effect, made the act of incorporation a parity of rights between the associated incorporators and the state, which formulated the concept that incorporation is in itself a right rather than a privilege.\(^{13}\) In spite of the obvious conditions that could emerge from a contract that could not be repealed, the state did not incorporate the repeal clause in a contract until 1823. Of the 130 charters granted from the 1824-25 session of legislature to the 1834-35 session, 54 were not subject to alteration or repeal, while some degree of continuing power was reserved by the lawmakers in the remaining 76.\(^{14}\) This repeal clause did not exhibit any continuity as far as types of businesses were concerned; it appeared to be a matter of influence on the part of the person or persons wanting the charter. But it is worthy to note that of the 17 banks that were granted charters during this decade, only one did not have a charter subject to repeal while 20 of the 22 railroads were free of legislative interference.

This liberal attitude toward the railroads was not without reason. Although the first charter was granted to a railroad in 1815, there were no more charters issued until the 1829-30 legislative session.
There seemed to be, at this point in history, a great deal of agitation for the construction of a railroad that would link the metropolitan areas of New York and Pennsylvania with something more convenient than the old stagecoach which had to change horses and drivers at ten-mile intervals. Before the 1830's railroads were a cumbersome investment; they were expensive; the state legislature might burden them with excess restrictions; and, in general, the investment involved a great deal of monetary risk. It was perhaps felt by the legislature that the only incentive that was necessary to initiate construction of a railroad was to give it free reign in the writing of its contract and also legislative gifts designed to insure the continuation of this most valuable asset to the state. They were right. The Delaware and Raritan Canal Company and the Camden and Amboy Rail Road and Transportation Company received their charters in 1830. These were companies that finally succeeded in constructing the major transportation facilities from New York to Philadelphia. In the 1830 charter these two companies were required to pay "transit duties" rather than taxes or impost. Also the state reserved the right to subscribe for one-quarter of the capital stock of the companies. Soon after the charter was granted the state began to expand privileges. In 1831, in return for a gift to the state of one thousand shares of stock, the Camden and Amboy received a guarantee that no other railroad would be authorized to transport goods and passengers between New York and Philadelphia unless the state surrendered this stock. During that same year the legislature passed an act of "union," which allowed these two companies to consolidate their capital stock into a "joint stock" with equal rights to profits. The
companies maintained their separate organization although direction was to come from a joint meeting of directors. This union became known as the "Joint Companies." This combination provided the Joint Companies with enough power necessary to secure passage of the infamous "monopoly bill," a bill which guaranteed the legislature $30,000 a year income from 1,000 fully paid shares. The $30,000 could be supplied from the taxes received from this company. In return for this guaranteed income to the state, the Camden and Amboy were given irrevocable monopoly privileges in the following passage:

That it shall not be lawful, at any time during the said rail road charter, to construct any other rail road or rail roads in this state, without the consent of the said companies, which shall be intended or used for the transportation of passengers or merchandise between the cities of New York and Philadelphia, or to compete in business with the rail road authorized by the act to which this supplement is relative.20

In spite of this seeming monopoly, the New Jersey Railroad and Transportation Company received an incorporation contract in 1832, but only after a legislative battle. The Railroad and Transportation Company now controlled the route from New York to New Brunswick. One dilemma faced both the Camden and Amboy and the New Jersey Railroad. In 1804 a charter had been granted to Alexander Hamilton to form the Associates of New Jersey Company. In order to secure the ferry rights, the New Jersey Railroad had to gain control of the Associates. This was done by purchasing stock in the company at the price of $130 a share and thus gaining control. Once this had been accomplished a railroad bed was built and put into operation from the shores of New Jersey to New Brunswick. At about this same time a road connecting Trenton to Philadelphia was built by the Philadelphia and Trenton Railroad. This property
was finally secured for the Joint Companies by buying the stock and thus insuring the monopoly of the Joint Companies. At this same time the New Jersey Railroad was tucked under the wing of the Joint Compan-
ies, and the three linked roads became known as the United Railroad Companies of New Jersey. This powerful railroad combination, with its influence over state politics, held virtually dictatorial powers over the character of special charters from 1835 to 1870. "It was this deep-seated control that earned New Jersey its nineteenth cen-
tury name of 'The State of Camden and Amboy.""

Perhaps because of this monopoly the state witnessed the anti-
corporation movement. Although this movement was not limited to New Jersey, we can see within the state the effects of it. The attacks began in 1835 and during the 1837-43 depression years the voices be-
came louder because of the unpleasant experiences with insolvent cor-
porations. The arguments against the corporations were that it was ex-
pensive to the state because of the time spent by the legislature in the drawing of charters; corporations tend to foster monopoly and the individual limited liability of stockholders gave preference to the ideas of non-responsibility. Peter D. Vroom, governor of New Jersey in 1835, expressed his opposition to every kind of exclusive right by stating:

Hence, corporations, of any description, should be sparingly created. If they are to compete with private and individual enterprise, they should be discountenanced. Powers and priv-
ileges are necessarily conferred by them, which individuals do not possess and cannot exercise. The contest between the two is an unequal contest, and the result is always in favor of the corporation.

On the national level the Loco-Foco or Equal Rights wing of the
Democratic party presented its philosophy of hostility to all banks of issue, to special charters of incorporation, and to irremovable corporate charters of any description.

In spite of this opposition to incorporation the number of charters continued to increase. The decade from 1825 to 1835 saw the incorporation of 34 manufacturing firms and a total of 117 charters granted, while the decade of opposition to incorporation (1835 to 1845) showed a rise of almost 100 percent in the number of manufacturing charters (67) and a general increase of almost 50 percent (Table I) in the total number of charters granted (166). The effects of this movement were felt in the character of the charters issued during this period. The 1835-36 legislature acquiesced to the plea for more rigid control of corporation charters by making all charters subject to repeal, an example which was followed for the next ten years. Also, during this period, restrictions concerning the amount of land that could be held by a corporation and limitation of corporate debts were inserted into corporate contracts.

The constitutional convention of 1844 again charged the air with the conflict between those who advocated restrictions on incorporation and those who did not. Those who favored restrictive legislature attempted to incorporate a three-fifths vote of both houses in granting charters, repealable charters, and personal liability into the constitution. The counter-argument contended that to bind the hands of the legislature in granting charters would cause economic interests to go elsewhere. The only restriction to incorporation came in Article IV, section 7, of the new constitution which required the acceptance of
three-fifths of both houses in the incorporation of banks or money corporations and limiting such charters to 20 years. Repealable charters and personal liability were again left to the caprice of the legislature.

1846 marks the year of the second general incorporation law. Although the special acts were thought to be the cause of much of the dispute between the two factions concerning the corporation, the constitutional convention of 1844 made no mention of the substitution of a general law for the special laws. The 1846 general incorporation law did not replace the special laws, but gave incorporators an alternate method of incorporation.

The 1846 general incorporation law was the first law to contain the general provision concerning legislative investigation of the corporation charter. It stated:

That the charter of every corporation, which shall hereafter be granted by the legislature, shall be subject to alteration, suspension, and repeal, in the discretion of the legislature.27

It is interesting to note that this provision applied not only to charters granted under the general act, but also to those issued by special enactment.28 The other rights that could be secured through the use of this general law were perpetual succession unless limited in the charter; the right to be sued and sue, complain and defend in any court of law or equity; the right to use a common seal and alter it at pleasure; the right to hold, purchase, and convey real and personal estate required by the business, but not exceeding the amount limited in the charter; the right to appoint subordinate officers and agents; and finally the right to make by-laws not inconsistent with the constitution.
or laws of the United States or the state of New Jersey. The act forbade corporations to engage in banking activities and limited activities to those expressed in the charter. Stockholders were only responsible for the amount of stock not yet paid for or the proportion thereof necessary to satisfy the debts of the company. In spite of the fact that this law was passed in hopes that some of the burden of the legislature would be relieved, it is apparent from Table 2 that the demand for special charter was still prevalent. One available explanation of this comes from Stoke when he explained that there were still those persons who sought special privileges in the form of taxes and liability from the legislature that could not be found through the use of the general enabling act. Also the law did not pertain to all types of organizations. In spite of the obvious shortcomings of the general enabling act of 1816, it was significant in that it was one of the first of the so-called general incorporation acts of wide coverage in the United States. Its second important feature was the section declaring all future charters subject to alteration and appeal.

Because the 1816 law proved inadequate in a number of respects the legislature replaced it in 1819 with a new general incorporation act. The purpose of the 1819 revision of the 1816 law was to liberalize some of the benefits, thus making it more desirable to prospective incorporators. In the 1819 act, stockholders were no longer unlimitedly liable for the debts before the amount of capital with which the corporation was to begin business was fully paid in. The stockholders were, however, liable for the return of any illegal dividends. The 1819 act continued the practice of holding the directors and officers of a
corporation liable for failure to publish a certificate within 30 days after an increase or decrease in capital stock or if any false reports were filed. This, in effect, made the directors and officers liable for misconduct very much the same as the liability of persons who entered into noncorporate business relationships.

