(8) As under UPA, RUPA provides partners with easy exit rights from the venture. A partner's dissociation will always result in either a dissolution and winding up of the business, or in a buy-out of the dissociated partner's interest. Dissolution and winding up cashes out the partner's interest through a sale of the partnership's assets, the repayment of creditors, and the distribution of any remaining proceeds to the partners. A buyout cashes out the partner's interest through the partnership's payment of the buyout price. Thus, under RUPA, a partner can always exit the partnership and cash out the value of his interest.[208]

(9) A dissociated partner remains liable for pre-dissociation partnership obligations, and he may be liable for post-dissociation partnership liabilities incurred within two years after the dissociation (assuming that dissolution has not occurred). Moreover, a dissociated partner has apparent authority to bind the partnership for a period of time not exceeding two years (assuming that dissolution has not occurred). Either a dissociated partner or the partnership may file a public statement of dissociation to limit this post-dissociation potential liability and apparent authority.[209]

(10) Similarly, the apparent authority of partners to bind the partnership continues after dissolution, but any partner who has not wrongfully dissociated may file a public statement of dissolution to limit this apparent authority.[210]

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[208] It bears repeating that, under RUPA, a partner who wrongfully dissociates before the expiration of a term partnership may not be entitled to any portion of the buyout price until the expiration of the term. Thus, while it is true that a partner can always exit the partnership and cash out the value of his interest, it may be a significant period of time before that cash is received. *See* text accompanying note 207.

[209] *See id.* §§ 702, 703(a)–(b), 704.

[210] *See id.* §§ 804–805.

Chapter 4

THE CORPORATION: OVERVIEW, THEORY, AND HISTORY

Anaylsis

A. Characteristics of the Corporation: Overview

Many people have the impression that most, if not all, businesses are corporations. And many people have the impression that most corporations are large, multinational affairs such as Coca-Cola or Marriott. Neither impression is correct. Most businesses are sole proprietorships or partnerships. And most corporations are actually small enterprises, often consisting of one or a handful of owners.[1]

All corporations, from the neighborhood bakery to Marriott Corporation, share certain characteristics. First, a corporation can be formed only by satisfying the requirements set forth by state statutes.[2] Every state has statutes regulating corporations. Every one requires that those forming the corporation (the "incorporators" or "organizers") file with the appropriate state officer (usually the secretary of state) a document commonly called the articles of incorporation. In addition, the corporation must appoint a registered agent (on whom process may be served if the corporation is sued), and pay a fee to the state. Operating a business as a corporation imposes continuing formalities, including filing annual reports,[3] holding meetings of shareholders and directors, paying taxes, and the like. Such formalities are a disadvantage over some other business structures, which

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[1] UNITED STATES CENSUS BUREAU, *Statistics about Business Size (including Small Businesses) from the U.S. Census Bureau*, (May 21, 2012). *See* http://www.census.gov/econ/smallbus.html.

[2] We discuss these requirements in detail in Chapter 5(C).

[3] *See, e.g.*, FLA. STAT. § 607.1622.

can be formed and maintained simply by selling lemonade or renting out hotel rooms (or by doing whatever the business does).[4]

Second, the corporation has always been considered an entity, legally distinct from the person(s) who own it and run it. Third, because it has "entity status," the corporation itself is liable for its contracts, torts, and debts. The people who manage it and those who own it generally are not liable for what the corporation does. This "limited liability" historically has been considered the greatest advantage of the corporate form of doing business.

Fourth, a corporation's shareholders (or stockholders) are its owners. The corporation sells "shares" of stock, which are units of ownership.[5] These shares entitle the stockholder to certain rights and responsibilities. Interestingly, shareholders do not manage the corporation. Rather, they elect the directors, who are responsible for management. Shareholder power is proportionate to the number of shares one owns. So someone holding 50 shares will have five times the ownership stake of someone holding 10 shares. Unless the governing documents say otherwise, she will also have five times as many votes and receive five times as much in dividends than the other. Again, the shareholders enjoy "limited liability." If the corporation does poorly, the shareholder may lose her investment, but she is not liable for what the business does.

Fifth, the corporation is managed by a board of directors. Note, then, that the corporate form separates ownership from management; the shareholders are the owners and the directors are the managers.[6] This separation is not seen, for example, in the general partnership, in which each partner presumptively has equal ownership and management rights. One advantage of the corporation, then, is the possibility of *passive investment*. A shareholder can enjoy the fruits of ownership (hopefully, profits) without being burdened with the responsibilities of management.