The significant aspect of both the 1846 and the 1849 general laws was that, for the first time, the power to grant incorporation charters individually was taken away from the legislature. In spite of this time-saving device the use of the special charter remained the most popular method of incorporation (Table 2). This apparent neglect was probably due to the effective incorporation of safeguards into these two acts that protected creditors and the general public. The advocates of more restrictive legislation concerning incorporation continued their fight against privilege and monopoly by including restrictive clauses in the general laws. The businessman, on the other hand, looked to the special laws for a more liberal attitude and less liability. In general, the special laws became less restrictive after 1850. Among these relaxations was the tendency away from stockholder liability, less severe or no penalties for exceeding debt limits, non-limitation of real estate holdings, and the decrease in residence requirements of directors and officers. Also, these special charters were beginning to allow legalized intercorporate stockholding; permission was being granted to mortgage property, issue bonds and preferred stock, and issue stock in exchange for property. There was little reason to use the general acts when a far greater degree of privilege could be obtained through special charter.
One may ask at this point why New Jersey was destined to be more tardy in enacting general laws of incorporation while other states such as New York and the New England states were fast becoming general act states. Cadman lists two possible reasons. The first is the power of the railroad monopoly in the state. The United Railroad of New Jersey which linked New York City and Philadelphia had become a powerful lobbying group in New Jersey and one of the most flagrant examples of special privilege in the state. It became apparent that an attempt to enact a general railroad act would curb the now guaranteed position of this giant corporation, and it threw its giant treasury open to those politicians who would maintain the status quo. It became so powerful that Sackett wrote: "... the State that had taken the corporation to its bosom as a child began to fear it as a master." It soon became apparent to those legislators who pushed for a reform of incorporation laws and lost at the next election that their hopes were futile.

The second reason was a matter of geography. Since New Jersey lay between the great financial and commercial centers of New York and Philadelphia, New Jersey became a competitor for legislative favors. The early New Jersey special charters to out-of-state corporations gave privileges that would not have been approved by general statutes. Since the New York constitution of 1846 made it difficult for promoters to gain special charters in that state, New Jersey maintained a competitive advantage by retaining its system of special acts of incorporation. That attitude of New Jersey may be summarized in this statement by New Jersey Governor Randolph in 1869:
"... The community that invites labor and capital within its borders by liberal legislation, adds to its own stability and enriches its citizens... I feel assured you will fully appreciate the propriety of continuing that policy which has heretofore induced manufacturing enterprise and capital to seek our protection.\footnote{36}

The 1846 general act for manufacturing companies remained in effect until 1875. The other acts enacted in the years 1846 to 1875 merely extended the rights of the 1846 act to include other businesses. The political issue of the general incorporation laws went into hibernation and the state of New Jersey appeared to be doing business "as usual." Except for a lull during the Civil War years, the number of incorporations showed a tendency to increase, an increase that was in favor of the special act type of charter. By the 1870's the only type of business organization that did not come under the general act of 1846 and its amendments was the railroad. It is obvious from our previous discussion of the role of the railroads in New Jersey that they would not be in favor of the restrictions of the general laws. What happened to break the hold of the Camden and Amboy on the state of New Jersey is a long and interesting story in itself, but for the purpose of this paper we will briefly outline what happened that resulted in the general railroad act of 1873.

We spoke earlier of the absolute monopoly that the Camden and Amboy Rail Road received under the "monopoly bill" of 1832 for transportation between New York and Philadelphia. Although other railroads had secured charters to operate spur lines, none had succeeded in securing rights to compete for the New York-Philadelphia traffic. In 1871 the United Railroad Company (the combined New Jersey Railroad,
Philadelphia and Trenton Railroad, and the Camden and Amboy Rail Road) was leased to the Pennsylvania Railroad for 999 years. The old anti-corporation group, interrupted from its hibernation, arose fighting against the home-grown monopoly that had now fallen into the hands of "foreigners." The result of this was an attempt to incorporate the New York and Philadelphia Railroad to compete with the foreign invaders. The charter was voted out, but by 1873 the agitation for reappraisal of the Pennsylvania grew to substantial proportions. The New York and Philadelphia Railroad, staffed by prominent Jerseymen, again made an attempt to seek a charter. It then became an open battle between the Pennsylvania and the New York and Philadelphia lines. The sentiment for the Jersey company became so strong that the Pennsylvania reversed its argument for continuation of privileges and now turned to a plea for a general act, which they hoped would still leave them with their historical monopoly instead of competing with another "favored" line. The New York and Philadelphia, however, spoke out against a general act and sought to become one of the favored sons of Jersey through a special charter. While this open agitation continued, a bill was submitted to the Assembly by Assemblyman Canfield. This bill authorized any 13 persons to form a railroad company under certain articles of association to be filed in the Secretary of State's office, when capital stock to the value of $1,000 for every mile of railroad projected by them had been subscribed. The New York and Philadelphia interests now saw the "handwriting on the wall." The old Camden and Amboy lobby, now the Pennsylvania lobby by inheritance, had succeeded in swaying the opinion of the legislature to the general law idea.
Partially because of this and partially because the Pennsylvania group had unearthed some "skulduggery" in the past behavior of the legislature, the New York and Philadelphia changed its position and was now ready to accept the general law idea. Since Canfield's bill had been submitted and agitation was so high, the bill was passed and became law on the twelfth of March.

The passage of this bill marked the passing of an era of special privileges under the special act method of incorporation. This act gave rise to the impetus that resulted in the constitutional amendment in 1875 that forbade the issuance of special charters for incorporation. 38

Part B - New Jersey and its Law 1875 - 1900

In 1873 Governor Parker proposed that "the State Constitution should require general laws and forbid the enactment of all special or private laws embracing subjects where general laws can be made applicable." A special commission was set up to consider the matter and submit its findings to the Senate and the House. The recommendations were accepted by the legislature and in September, 1874, a special vote made the recommendations part of the New Jersey constitution. Article I, paragraphs 19 and 20, stated that:

No county, city, borough, town, township, or village shall hereafter give any money or property, or loan its money or credit, to or in aid of any individual, association, or corporation, or become security for or be directly or indirectly the owner of any stock or bonds of any association or corporation.

No donation of land or appropriation of money shall be made by the state or any municipal corporation to or for the use of any society, association or corporation whatever.
These two paragraphs strengthened the limitation imposed on governmental assistance of private corporation under the 1844 constitution.

The most important additions that pertained to the corporation were found in Article IV, section 7. Paragraphs 3, 8, and 11 stated that:

The legislature shall not pass any law impairing the obligation of contracts or depriving a party of any remedy for enforcing a contract which existed when the contract was made.

Individuals or private corporations shall not be authorized to take private property for public use, without just compensation first made to the owners.

The legislature shall not pass private, local, or special laws in any of the following enumerated cases, that is to say: Granting to any corporation, association or individual, any exclusive privilege, immunity or franchise whatever. Granting to any corporation, association or individual the right to lay down railroad tracks. The legislature shall pass general laws providing for the cases enumerated in this paragraph, and for all other cases which, in its judgment, may be provided for by general laws. The legislature shall pass no special act conferring corporate powers, but they shall pass general laws under which corporations may be organized and corporate powers of every nature obtained, subject, nevertheless, to repeal or alteration at the will of the legislature.

Although the legislature was prohibited from granting special charters it now had express powers to repeal and amend general acts provided for in this amendment. As we shall see, the amendments to the general acts for incorporation led to a condition where the granting of a charter under the general law became equal in privileges to those granted by special act before 1875.

As mentioned earlier, the early railroad charters provided for a "transit tax" rather than a property or state tax that applied to other forms of business. This transit tax was paid only on goods or
persons moved by the railroads and was far below the tax rate paid by other forms of business. The railroad pushed this privilege to its limits, buying properties and land and then claiming exemption because they belonged to the railroad. In the meantime the state of New Jersey found itself in dire financial condition. Although nineteenth in population, it stood sixth in indebtedness, and cities such as Elizabeth, Rahway, and Jersey City were faced with the possibility of receivership. In 1882 Mr. Charles L. Corbin, a noted lawyer and antimonopoly supporter stated the causes of this condition in a paper read before the Kent Club in Jersey City. He said:

   The cause which far more than any other has given New Jersey such eminence in the crowd of public debtors, can be stated with confidence. More than one-fourth of the property of the State is exempt from county and local taxation. That exempted property belongs to the railroad companies. 40

Although the constitutional revision of 1875 contained the clause that "property shall be assessed for taxes under general laws, and by uniform rules, according to its true value," it did not apply to railroads incorporated before the 1846 general act or the 1873 railroad act because Article X, paragraph 1, of the constitutional revision guaranteed that "all claims and rights of individuals and bodies corporate, and of the state and all charters of incorporation shall continue."

The legislature was faced with the dilemma of resolving the precarious economic position of the state while its hands were tied as to how to do this without violating the Dartmouth decision (see Appendix).