Sixth, if one tires of being a shareholder, she can transfer her stock. She can give it away (*inter vivos* or by will) or sell it. If the stock of the corporation is publicly traded, she can sell the stock through a broker or online. If the corporation is not publicly traded, she may have trouble finding a buyer, but, generally, has the right to

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[4] The sole proprietorship and the general partnership are formed and maintained simply by conducting the business, with no requirement of state imprimatur.

[5] "Issuance" is the formal term for a corporation's selling its own stock. We discuss the process in Chapter 10(C).

[6] It is possible (indeed, quite common) for directors also to be shareholders. Such people play two separate roles. When they act as shareholders, the rules governing shareholders apply. When they act as directors, the rules governing directors apply.

sell whenever she can. This transferability flows from the fact that the stockholder is not a manager. In the general partnership, because the owners are the same as the managers, one cannot simply transfer her entire interest; she does not have a right to force the other partners to accept a new fellow manager.

Transferability also reflects continuity of existence, which is another advantage of the corporation. Because it is an entity separate from those who own and run it, the fact that ownership of the corporation may change is irrelevant. The corporation goes on—no matter who the owners are. A partnership, in contrast, traditionally has been seen as an aggregate of its individual partners; this means that if a partner withdraws, or dies, or becomes bankrupt, the partnership ends. The partners may then have to liquidate the assets, and, if they want, form a new business. The corporate structure avoids these headaches.[7]

Seventh, the corporation, as a general rule, must pay income tax on its profits. In addition, shareholders pay income tax on dividends they receive. This taxation at two levels ("double taxation") is a disadvantage of the corporate form.[8] Partnerships are not taxed at the business level. The partners pay income tax on profits attributed to them, but the partnership itself does not pay income tax. This "flow-through" taxation is an advantage of the general partnership, depending on the marginal taxation rates.

Eighth, every business will need funding. Often, the proprietor (sometimes along with friends and family) provides the initial capital. The corporation (like any form of business) can raise capital either by getting loans or by selling ownership interests (which, as we just saw, consists of stock in the corporation).

The genius of the corporation is that it combines a mechanism for passive investment with limited liability. The shareholder does not bear the responsibility of making management decisions. And while the shareholder might lose the money she invested, generally that is all she can lose. She is not liable for the debts incurred by the business. The development of the corporation unlocked an unprecedented economic engine. This engine created far more than wealth for its investors. It created jobs, spurred innovation, and generated huge amounts of tax revenue. Nearly a century ago, the president of

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[7] Good planning by partners can avoid these problems.

[8] Corporations can avoid paying income tax at the corporate level by forming an S Corporation, so named because it is provided for in Subchapter S of the Internal Revenue Code. *See* section E.

a major university praised the corporation as "the greatest single discovery of modern times."[9]

B. Theoretical Understandings of the Corporation

For generations, scholars have attempted to explain the characteristics of the corporation by employing different theoretical underpinnings. Their theories are efforts to explain what a corporation "really" is. We might think of them as metaphors for the corporation. None is totally correct, none is totally wrong, and each has its place in defining the corporation.

The traditional theoretical view is that a corporation is an *artificial person* (to be contrasted with a natural person, which is a human being). The corporation is an entity, independent of the people who form it, own it, and run it. It does business, acquires assets, incurs debts, hires and fires people, opens and closes stores, enters contracts—does everything it does—in its own name, rather than in the name of any individual. This artificial person has many of the legal rights of a natural person: it can litigate, apply for business licenses, invest in securities, buy and sell property, and it must also pay taxes and fees for the privilege of doing business.

One consequence of this view is that the corporation, as an independent entity, is liable for its own debts. Indeed, the separate entity concept is so deeply ingrained that many corporation statutes (unlike limited partnership and LLC statutes) never expressly state that shareholders are not liable for corporate obligations. It is simply assumed. Other characteristics can be explained by the artificial person theory. For example, the corporation's continuity of existence—that is, the fact that it can exist notwithstanding the deaths of its owners and managers—can be seen as a consequence of its entity status.

Though well-established, the artificial person theory is highly formalistic. The corporation has no will of its own and cannot really do anything by itself. Everything the corporation "does" is actually done by people. In realistic terms, then, a corporation is a device by which *people* conduct a business. In famous terms, Professor Wesley N. Hohfeld summarized: "[I]t has not always been perceived . . . that transacting business under the forms, methods, and procedure pertaining to so-called corporations is simply another mode by which individuals or natural persons can enjoy their property and engage in

business. Just as several individuals may transact business collectively as partners, so they may as members of a corporation—the corporation being nothing more than an association of such individuals. . ."[10]

Hohfeld's analysis illustrates the fallacy of accepting the artificial person theory uncritically. A corporation may be treated as an entity for many purposes, but at some point a court may rely on the reality Hohfeld described to avoid formalistic results. Considerations of fairness may outweigh arguments grounded solely on the artificial entity theory. For example, courts developed the doctrine of "piercing the corporate veil"[11] to impose liability on shareholders for the acts or debts ostensibly incurred by the entity.

A second metaphorical view is that the corporation is a privilege from the state that permits the owners and investors to conduct business in the corporate form. Sometimes people use the terms "concession," "grant," or "franchise" to refer to this privilege. This theory may have been more important in earlier times, when state legislatures granted incorporation to businesses individually. Then, it was easier to imagine the incorporation as a grant from the state. Now, all states have enacted "general" incorporation statutes, which permit anyone to form such an entity by following the steps discussed in Chapter 5(C). Still, the notion that a corporation receives a "franchise" from the state is the theory on which states apply their franchise taxes to corporations but not to other business forms.[12]

A third view is that the document forming the corporation is a contract or a compact. A well-known example was Chief Justice John Marshall's opinion in *Trustees of Dartmouth College v. Woodward*.[13] He concluded for the Supreme Court that the charter that created Dartmouth College was a contract between the corporation and the state.[14] Accordingly, under the Contracts Clause of the Constitution, the state could not unilaterally change it. In reaction to this decision, states long ago adopted provisions empowering them to amend their corporate law and declaring that corporations are subject to the amendments.[15] Depending on the circumstances, a court may see the corporate articles as a contract among shareholders or between the shareholders and the state. For example, courts sometimes use the

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[10] WESLEY N. HOHFELD, FUNDAMENTAL LEGAL CONCEPTIONS 197 (1923).

[11] *See* Chapter 8(E).

[12] Franchise taxes are levied by the state of incorporation, essentially for the privi-

contract theory in disputes between holders of different classes of stock.[16] Because the articles are a "contract," they spell out the rights of the holders.

Over the past half century, law and economics analysis has challenged many of the traditional beliefs about business. This analysis is associated with scholars at the University of Chicago and is often called "the Chicago School." Key among the academic leaders at the University of Chicago were the late Milton Friedman, who won the Nobel Prize for Economics in 1976 and the late Ronald Coase, who won that prize in 1991. Another important pioneer is Dean Henry Manne of George Mason University.

Law and economics scholars talk about the "firm" rather than the corporation to emphasize that their theories apply to businesses generally, no matter what their legal structure. Based on the analysis of Professor Coase in the 1930s, they posit that the firm is a "nexus of contracts."[17] Coase reasoned that every firm is, in essence, a long term relational contract by which each factor of production is affiliated with the others who contribute to the enterprise. Thus a business is not an entity, but a bundle of contracts entered by the managers with persons who provide different "inputs." For instance, shareholders agree to furnish capital, employees provide labor, and suppliers provide materials, etc. The managers are the glue that fits together all the various contributors in the most efficient way.[18]

According to the law and economics model, managers should have broad discretion to structure and run the enterprise. The result is a hierarchical structure of control over employees and agents, perhaps softened by principles of participatory management or team production.[19] The principal problem is control over "agency costs," which are "the sum of the monitoring and bonding costs,"[20] plus "any residual loss,"[21] incurred to prevent shirking by agents. Monitoring costs are the expenses incurred to oversee the business, and bonding

[16] *See, e.g.,* Holland v. Nat'l Auto. Fibres, Inc., 19 A. 124, 126 (Del. 1937).

[17] Ronald H. Coase, *The Nature of the Firm,* 4 ECONOMICA 386 (1937). The nexus theory simply views the firm or corporation as a string of different contracts. So a typical corporation will be a series of contracts evidencing limited liability, free transferability of shares, voting power for shareholders, etc.

[18] For more on this subject, *see* Henry N. Butler & Larry E. Ribstein, *Opting Out of Fiduciary Duties: A Response to the Anti-Contractarians,* 65 WASH. L. REV. 1 (1990).