The 1884 gubernatorial race saw the issue of "equal taxation" as paramount. Leon Abbett, the Democratic candidate, was successful, and the legislature saw the introduction of many bills aimed at
extracting more tax money from the railroads. The Senate bill, known as the Griggs bill, was finally passed.\textsuperscript{12} What this bill did was to differentiate between properties used for transportation - to be taxed at the old rate - and properties not used for transportation which now were taxed at equal rates paid by other property owners. This law proved less than expected, first, because of litigation with the railroads concerning its constitutionality, and secondly, the problems of assessment and collection of taxes proved difficult. In 1886 the legislature had to pass a law forcing the corporations to disclose needed information as to value.\textsuperscript{13} An alternate method of filling the state treasury passed the legislature in 1884. This measure levied a franchise tax upon all the corporations chartered in the state.\textsuperscript{14}

It was shortly after the effort to tax the railroads that Governor Abbett called upon James B. Dill, a young corporation lawyer from New York, whose pamphlet "the Advantage of Business Corporations" made him well-known, to ask his opinion on a procedure to take to increase the state revenue. Dill suggested that the state broaden its corporation laws to make it advantageous for corporations to locate there.\textsuperscript{15} With the small franchise tax provided for in the 1884 legislation the state would be assured of sufficient income. In 1890 Dill, together with Governor Abbett, Secretary of State Kelsey, United States District Attorney White and Mr. Allen McDermott had a conference in which Dill gave his views in detail.\textsuperscript{16} Two years later, in 1892, the state adopted the Corporation Registration Law. This act required each corporation to have an agent and to state the name of the agent in the charter; that the agent should be authorized to receive papers
for the corporation, and that the agent's address should be the post-office address of the directors and stockholders for the purpose of sending legal notices; and it also provided that all stock and transfer books for the inspection of the stockholders should be kept at the agent's office. It is interesting to note that Dill's own company, The Corporation Trust Company, advertised that it would "attend to every detail, including, if you desire, the organization of your company," that it had "employees ... who act as incorporators," and that since the law required at least one director to be a resident of the state, it would also supply him "without extra charge." The Corporation Trust Company advertised the liberal corporation laws of New Jersey far and wide, and Dill became, in fact, "a legal partner of trade." In its office at 15 Exchange Place, Jersey City, was housed the principal office of more than 1,200 corporations.

The nature of the corporation laws in the 1880's and 1890's gave New Jersey the name "home of the trusts." Between the years 1888 and 1903 New Jersey incorporated 192 trusts, more than six times the number incorporated by its nearest competitor, Pennsylvania. The popularity of New Jersey had resulted from the policy of keeping on the books the kind of statutes which would be attractive to incorporators. Of particular importance to this attractiveness were the amendments to the general act made in 1888, 1891, and 1893. The 1888 amendment gave the corporation specific power to hold stock in other corporations. The 1891 amendment gave the corporation power to pay in stock for stock or property of another corporation, and the 1893 amendment extended the above rights by giving the corporation power to issue sufficient
stock to pay for purchases.\textsuperscript{51} These three amendments empowered the corporation now to become a "holding company" or:

Any company, incorporated or unincorporated, which is in a position to control, or materially to influence, the management of one or more other companies by virtue, in part at least, of its ownership of securities in the other company or companies.\textsuperscript{52}

These enabling clauses gave sanction to practices that were in violation of the Sherman Act (see Appendix).

The income received by the state from the liberal incorporation laws was evidently pleasing to the lawmakers. So much so, that in 1896, under a Republican governor and legislature the general acts were extended to give incorporators even more flexibility. This act, a self-admitted work of James B. Dill\textsuperscript{53} now became the official policy of New Jersey.

The law of 1896 gave the corporation seven expressed powers.\textsuperscript{54} It had the power to have succession, to sue and be sued, to make and use a common seal, to hold, purchase and convey such real estate and personal estate as the purpose of the corporation shall require, and to mortgage any such real or personal estate with its franchises, to appoint officers and agents, to make by-laws, and to wind up and dissolve itself. The power of succession gave the corporation perpetual existence rather than limiting its life to 50 years as did the 1875 act. The power to sue also implied the power to compromise suits, and the power to be sued did not give the corporation the right to defend itself by using the plea of ultra vires. The power to make and use a common seal did not imply the old common law idea that the corporation can only act under its corporate seal, but expressed the idea that acts
of the corporation must stem from the vested authority of the officers of the corporation. Under the 1875 act the corporation was limited in its charter. All such limitations, expressed or implied, were removed in the revision of 1896. The general rule for indebtedness is stated in Barry v. Merchant's Exchange Company:

It is in vain to look in our laws for any express restriction of corporations, to the amount of their capital in the use of their credit.

The history of these institutions in this country shows that no such restriction exists. The Legislature has sometimes interposed its authority by expressly limiting the use of the corporation credit, thus showing that unless so restricted it was unlimited.55

The power to appoint agents and officers is usually vested in the directors, but the manner of appointment may be and usually is prescribed by the by-laws. The power to make and alter by-laws assumes that the by-laws cannot be altered once stock has been issued on them and monies paid on the strength of them. This would be a fundamental violation of the contract between stockholders. The methods the corporation may use to wind up and dissolve under this statute are: by the limitation of the certificate of incorporation,56 by surrender of the corporate franchises,57 by unanimous consent of the stockholders,58 by the legislature,59 by decree of the Court of Chancery in insolvency proceedings,60 by the Court of Chancery or Supreme Court for failure to obey orders to bring books into the state,61 and by proclamation of the Governor for failure to pay taxes.62

Corporations under the 1896 law may be formed for any lawful purpose.63 They might carry on their business in any state of the Union or in any foreign country.64 In-state corporations are restricted to
non-service or banking operations while foreign corporations may carry on these same activities outside the state boundaries. Corporations of the state might merge and consolidate and be regarded as one corporation. Consolidating corporations could sell or mortgage any property they might obtain, and any corporation could lease its franchise or holdings to another.

What this act did was to give a code of general rules of law applicable to all corporations, thus enabling certain types of corporations to be formed. By giving the corporations the power to write their own certificates of incorporation and giving them rights to be formed for any lawful purpose, it was felt that all possible avenues for attraction of incorporation had been pursued. Formerly, the corporation had recourse to the legislature for a specific grant of power if the general acts were not sufficient to affect the object of the corporation. Under the 1875 constitutional amendment the legislature could no longer pass special acts so that the general act, as it now stood, "passed in obedience to the mandate of the Constitution, the certificate required by that act becomes the charter of the company, and the equivalent of the former special act of the legislature."70

As though to carry this idea to its logical conclusion, by an amendment to section 8 passed in 1898, corporations are now authorized to insert in their certificate of incorporation provisions "creating and defining the powers of the corporation." According to Dill, this is perhaps an innovation in general enabling acts, and if the word 'create' is to be given its usual and ordinary meaning it is as though the Legislature has endowed the corporators with a lawmaking power, enabling them to give the corporation such powers as they see fit, provided only that such
powers are not inconsistent with the act itself. In other words, unless a power is expressly or implicitly forbidden by the statute, it may be created under this section.72

It is apparent that in the State of New Jersey special opportunity is given for the skill of counsel in drawing a certificate of incorporation. It is as though the legislature had laid out, first, seven express powers which all corporations should possess and then had defined certain limits beyond which corporate powers could not go. It then provided a method of obtaining the equivalent of a special charter containing any and every other power which should be desired, not inconsistent with the provisions of the act itself.

Under this act incorporators had only to file a certificate of incorporation with the Secretary of State and upon the date of filing the corporation began its existence. The certificate of incorporation must contain:

1. The name of the incorporation
2. The location, including principal office in the state
3. The object or objects of formation
4. Amount of total authorized capital stock
5. The number of shares into which the same is divided and the par value of each share; the amount of capital stock with which it will commence business.
6. The names and post office addresses of the incorporators and the number of shares subscribed for by cash
7. The period, if any, limited for the duration of the company
8. May contain provisions the incorporators wish to insert so long as it is consistent with the act 73

In a pamphlet issued by the Corporation Trust Company,74 the advantages of the New Jersey Law are presented. It is noteworthy to quote the issue presented in this pamphlet in detail so as to show the reader what was being advertised to incorporators all over the United States. It states that "the great amount of capital already registered in New
Jersey will tend to prevent any change in the law or in the policy of
the State," and with "such absolute security and freedom from inter-
ference, such a stable and permanent corporation law is afforded by
no other state." It further states that:

The laws of New Jersey involve no publicity; the only report
required to be filed with the Secretary of State being the
list of Officers and Directors, filed within thirty days after
the annual stockholders' meeting. The corporation must keep
a record of the stockholders in New Jersey, which is open to
inspection by the stockholders, but is not public property.
The books of account and general records of the company are not
required to be kept in New Jersey, may be free from inspection
even by the stockholders.

In brief then the advantages of the New Jersey law are:

1. Broad and complete protection against liability
2. Stock issued for property is fully paid and non-assessable
3. But one director need be a resident of New Jersey
4. Meetings of stockholders may be held in proxy
5. Corporate protection is not withdrawn in case of failure
to file annual report
6. Reports are brief and require no statement of private affairs
7. There is no limitation on the amount of capital stock
8. The incorporation may be "for any lawful business or purpose
whatever"
9. Stockholders are not liable for corporate debts
10. The provisions of the law have been judicially interpreted
and there are no doubtful points or uncertainties
11. It is the standard corporation law of the world
12. The liberal policy of the state has been unchanged for nearly sixty years and the General Corporation Act has stability and permanence.

The key to the New Jersey corporation policy may be summed up in two words - security and secrecy. Starting with an unstructured legal position concerning incorporation, the laws of New Jersey became the standard form for all other states. This law, which is the standard law of corporations even today, evolved out of an attempt to lessen the burden of the Legislature and decrease the bankrupt conditions of a state.
"The test of the corporate character is triple, involving the interrelations of the associated persons, their relations to other individual members of society and their relations to the state." To test the character of the modern corporation we must look at all three of these relationships to find a composite picture of what is involved in corporate behavior. Since our subject is the modern business corporation, or the corporation for private profit, we shall attempt to find a common denominator of behavior that will serve to illustrate the mode of behavior found in modern corporate life.

Keeping the above test in mind we will now look at the interrelations of the associated persons of the modern corporation. The corporation in its infancy in the United States was generally thought of in terms of the character of its entrepreneurial leadership. The "great" names associated with the business world became, in fact, almost charismatic in nature. The Carnegies, the Mellons, the Morgans became the image that was associated with business activity. With the rise of consolidations, mergers, and the holding company legal formula, the lawyer found his place in the business structure because of his knowledge of the legal devices that were necessary to carry out these activities. The entrepreneur of the past became the "national," the "united," the "American," and the "universal," and the lawyer became the true legal organizer of corporate industry. James B. Dill's
role in the incorporation of many business firms was not unique, but, on the whole, rather typical of the changing relations of the lawyer. The practice of lawyers before the corporation movement in the United States had been confined to relations with other men; their relations now changed in that they had, as clients, corporations and trusts.² As a result of this changing relation the successful corporation lawyer's prestige was increased as well as his income; in fact, during this period they were the most highly paid of all the professions.

The third general period of corporate leadership may be said to be the "engineering period." Although large sums of fluid capital were needed to insure the continuance of industry, there was still a need for someone to translate the work of science into profitable, practical techniques of production. Industry had reached a stage of capital expansion where the lines of communication were no longer effective and the expansion of human muscle power no longer economical. The rise of the steel industry, the chemical industry, the rubber industry, the production of the automobile and the use of power technology generally had left a void in command of these forces that had heretofore been handled directly by the owners of industry working themselves as leading technical craftsmen. The engineer and the technician filled this gap by providing methods of production that did not involve expansion but effectiveness. It was this rise in the prestige of a class of persons, heretofore not even recognized as a separate part of society, that Veblen³ saw the control of industry and society in the future. The modern corporate period or the era of the professional administrator does not fulfill the Veblen prediction. The modern
corporate structure is managed and controlled by persons who, for the most part, have received their preliminary training on a university campus rather than in the plant itself. They are the persons who work for wages or salaries in a well-structured system of prestige and promotion. They are persons whose lives are lived within rigid codes of behavior whether written or unwritten and the possibility of their being innovators or of changing the system is practically non-existent.

The religious analogy is compelling here in that a similar set of leaders are found in the growth of religious institutions. The early leader is generally the charismatic type, the gifted or supernatural leader whose function in the social system is to provide a buffer in transitional periods of societal growth. Upon his death the law makers and the preachers continue his image, molding it to fit the necessities of the historical epoch. Once the lawmakers have provided a set of codes, rules, and regulations the task of leadership is left in the hands of an official bureaucracy, officially trained to continue the now institutionalized form of religion.4

Part A - The Interrelations of the Associated Persons

The social values and institutions of society mold individual personality and behavior through the socialization process. Each institution varies this value scheme to meet its particular requirements. The socialization process in the business corporation involves the acceptance of the various roles within the system. The authority system of the modern corporation encourages members to accept uncritically the
legitimacy and rationality of the system. Thus, we find what may be called a "corporate personality" which is formed through the perception of one's roles in the organization. These roles may be said to be self-enforcing in that those who do not conform to the system are "let go" while those who remain, remain because of their acceptance of the ready-made role behavior. Bell has said that:

> Our examination of the social system in which the corporate administrator works and lives reveals that he exists in a tight little social island almost completely isolated from direct contact with the cultural mainland.

This isolation is guaranteed by the secrecy surrounding corporate activities in that there are no institutional methods that have been developed which permits the "owners" - stockholders of the corporation - to exert pressure and make management defend itself or adjust to pressure. This secrecy is largely responsible for the myth that business operations are effective as opposed to governmental operations which are perceived as being wasteful.

Another attribute of the modern corporation is its bureaucratic impersonality. With the rise of mass-production the worker may know only a small aspect of a particular job and may never know its relation to the finished product. Even the skilled artisan who, in the past, dealt directly with the customer has been replaced by large organizations whose products go to ultimate customers whom the workers in the organization cannot possibly know. These older gemeinschaft relations have been largely replaced by impersonal relations that may lead to a state of anomie or normlessness on the part of the worker. What has happened is that formal organization has been superimposed on the
informal structure that cannot function solely on the basis of primary or personal relations. The organization's right to exist is based on de facto assumptions rather than de jure premises. The allegiance to organization has produced a variety of organizational "types" whose relation to the modern corporation has been investigated by a number of studies.

Argyris maintains that the organizational setting itself is in conflict with the natural tendency for human organisms to develop toward maturity. The three variables that tend to increase dependency are: the nature of the formal organization which differentiates between line and staff relations, thus making a clear-cut distinction between lines of authority within the organizational structure; the directive leadership exhibited by organizations that tends to increase dependency through the ordering of more definite tasks and managerial controls which insure the organization of continued existence. There is a variety of behavior patterns that members of the organizations display in their reaction to this power structure. They may act indifferently or apathetically climb toward greater freedom, get out of the system, rebel, create informal groups, create formal groups, focus on material rewards, or develop more maturity. In general, the reactions that question the authority of the system tend to create a situation where formal controls are tightened, thus widening the gap that the reaction attempted to replace in its formation.

Wilbert Moore has distinguished three types of persons in the organizational hierarchy. The most successful of these is the "strainer." The strainers are those who are typically depicted as
managerial folk. They are the status seekers, the sycophants, the joiners. They are the ones who marry the women who can entertain, who attend the right church, join the right club, belong to the right political party, and are typically called the "bright young men." For these people the ladder of success is more like an escalator; once they have successfully mounted the bottom, it would take positive effort to avoid going to the next level. They have internalized the values of the organizational system which guarantees them and the organization a secure future. The "secure mobiles" are those who like their jobs. They do not aspire for line positions and accept money as payment for what they are doing and not for something else. This group is typified by the scientist working in industry. Although there may be some conflict between the scientist and the administrator as far as secrecy of work and type of projects is concerned, the scientist-in-industry is not concerned with upward mobility that would take him away from his personal and professional goals. His concern is not with making money - the goal of industry - but with doing research, and doing research cannot be encumbered by administrative duties. The "treader" is the person within the organizational structure that has limited expectations. Although society demands that one should strive for advancement, the treader sees that for him the advancement is not within the range of his expectations. The greater the disparity between aspiration and achievement, the greater chance for neurotic or even psychotic behavior. On one hand, it is not permissible to "give up!"; on the other, achievement is not possible.

Presthus also finds three types within the organizational
scheme. These are the "upward mobile," the "indiffereuts," and the "ambivalents." These types are considered to be a product of the adaptive process involved when the individual is faced with resolving the anxiety produced by the strain between authority and individuality. The ambivalents, proportionately the smallest of the three patterns of accommodation, is essentially what William James would call a "tender-minded" person. He is introverted in the sense that the important aspects of life are not to be found in the security of the organization. He questions the rationality and legitimacy of the system and finds himself in the position of an outsider looking in. His needs are directed toward personal autonomy rather than collective goals and he rejects or tolerates the system of authority and status. In essence his inability to assume the required roles of the organization place him in a position as an agent of change, but never as a functioning bureaucrat.

The indifferents compose the majority of the organization men. This personnel group is characterized by the great mass of waged and salaried employees who work in the bureaucratic situation. This group "tends to reject the organizational bargain which promises authority, status, prestige, and income in exchange for loyalty, hard work, and identification with its values." The indifferents' psychological position is one of "compartmentalization"; he separates his work situation from his other activities. He probably understands that his participation in the organization will not have much effect on the organizational structure because conditions are determined by remote bodies of men not directly influenced by an attempt on his part to
change the system. Oligarchy breeds this alienation by excluding the vast majority of employees from real participation in the organization.

The third pattern of accommodation, the upward-mobile, is composed of the people who like what they are doing; they accept and identify with the goals of the organization. This is the group generally considered "business leaders" in that the members of this group are the most likely to rise to positions of authority within the structure of the organization. They are basically the "authoritarian personality" type in that their orientation to the organization is divided between those who are weak and those who are strong. This authoritarian perception justifies their assumption that the organization is a rational system in which authority, status, and income must be unequally distributed. His allegiance to the organization reflects much of the character of the organization itself. His propensity to join conflicting institutional systems without involvement may brand him a "progressive conservative," yet there appears to be little self-perceived conflict in his behavior. His participation in the organizational structure merely enhances his personality characteristics. The bureaucratic situation nicely accommodates authoritarian needs. Hierarchy is so constructed that a chain of command runs throughout the organization. And his perception of authority is attracted to a system of interlocking subhierarchies that permit the indulgence of many degrees of authority at many levels. This orientation enables him to submerge, diffuse, or rationalize any attending moral issues and appears to justify what might be called the "rational" character of the bureaucracy.
These organizational types only exist as "ideal types" as each corporation has its unique characteristics. What is important here is to recognize that patterns of behavior are largely determined by work and institutional relations. If the institution or the work relations change there will also be a corresponding change in the character of those who assume the roles within the system. The character of the modern corporation produced adaptive personalities which, in any institutional setting, tend to enhance the status quo and maintain an equilibrium which may in time become similar to the rigid class structure found in older institutional forms.\(^\text{17}\) This self-perpetuating control of corporate structures will make the character of corporation managers more clear in the future.