[19] *See* Henry G. Manne, *A Free Market Model of A Large Corporation*

costs are devices to assure the fidelity of employees and agents where oversight is impractical or too costly.[22] Shirking is conduct of an individual that diverges from the interests of the enterprise as a whole —including cheating, negligence, incompetence, and culpable mistakes.[23]

In this view, shareholders are not the owners of the corporation. Instead, they are simply contractual suppliers of capital—the group whose "contract" entitles them to the profits of the business and requires them to risk losing their investment. At the same time, however, the goal of the corporation is viewed as the maximization of shareholder wealth in the enterprise. A corporation is thus seen as a set of consensual relationships established by the managers with the goal of maximizing the wealth of those who supplied the capital.[24]

One problem with this model is its use of the term "contract." It is difficult to say that a person who buys 100 shares of McDonald's Corporation through an online brokerage has entered a "contract" with the entity. It is true, of course, that a purchaser of McDonald's stock has certain rights, such as the right to receive any declared dividend. But the shareholder who buys her stock through a stock exchange has not given any money to McDonald's or agreed to do anything for the corporation.[25] And the holder of 100 shares of McDonald's must understand that she has no power to influence the corporate decision-making. After all, over one billion shares of McDonald's stock are held by shareholders throughout the world, so our friend with 100 shares will have no clout among the shareholders.

So did this shareholder enter into a "contract" agreeing to this? To a lawyer, probably not, because "contract" means an agreement the legal system will enforce. But "to an economist, an implied contract is one that is enforced through marketplace mechanisms such as reputation effects rather than in a court, a means of enforcement that may not bring relief to the aggrieved party but will over time penalize parties who welsh."[26]

[22] *See* Armen Alchian & Harold Demsetz, *Production, Information Costs, and Economic Organization,* 62 AM. ECON. REV. 777 (1972).

[23] *See id.*

[24] *See* Milton Friedman, *A Friedman Doctrine: The Social Responsibility of Business Is to Increase Its Profits,* N.Y. TIMES, Sept. 13, 1970, § 6 at 33.

Clearly, "contract" may mean something quite different to an economist than to a lawyer. The economist sees the word as encompassing voluntary arrangements generally, even without consensual exchanges. Some of these arrangements "may be implied by courts or legislatures trying to supply the terms that would have been negotiated had people addressed the problem explicitly. Even terms that are invariant—such as the requirement that the board of directors act only by a majority of a quorum—are contractual to the extent that they produce offsetting voluntary arrangements. The result of all of these voluntary arrangements will be contractual."[27]

To law and economics scholars, business law should provide standard default rules which the parties should be free to modify. In other words, the law should not impose mandatory rules; instead, the law should enable businesspeople to structure the business as they see fit. There is no denying the impact of this thinking on modern business law. Contemporary statutes on limited partnerships and LLCs permit the proprietors to contract around most matters, including fiduciary duties. On the other hand, modern corporation law, while clearly permitting more contractual choice than in previous generations, still includes mandatory requirements that the proprietors are not free to waive or modify. And federal law concerning access to public markets is full of mandatory prescriptions that cannot be avoided.

C. Social Responsibility and Political Activity

Business is economic activity aimed at the creation of wealth. In short, people go into business to "make money."[28] But does that mean that everything a business does must be aimed solely at the generation of wealth? Or can businesses engage in philanthropy as well? These are especially apt questions concerning large corporations, the stock of which is traded publicly.[29] On the one hand, many argue that public corporations, because of their immense economic power, should be subject to social control and should be expected to address the social impact of their actions. The argument is often based upon the view of the corporation as privilege or concession, discussed in section B above. Thus, if the state bestows the privilege of

[27] Frank Easterbrook and Daniel Fischel, *The Corporate Contract*, 89 COLUM. L. REV. 1416, 1428 (1989).

[28] There are many non-profit businesses, including charitable organizations and universities. They, and the law governing them, are beyond our scope. *See generally* Linda Sugin, *Resisting the Corporatization of Nonprofit Governance: Transforming Obedience into Fidelity,* 76 FORDHAM L. REV. 893 (2007).

[29] The issue is less debated concerning small, closely held businesses. First, those

a corporate charter, through which the corporation generates great wealth, the state ought to be able to impose social responsibilities—to require the corporation to "give back" in some way for societal good.

The contrary argument is that the goal of business is to make money, period. If you want to use the money you make through business to "do good," great—but do it with your money, not the corporation's. This view is essentially *laissez faire*—that the government should leave corporations alone and let them tend to business and the bottom line.