**Part B. - The Relation to the Community**

A decision made by the board of directors of a large corporation in New York City may affect the social, economic, and political structure of a community as far away as Washington. The effect of this "outside" control of heretofore locally controlled business is illustrated in Volume IV of the Yankee City Series.\(^\text{18}\) In Yankee City, the workers in the shoe factory attributed undesirable activities only to ethnic and non-resident managers.\(^\text{19}\) Under the control of resident managers and owners, usually combined in this facility, grievances and complaints remained within the sanctions of the community and were subject to public opinion. When ownership becomes impersonalized by removal from the community, that is, owned through a holding company, and managers are brought in from the outside, the methods of control
become less predictable and less amenable to local pressures. The holding company directors are not concerned with the feelings and status of the community. Their main function is to see that the local plant facility is performing in terms of the goals of the larger business organization. If the local factory cannot produce effectively for a nation-wide market or the local factory does not fit in with the overall scheme of the holding company, it is closed or its productivity is increased by replacing employees with new, more efficient machinery. If the factory is closed, the feeling against "foreign" owners is increased. The replacement of men by machines upsets the employee status system that comprises a part of the community structure, historically. In the face of this danger to the status system of Yankee City, the workers referred many times to the former local owner-managers who had long since died. The elevation of these former owner-managers to a position of "charisma" was apparent in that both the foreign managers and the union used quotes and decisions that had been made by them to foster their respective causes. The character of these men, as portrayed by myth and legend, put management at a disadvantage as their roles were merely those of employees of some larger enterprise. It has been said that we have capital and capitalism, but there are no more capitalists. These early capitalists, as members of the community, played an important role in the community structure. Not only did the profits of the factory remain in the community, but they lived there and supported local interests. Their authority was tempered by community sanctions and based upon the possible personal repercussions that might occur if the decision was wrong. The relations between management
and the workers was on a face-to-face or primary level of interaction, and there was little need for a union to represent the workers. When the outside managers came into Yankee City, the lines of authority were not known and the older, established methods of communication proved ineffective. The union provided a means of communication that could never be obtained by the individual worker. One knew the union official because he was a member of the community and understood its needs. One had little chance of knowing the men who made the final decisions in matters related to management. The union, as a representative body, could make its wishes known because it had within its power the ability to withhold the producing units of the factory, namely, workers.

What Yankee City illustrates is the tendency for independent, self-employed, profit-making individuals to be displaced by the employee. The skilled artisan of the past is being replaced by the "production worker," and the training ground for employment in the historic apprenticeship shifted from the family unit to the public institutions of education and in-plant training. With the expansion of industry, the skilled shoemaker became a sole or heel maker whose duty was to produce component parts of shoes rather than the whole shoe. The workers in the shoe factory see management as a symbol of status rather than on the human level. The increased division of labor results in the distant, impersonalized, "scientific" control of behavior. This scientific control increased the use of planning and reduced risk-taking to the point where the role of other institutional forms in society is secondary. The family and the community are replaced by the
"rational" procedures of industry which substitute a new status system and behavior pattern. These have tended to replace the skills once "owned" by employees to the skills possessed by management in the form of machinery.

Part C - The Relation to the State

With the expansion of the corporate form of business, the states were unable to pass regulating acts that were effective. Once corporations had begun operating in many states and operating on an inter-state basis the federal government began its attempt to regulate and control the practices of business and businessmen. In spite of the attempt by governmental decree and legislative edict, the corporation has continued to multiply its control and expand its boundaries. For all practical purposes, the corporation may now be considered to be a state within the State. Whether one considers Berle and Means' top 200 or Fortune's 500, the fact still remains that the business corporation has within its power the ability to exert more political, social, and economic pressure than any non-governmental agency in society.

The early control of corporations came from the rigid controls found in the state charters. The size and activities were limited as was the life of the corporation. When states began to compete for fees paid by incorporation, these restrictions were practically eliminated and opponents of big business turned to the federal government for help. As a response to this opposition to big corporations, the Sherman Act (see Appendix) was passed in 1890. The act attempted to
make any contract or combination in restraint of trade illegal. The idea of monopoly practices by business, other than business granted existence by crown charters, was not accepted by common law. Under the tenets of individual freedom and the *laissez faire* doctrine, the 1880's and 1890's saw the rise of many trusts and combinations whose only claim to insurance of existence was that they had virtual control of the market of their particular product. The trust may be defined as:

... an organization managed by a board of trustees to whom all the capital stock of the constituent companies is irrevocably assigned.\(^1\)

The purpose of the trust was to create a federation of corporations or partnerships under the control and supervision of trustees. It was the job of these trustees to determine the output, markets, and prices of the contributing business organizations. In general, these combinations occurred in businesses that had rather highly standardized products. Setting the standard procedure for trust formation was the Standard Oil Trust of 1882. It was followed by the Cotton-seed Oil Trust of 1884, the Linseed Oil Trust of 1885 and the National Lead Trust, the Whisky Trust and the Sugar Trust of 1887. All of these products were standardized. That is, sugar is readily classified whoever produces it, the same as whisky and oil. The only competitive aspect of these products was the price. Under the trust system this could be controlled by the manipulations of the trustees. The various adverse court decisions by individual states, the Sherman Act, and the general depressed economic conditions of the United States in the early 1890's promoted the failure of the trust form of combination.
The trust was perhaps down but not out. In its place rose a new legal expedient - the holding company. This form of business enterprise, given sanction under the New Jersey corporation law, was formed to combine two or more hitherto independent companies under a centralized management or control with a unified financial structure. This was done by substituting the financial securities of the holding company for the securities of the subsidiary companies.\(^\text{22}\) In 1914 the Clayton Act (see Appendix) was passed which prohibited some of the specific practices that large corporations used against smaller competitors when their use was such as to "substantially lessen competition."

What this act did was to prohibit price discrimination, exclusive selling or leasing contracts by independent firms. It did, however, declare that labor is not a commodity or article of commerce and, therefore, labor unions are not subject to the anti-trust laws. Also in 1914 the Federal Trade Commission (see Appendix) was created to replace the Bureau of Corporations. This commission was given authority to investigate corporations engaged in interstate commerce and to require from them annual and special reports and other information.

The Sherman Act, the Clayton Act, and the creation of the F.T.C. have been the federal government's effort to restrict growth of monopoly power.

Despite these and related activities, governmental restriction of the growth of monopoly has not been generally successful. One of the major reasons for this lack of success is that the corporations have fought restrictive legislation in the name of free trade. Another reason is the secrecy involved in corporate activities which permits
violations of the Clayton and Sherman Acts. The use of interlocking directorates, "price fixing," and mergers is probably as prevalent today as it was at the time of passage of these bills.\textsuperscript{23} The difference in the court's rule today is the fact that the "rule of reason" is used as a criterion for judgment. Thus, the mere fact that a monopoly exists is no reason for ordering its dissolution, so long as the methods by which it has been established seem fair and the price it charges, though admittedly higher than a price determined by competition, is not outrageous. The Clayton Act restrains only those practices designed to "substantially lessen competition," and the Federal Trade Commission is authorized to ban only those practices that it considers "unfair." In short, it should be remembered that governmental activities are not, for the most part, secret in nature. The action of government in a democratic situation is generally the result of public opinion and/or pressure. If a people believe that big government is evil, but big business is good, it is probably because big business guards its activities, thus providing the myth of effectiveness.
The modern large corporation may be said to be the central and most important institution of our time. Its large size and extended political boundaries allow it to employ men as producers of goods which employees buy as consumers; it clothes him and feeds him and invests his money; it provides him with the instruments of war. Its private decisions, primarily made in the interests of the small, cooperative groups in control of corporate organization of private property and income, determines to a large extent the size and shape of the national economy, the level of employment, the purchasing power of the consumer, the price structure for goods and services, and the channelling of investments. In short, the corporation is a political state within a state. The idea that the corporation is "private" in nature can no longer validly apply to a system where the decisions handed down from those in power can affect more people than decisions made by many public administrations and legislatures. The newness of this institution has provided the American scene with a private government without effective public control. Lacking adequate public control, the unorganized worker, the small business firm, and the prospective employee are not protected in their legal rights by any due process in the corporate structure because there is none. A social institution is supposed to answer all questions pertaining to its functions. The corporation has not provided its body politic
with answers. This anomalous institutional situation results in pathological behavior of the institution and its members alike. Stockholders, as owners of the corporation, are encouraged to relinquish their one power of control - the vote - by accepting proxy nominations that result in furthering the schism between ownership and control.

The growth of the merger and holding company idea have resulted in an economy controlled by a small handful of businessmen. Because of the power of the large corporation, the decisions of these leaders have been transferred into political acts; hence, these actions must have legitimacy. At the present time, the legitimacy for action is two concepts widely held in the folklore of the corporation. One is that the corporation is the product of a contract between the state and the corporation; the other is the idea that the corporation is functioning as a unit of private property.

The traditional folklore of private property has come to mean the individual ownership of property with unlimited concentration of rights held by those who were owners. This does not mean that there was uncontrolled use of property as "no property system grants limitless and exclusive rights to valuable things, for to do so would be to destroy the very basis of the social order which property institutions serve to regulate."¹ In the main, this traditional idea maintained a one-to-one relation between subject and object. The corporation violates this principle in that different units hold different rights in the same locus of value.

These traditional ideas concerning private property formed the basis for Adam Smith's concepts of private property, private
enterprise, individual initiative, the profit motive, wealth, and competition. The idea of private property involved possession; enterprise was limited to small individual businessmen. Individual initiative, in the form of "rugged individualism," pertained only to a large number of individual businessmen competing according to the "guiding hand" concept of the market and economy with profit as a motive.

Wealth was associated with the efficiency and diligence of the individual businessman, his reputation for honesty and integrity in business dealings, and in the quality of his goods and services. The laws against monopoly, public or private, were designed to prevent individuals from obtaining exclusive control of any business or industry by political means.

Much of the same terminology remains in the business world today in spite of the fact that the assumption that ownership of property and control of property have long since ceased to exist. The corporate structure has changed this traditional logic into new institutional forms not yet recognized by the legal system's attempt to control activities of large business corporations.

Legal thought rests upon certain assumptions that cannot always be supported by the reality of the situation. The Dartmouth Decision, which gave the corporation certain abilities, rests upon the assumption of the "natural" character of corporateness found in ancient law. It assumed that the corporate form was part of the development of associations and insured the truth of this assumption by creating corporations that possessed the same characteristics as these older forms of relationships.
New Jersey's law pertaining to the corporation illustrates how certain economic, political, social, and geographical factors have influenced the growth of the corporate form of business enterprise. The early incorporation period followed very closely the procedure of the joint-stock company formation found in crown-chartered companies in England. The purpose here was to give legislative sanction to limited forms of business enterprise that the state felt necessary for the welfare of its citizens. With the advent of the general incorporation acts, the state delegated a large part of its sovereignty to the corporation, thereby giving businessmen much greater autonomy in development of corporate powers and practices. Businessmen were given the power to create fictitious persons called corporations, but also another group of fictitious persons was created in the form of stockholders whose only claim to ownership of a business was slips of paper called stocks or bonds. The older relations assigning control to persons in ownership positions ceased to exist; yet the fiction maintained that these old relations still existed.

The federal government's entrance into the control of corporation activities followed the assumption of the traditional concept of business relations that existed in Adam Smith's day. What the federal government attempted to control was the fictitious character of the corporation, not the actual working reality of the business world. The fiction was that markets and market relations still influenced competition between businesses: the reality was that competition had ceased to exist. "Restraint of trade" and "activities that tended to lessen competition" did not and could not curb the growth of the
business corporation because, under the provisions of state laws such as New Jersey's, the corporations could no longer be controlled as economic organizations. They had become semi-autonomous, semi-sovereign industrial states with their own constitutions and law-making bodies.

The resultant behavior of members of the corporation becomes confused and pathological because of the conflicting status of the organization itself. In greater American society decisions that affect the public come about through institutional procedures that are defined by law and sanctioned by the public. In the corporate setting, decisions are made without regard for the owners or other members of the corporate structure because no institutional means have been devised to control and influence the decision making process. If the employee or the stockholder does not agree with the practices of business he may withdraw. The withdrawal of one or many of the members of the corporate community has little effect upon structure, except in rare cases when corporation control has been challenged. If one considers the corporation as owned by many, yet controlled by a few, it attains the character of communism, a conflict with the American idea of republicanism and democracy. The oligarchical control of the corporate enterprise and the interlocking directorates have created a new class of citizens who interact behind the wall of secrecy and form a perpetual kinship type of relation through the recruitment of new members to the kin group. The new class of citizens, which have achieved status as part of "The Power Elite," constitute a new oligarchy of control whose involvements, in many cases, exceed the compensation paid to
the highest ranking public officials who are subject to public control.

What has happened is that we have two conflicting political organizations within the same social system. One, the formal, institutionalized, and recognized organization called the State; the other, the corporation, not identified as a political institution, yet able to exert political power without express institutional authority. A rather strained interpretation of constitutional law, with its protection of contractual relations, has provided the avenue for establishment of this unofficial political institution, based upon the assumptions of traditional concepts of business relations. The corporation's authority for existence is based, therefore, upon *de facto* assumptions rather than *de jure* reality.

The analysis of corporations as social or economic institutions must, therefore, consider its political nature if it is to be valid in its assumptions. The empirical investigations of the modern business corporation have been, for the most part, based upon the traditional, fictitious assumptions that the corporation is mainly social or mainly economic. Rarely have the relations found in industry been assumed to be political in nature. If the study of the corporation is to be meaningful it must be with the idea in mind that corporate relations are political and, as political, do not conform to the classical idea of private organization.
APPENDIX

CASES AND LAWS PERTAINING TO THE CORPORATION

THE DARTMOUTH COLLEGE CASE - Trustees of Dartmouth College v. Woodward, 4 Wheaton 518 (US) 1819.

Briefly, this case involved the power of a state to change or alter a corporation charter. In 1796 Reverend Eleazar Wheelock founded Dartmouth College under a charter granted by King George III of England. The control of the college was through a board of directors who were designated by Mr. Wheelock. The college prospered until 1816 when the New Hampshire legislature passed an act amending its charter, changing its name to Dartmouth University and made it a state institution subject to state control. The trustees took the case to court arguing that for the state to alter a contract was a violation of the Federal Constitution, Section X of Article I, which stated that "No state shall ... pass any ... act impairing the obligation of contracts." The state courts upheld the action of the New Hampshire legislature and the case finally came before Chief Justice John Marshall in 1819. Justice Marshall was one of the "midnight appointees" of John Adams, the last president of the Federalist party which demanded so liberal a construction of the constitution as to give the country a strong national government. In making his favorable decision for the trustees of Dartmouth College, Marshall utilized Blackstone's concept of the nature of the corporation. Blackstone stated
that the corporation was "an artificial person created for preserving
in perpetual succession certain rights, which, being conferred on
natural persons only would fail in process of time." To quote in
full, Chief Justice Marshall's decision state that:

A corporation is an artificial being, invisible, intangible,
and existing only in the contemplation of the law. Being a
mere creature of law, it possesses only those properties
which the characters of its creation confers upon it, either
expressly or as incidental to its very existence. These are
such as are supposed best calculated to effect the object
for which it was created. Among the more important are im-
mortality, and, if the expression may be allowed, individual-
ity; properties by which a perpetual succession of many persons
are considered as the same, and may act as a single individual.
They enable a corporation to manage its own affairs, and to
hold property without the perplexing intricacies, the hazard-
ous and endless necessity, of perpetual conveyances for the
purpose of transmitting it from hand to hand. It is chiefly
for the purpose of clothing bodies of men, in succession,
with these qualities and capacities that corporations are
invented, and are in use. By these means a perpetual suc-
cession of individuals are capable of acting for the promo-
tion of the particular object, like one immortal being.

THE SHERMAN ANTI-TRUST ACT - "An act to protect trade and commerce
against unlawful restraints and monopolies," Public Law No. 190-51st

The problems created by trusts and combinations became so ap-
parent that by the 1880's both political parties in 1885 incorporated
"prevention of monopoly" clauses in their platforms.¹ Beginning in
1888 the first resolution was introduced to Congress to investigate
monopoly practices in business enterprises. On December 4, 1889,
Senator Sherman introduced an anti-trust measure which was referred
to the Committee on Finance. On July 2, 1890, after debate and re-
vision, the act was passed with only one vote cast against it in both
houses. This one vote was cast by Senator Blodgett, a railroad man from New Jersey. The act contained eight sections which state the following:

Section 1: Every contract, combination in the form of a trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal.

Section 2: Every person who shall monopolize, or attempt of monopolize, or combine or conspire with any other person or persons, to monopolize...shall be deemed guilty of a misdemeanor.

Section 3: Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade...is hereby declared illegal...Every person who shall make any such contract...shall be deemed guilty of a misdemeanor.

Section 4: The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act.

Section 5: ...under section four of this act...parties should be brought before the court...whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

Section 6: Any property owned under any contract or by any combination, or pursuant to any conspiracy...mentioned in section one of this act...may be seized and condemned by like proceedings as those provided by law for...property imported into the United States contrary to law.

Section 7: Any person who shall be injured...by reason of anything forbidden or declared to be unlawful by this act, may sue...and shall recover three-fold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

Section 8: That the word "person" or "persons," wherever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.
Five years after the Sherman Act the Supreme Court was called upon to make a decision on the validity of a series of mergers in the sugar refining industry. The American Sugar Refining Company, a New Jersey corporation and the successor of the Sugar Refining Trust, purchased with its own stock all the stock of four independent refineries located in Philadelphia, which gave them control of 98 percent of the sugar refining industry. Prices advanced and a suit was initiated by the Department of Justice, asking that the contract for the exchange of stock be voided, that the stock which had been exchanged be returned, and that further performance of the agreements be enjoined. The court decided in favor of the American Sugar Refining Company, arguing that the challenged transfers related merely to the control of manufacturing as distinguished from the interstate commerce and, hence, were beyond the purview of the Sherman Act. This narrow decision based upon the idea of "interstate commerce" was criticized in the dissent of Justice Harlan. Had the prosecution attacked the trust on the basis of its collective acts or the essential monopolistic combination in restraint of commerce, the case would probably have been decided in favor of the federal government, as were later cases of this same nature.

The importance of this case lies in the fact that it was the first time the Supreme Court was called upon to decide directly the
legality of the holding-company form of combination. The Great Northern Railway Company, dominated by James J. Hill, and the Northern Pacific Railroad Company, dominated by J. P. Morgan, owned and operated parallel lines of railroad connecting Duluth and St. Paul with Seattle and Portland. Prior to 1893 the Northern Pacific was owned or controlled and operated by the Northern Pacific Railroad Company. When this concern became insolvent the firm entered into receivership, but before the foreclosure and sale a majority of its bondholders made an arrangement with the Great Northern Railway Company for a virtual consolidation of the two systems which gave the practical control of the Northern Pacific to the Great Northern. This consolidation was held illegal in Pearsall v. Great Northern Railway Company, which upheld the Minnesota law that forbade any railroad corporation from owning or having under their control parallel or competing railroad lines.

Undeterred by this decision, the two companies, in 1901, acquired joint control of the Chicago, Burlington and Quincy Railroad, a road extending westward from Chicago and serving as a feeder for both of these northern railways, as well as the Union Pacific system which was controlled by Harriman. The acquisition of the Burlington stock by Morgan and Hill so alarmed Harriman that he began to buy into the Northern Pacific Company. His purchases were so skillful that he soon held the majority of common stock in the Northern Pacific before Morgan became aware of what was transpiring. It soon became apparent that there might be a fight for control of the Northern Pacific so a compromise was reached on November 13, 1901, in the form of a
holding-company charter granted by the state of New Jersey to the Northern Securities Company. Since the Northern Securities had a total subscribed capital of $30,000, while its authorized capital stock was $400,000,000 - the total capital of the Great Northern and the Northern Pacific - it became apparent, through the invitation of stockholders of both railroads to exchange their stock for stock in the new holding company, that the ultimate objective was to skirt the Pearsall decision and put the control of these two lines under one company. At the time of the suit the Northern Securities had obtained about nine-tenths of the outstanding Northern Pacific stock and more than three-quarters of the Great Northern. On the basis of this control the case was brought before the Supreme Court in 1904.

The suit by the government was to rescind the stock transfers and to compel the holding company to divest itself of the stock of these competing roads. Despite the protestations of the defendants, the court found that the purpose and effect of the formation of the holding company was to suppress competition between the two systems, and ordered the dissolution of the combination.

Two dissenting opinions are of worth at this point. The first, by Justice Harlan, contended that:

Underlying the argument in behalf of the defendants is the idea that as the Northern Securities Company is a state corporation, and as its acquisition of stock of the Great Northern and Northern Pacific Railway companies is not inconsistent with the powers conferred by its charter, the enforcement of the Act of Congress (Sherman Act), as against those corporations, will be an unauthorized interference by the national government with the internal commerce of the States creating those corporations.6

The majority opinion held that no state could, merely through the
creation of a corporation, project its authority into other states in such a way as to prevent Congress from exerting its power of regulating interstate commerce. The second opinion came from Justice Holmes. He stated: "There is no combination in restraint of trade until something is done with the intent to exclude strangers to the combination from competing with it ..." Although no one had attempted to compete with the Northern Securities combination, the court contended that the inevitable outcome of this combination would result in a restraint of trade, and the act of 1890 was designed to protect the freedom of interstate commerce.

One interesting result of this case was that the court that had attempted to stop a combination in restraint of trade decreed that the holding company either give the stock back to the former holders or distribute it among its own stockholders. It chose the latter so that the two railroads returned to the old Hill-Morgan community of interests, thus nullifying the purpose of the decision.


Under the Sherman Act industrial combinations continued to grow until, in 1914, under the presidency of Woodrow Wilson, Congress was called upon to pass legislation to prohibit specific undesirable practices leading toward monopoly; particularly interlocking directorates and holding companies. Other recommendations were to make the individuals who violated the anti-trust laws personally liable; to enable any person injured by a trust to base a suit for damages upon the
facts proved by a government prosecution and thus facilitate the collection of those treble damages allowed by the Sherman Act; and, finally, to extend the powers of the Interstate Commerce Commission to include the regulation of the issuance of securities by the railroad.

These recommendations were embodied in five bills, promptly christened the "Five Brother Bills," next-of-kin to the "Seven Sister Acts" that were enacted under the Wilson governorship of New Jersey. These five bills were then consolidated into two bills. One bill resulted in the Clayton Act; the other established the Federal Trade Commission by replacing the Bureau of Corporations established in 1903.

In the Clayton Act four kinds of monopolistic practices were singled out: price discrimination "where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce" (section 2); the issue of tying clauses in sales or leases "where the effect ... may be to substantially lessen competition or tend to create a monopoly in any line of commerce" (section 3); acquisition by a corporation of stock of another corporation "where the effect of such acquisition may be to substantially lessen competition" between the acquiring and the acquired corporation, or "to restrain commerce in any section or community, or tend to create a monopoly of any line of commerce" (section 7); and interlocking directorates among corporations (above a certain size) which are, or have been, competitors (section 8).

This act and the Federal Trade Commission Act were the first recognition that the antiquated idea of *laissez faire* relations between
the state and the corporation did not work. They demonstrated that there were no economic laws, per se, and the only institution that could ever hope effectively to control the growth and influence of business enterprise was the federal government.

Although the Clayton Act was amended two times since its birth - once in 1936 and again in 1950 - the law remains in effect as an attempt to curb the unrestricted growth of corporations and encourage competition.
# TABLE 1

CORPORATIONS CREATED BY SPECIAL CHARTER **

(1791 - 1845)

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<tr>
<td>1799</td>
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<td>1827</td>
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<td>1800</td>
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<td>1828</td>
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<td>1801</td>
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<td>1829</td>
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</tr>
<tr>
<td>1802</td>
<td>3</td>
<td>1830</td>
<td>12</td>
</tr>
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<td>1803</td>
<td>3</td>
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<td>1804</td>
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<td>1809</td>
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<td>1837</td>
<td>12</td>
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<td>1810</td>
<td>11</td>
<td>1838</td>
<td>15</td>
</tr>
<tr>
<td>1811</td>
<td>10</td>
<td>1839</td>
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<td>1812</td>
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<td>1841</td>
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<td>1815</td>
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<td>1843</td>
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<td>1816</td>
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*Full year not available

## TABLE 2

**INCORPORATIONS BY SPECIAL CHARTER AND GENERAL LAWS FOR THE STATE OF NEW JERSEY***

*(1846 - 1875)*

<table>
<thead>
<tr>
<th>Year</th>
<th>Special Charter</th>
<th>General Law</th>
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<td>20</td>
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</tr>
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<td>1850</td>
<td>20</td>
<td>7</td>
</tr>
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<td>1851</td>
<td>38</td>
<td>18</td>
</tr>
<tr>
<td>1852</td>
<td>40</td>
<td>13</td>
</tr>
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<td>23</td>
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<td>1874</td>
<td>86</td>
<td>36</td>
</tr>
<tr>
<td>1875</td>
<td>40</td>
<td>49</td>
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</tbody>
</table>

### TABLE 3

**INCORPORATIONS BY GENERAL ACTS**

**STATE OF NEW JERSEY**

*(1876 - 1900)*

<table>
<thead>
<tr>
<th>Year</th>
<th>Number</th>
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</thead>
<tbody>
<tr>
<td>1876</td>
<td>33</td>
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<td>39</td>
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<tr>
<td>1878</td>
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<td>1879</td>
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<td>1880</td>
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<td>1881</td>
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<tr>
<td>1882</td>
<td>252</td>
</tr>
<tr>
<td>1883</td>
<td>189</td>
</tr>
<tr>
<td>1884</td>
<td>105</td>
</tr>
<tr>
<td>1885</td>
<td>124</td>
</tr>
<tr>
<td>1886</td>
<td></td>
</tr>
<tr>
<td>1887</td>
<td></td>
</tr>
<tr>
<td>1888</td>
<td></td>
</tr>
<tr>
<td>1889</td>
<td></td>
</tr>
<tr>
<td>1890</td>
<td></td>
</tr>
<tr>
<td>1891</td>
<td>264</td>
</tr>
<tr>
<td>1892</td>
<td>267</td>
</tr>
<tr>
<td>1893</td>
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<td>1894</td>
<td>196</td>
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<td>1895</td>
<td>217</td>
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<tr>
<td>1896</td>
<td>180</td>
</tr>
<tr>
<td>1897</td>
<td>280</td>
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<tr>
<td>1898</td>
<td>311</td>
</tr>
<tr>
<td>1899</td>
<td>740</td>
</tr>
<tr>
<td>1900</td>
<td>770</td>
</tr>
</tbody>
</table>

*New Jersey: Secretary of State. Corporations of New Jersey: List of Certificates Filed in the Department of State to December 31, 1911, Trenton, 1912.*
<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1816</td>
<td>An act relative to incorporations for manufacturing purposes.</td>
</tr>
<tr>
<td>1846</td>
<td>An act to authorize the establishment, and to prescribe the duties of manufacturing companies.</td>
</tr>
<tr>
<td>1847</td>
<td>An act to encourage the establishment of mutual savings associations.</td>
</tr>
<tr>
<td>1849</td>
<td>An act to encourage the establishment of mutual loan and building associations.</td>
</tr>
<tr>
<td>1849</td>
<td>An act to authorize the establishment, and to prescribe the duties of companies for manufacturing and other purposes.</td>
</tr>
<tr>
<td>1850</td>
<td>An act to authorize the business of banking.</td>
</tr>
<tr>
<td>1852</td>
<td>An act incorporating homestead and building companies.</td>
</tr>
<tr>
<td>1852</td>
<td>An act authorizing the incorporation of plank road companies.</td>
</tr>
<tr>
<td>1852</td>
<td>An act to provide for the incorporation of insurance companies.</td>
</tr>
<tr>
<td>1853</td>
<td>An act to incorporate telegraph companies.</td>
</tr>
<tr>
<td>1854</td>
<td>An act for the incorporation of companies to navigate lakes, ocean, and inland waters.</td>
</tr>
<tr>
<td>1855</td>
<td>An act incorporating vessel building associations.</td>
</tr>
<tr>
<td>1855</td>
<td>An act to encourage the agricultural developments of the state, and enable persons of moderate means to become land holders, etc.</td>
</tr>
<tr>
<td>Date</td>
<td>Description</td>
</tr>
<tr>
<td>------</td>
<td>-------------</td>
</tr>
<tr>
<td>1857</td>
<td>An act to authorize the formation of associations to aid those who may wish to establish and carry on useful branches of industry in either the counties of Mercer, Hunterdon, or Gloucester.</td>
</tr>
<tr>
<td>1865</td>
<td>An act to encourage and facilitate the improvement of lands in this state.</td>
</tr>
<tr>
<td>1867</td>
<td>An act to authorize and encourage the improvement of property in this state.</td>
</tr>
<tr>
<td>1869</td>
<td>An act to facilitate the formation of companies to dig and cut peat, stone and other articles.</td>
</tr>
<tr>
<td>1873</td>
<td>An act to authorize the formation of railroad corporations and regulate the same.</td>
</tr>
<tr>
<td>1874</td>
<td>An act to authorize the establishment and to prescribe the duties of corporations for manufacturing and selling gas in any of the cities and towns of this state.</td>
</tr>
<tr>
<td>1875</td>
<td>An act to incorporate building companies.</td>
</tr>
<tr>
<td>1875</td>
<td>An act for the relief of corporations organized under general laws.</td>
</tr>
<tr>
<td>1875</td>
<td>An act concerning corporations.</td>
</tr>
<tr>
<td>1880</td>
<td>An act authorizing corporations created by special charter or otherwise to remove their principal office from the place designated in their charters to such other place as may be deemed best by the corporations.</td>
</tr>
<tr>
<td>Date</td>
<td>Description</td>
</tr>
<tr>
<td>------</td>
<td>-------------</td>
</tr>
<tr>
<td>1882</td>
<td>An act concerning corporations.</td>
</tr>
<tr>
<td>1882</td>
<td>An act for the relief of insolvent corporations</td>
</tr>
<tr>
<td>1882</td>
<td>An act for the relief of holders of stock of any corporation of this state whose certificates of stock have been lost or destroyed.</td>
</tr>
<tr>
<td>1884</td>
<td>An act to provide for agreements between creditors and insolvent companies.</td>
</tr>
<tr>
<td>1886</td>
<td>An act relative to the filing of certificates of incorporation.</td>
</tr>
<tr>
<td>1888</td>
<td>An act relative to the titles of corporations.</td>
</tr>
<tr>
<td>1888</td>
<td>An act concerning corporations of this state, and of other states doing business in this state.</td>
</tr>
<tr>
<td>1888</td>
<td>An act relating to the consolidation of corporations (April 17) Supplement to &quot;An act concerning incorporations&quot; (1875).</td>
</tr>
<tr>
<td>1888</td>
<td>An act to authorize corporations formed under the act entitled &quot;An act concerning corporations,&quot; approved April 7, 1875, and the acts amending and supplementing the same, for the purpose of the improvement and sale of lands, or the building, operation and maintenance of hotels and carrying on the business of an inn-keeper, or of the transportation of goods, merchandise or passengers upon land or water, to purchase and hold stock in any one or more of said companies in certain cases.</td>
</tr>
<tr>
<td>1889</td>
<td>An act concerning corporations.</td>
</tr>
<tr>
<td>Date</td>
<td>Description</td>
</tr>
<tr>
<td>------</td>
<td>-------------</td>
</tr>
<tr>
<td>1890</td>
<td>An act concerning corporations.</td>
</tr>
<tr>
<td>1890</td>
<td>An act to provide a method for appointing commissioners in the place of other commissioners who have deceased or who shall fail to act in certain cases touching the organization of companies, and providing for the organization of companies in certain cases.</td>
</tr>
<tr>
<td>1891</td>
<td>An act to authorize corporations formed for the purpose of constructing or repairing either railroads, water, gas, or electric works, tunnels, bridges, viaducts, canals, hotels, wharves, piers, or any or all such works of internal improvement or public use of utility, to subscribe for, take, pay for in property, materials or service, hold, use and dispose of stock or bonds in any corporation formed for the purpose of constructing, maintaining and operating any such public works.</td>
</tr>
<tr>
<td>1892</td>
<td>An act relative to the residence of directors of corporations in this state.</td>
</tr>
<tr>
<td>1892</td>
<td>An act concerning corporations.</td>
</tr>
<tr>
<td>1894</td>
<td>An act relative to corporations.</td>
</tr>
<tr>
<td>1892</td>
<td>An act to secure to laborers and workmen in the employ of corporations a prior lien for wages in cases of insolvency.</td>
</tr>
<tr>
<td>1896</td>
<td>An act concerning corporations.</td>
</tr>
</tbody>
</table>
Chapter I. Introduction


6. Ibid. p. 40.


Chapter II. The Idea of Corporateness


3. Ibid. p. 25.


Chapter III. The Corporation in New Jersey


Chapter III. (Continued)


7. Ibid. p. 37.


11. N. J. Laws, 1815, p. 68.

12. Cadman, op. cit., Chapter XI.


15. N. J. Laws, 1830, pp. 73, 83.

16. This is said to be the first locomotive ever used for railroad traffic in the country and was put upon the trails in Bordentown. Sackett, op. cit., p. 8.

17. This right was never exercised. Although New Jersey had written this provision in many charters she never exercised the option directly. In this manner she circumvented many of the problems that faced states that utilized tax funds to finance public works.


27. N. J. Laws, 1846, p. 16.
29. N. J. Laws, 1846, p. 64.
31. This right never appeared to be used, except in those organizations that were already insolvent. Cadman, op. cit., p. 384.
34. Cadman, op. cit., p. 435.
35. Sackett, op. cit., p. 18.
40. Sackett, op. cit., p. 186.
41. Article IV, section 7, paragraph 12.
42. N. J. Laws, 1844, p. 142.
44. N. J. Laws, 1884, pp. 233 ff.
46. Ibid., p. 1885.
48. Trust here is used to include companies which had capitalizations of over $1,000,000 and which had resulted from the combination of two or more individual firms. Russell C. Larcom. The Delaware Corporation. Baltimore: The John Hopkins Press, 1937, p. 12.
56. N. J. Laws, 1875, section 53.
57. N. J. Laws, 1875, section 32.
60. N. J. Laws, 1875, section 69.
61. N. J. Laws, 1875, section 44.
62. N. J. Laws, 1875, section 156.
64. N. J. Laws, 1896, section 7.
Chapter IV. The Modern Corporation


5. The phenomenon is characteristic of all organizational forms and applies equally well to religious, military, and academic associations. The corporate personality is not only found in legally formed corporations but in all corporate forms of social relations.


7. It is interesting to note that in French and Spanish the corporation is titled an anonymous society.


10. Moore, op. cit., Chapter XII.


15. Presthus, Ibid., Chapter 8.


19. Ibid., p. 23.

20. Ibid., p. 5.


23. The recent investigations of the major electric companies illustrate that "price fixing" plays a major role in modern business practices.

Chapter V. Conclusion

APPENDIX


5. It is interesting to note that Dill's form 84 was used word-for-word in the contract for this company. Ripley, *op. cit.*, pp. 267-8.

BIBLIOGRAPHY


Dill, James B. "Some Aspects of New Jersey's Corporate Policy." Address before the Pennsylvania Bar Association, June 29, 1903.