In *A.P. Smith Manufacturing Co. v. Barlow,*[30] a corporation (through its board of directors) made a charitable contribution to Princeton University. Some shareholders objected and argued that charitable giving was not an appropriate corporate goal. After all, the corporation was giving away money that could otherwise go to the shareholders. The court upheld the gift. It noted that in the early days of the Republic, incorporation was permitted only for the social good. Over time, the court said, the goal of private business became focused on profit. When the corporation became the dominant economic force in the country, however, "calls upon the corporations for reasonable philanthropic donations have come to be made with increased public support."[31]

Milton Friedman argued that "social responsibility" is actually a "fundamentally subversive doctrine" in a free society.[32] The corporation, Dr. Friedman asserted, should make its money and let the individual shareholders decide whether to make charitable contributions with their own money.[33] But the *A.P. Smith* view has prevailed. The corporation law of every state permits (but does not compel) corporations to make charitable contributions, and federal income tax law permits the corporation to take a deduction for such gifts. Modern statutes list specific "powers" that corporations automatically have, including the power to make charitable contributions.[34] There are limits, however, on the corporation's largesse. These are for-profit enterprises, and, accordingly, they cannot give away everything.

[30] 98 A.2d 581 (N.J. 1953).

[31] *Id.* at 584.

[32] *See* note 24; *see also* Milton Friedman, *The Social Responsibility of Business,* THE ESSENCE OF FRIEDMAN 36, 36–38 (1987).

[33] Individuals might make contributions to institutions less prestigious, less

Charitable contributions must be reasonable.[35] Courts are very deferential to management decisions in this area.[36]

It is worth noting that corporate philanthropy consists of managers giving away money that otherwise might go to shareholders. Warren Buffett, the famous investor, relates an interesting tale about a friend who sought charitable contributions for various organizations. Buffett said: "And in the process of raising . . . eight million dollars from 60 corporations from people who nod and say that's a marvelous idea, it's pro-social, etc., not one [executive] reached in his pocket and pulled out ten bucks of his own to give to this marvelous charity."[37]

Fifty years ago, most people who owned stock in public corporations were relatively wealthy. Stock ownership was for the rich, and the idea that they would forego a dividend so the corporation could give money to Princeton did not cause much concern. Today, however, the majority of Americans are invested in the stock market. If you have money in a pension plan or in a savings-and-loan association, it is invested in the stock market.[38] So today, corporate philanthropy may result in funneling to an institution like Princeton money that otherwise might go into a blue-collar worker's pension.

The social responsibility discussion, however, is much broader than corporate gifts to charity. The discussion focuses in addition on social ramifications of corporate decisions. Decisions about where to locate manufacturing facilities, how many people to hire, etc. carry dramatic consequences for communities, and, sometimes, entire regions. For example, suppose a corporation has an old, obsolete manufacturing plant in a small town in a northern state. The board of directors is considering closing the plant and moving manufacturing to a different region—where labor and land are cheaper, and where a modern, efficient plant could be built. In making this decision, should the corporation take into account the adverse effects on the

[35] *See* Theodora Holding Corp. v. Henderson, 257 A.2d 398, 405 (Del. Ch. 1969) (stating that the "test to be applied in passing on the validity of a gift . . . is that of reasonableness"); State v. Chicago, B. & Q.R. Co., 199 N.W. 534, 537 (Neb. 1924) (stating that there is no reason why a corporation may not "to a reasonable extent" donate funds to "aid in good works.").

[36] *See, e.g.*, Kahn v. Sullivan, 594 A.2d 48, 58 (Del. 1991) (noting "limited" options for courts reviewing management decisions on charitable contributions).

[37] KNIGHTS, RAIDERS AND TARGETS: THE IMPACT OF HOSTILE TAKEOVERS 14 (1988) (John C. Coffee, Jr., et al., eds.).

[38] *See* Asset Allocation of Pension Funds and Public Pension Reserve Funds in Or- [partly cut off] *Pensions at a Glance 2011:*

persons currently employed in the plant, their families, the other businesses in the town, the community itself, and the state?

These interests are often described as "other constituencies" of the corporation. Does the corporation "owe" something to these constituencies—who, after all, have supported the business in this community for years? If the company should consider the effect on these other constituencies, how does it balance the possibility that keeping the present plant may result in reduced dividends to shareholders and higher prices to the public? And what if a new plant would be "greener?" Should it change the calculus if the new plant would be built—and people employed—in Honduras instead of another region of the United States? Ultimately, the social responsibility debate raises more questions than answers.

The corporation law in some states reflects the concerns with other constituencies. Pennsylvania law, for example, provides that directors, when making management decisions, are not required "to regard . . . the interests of any particular group affected by such action as a dominant or controlling interest or factor."[39] This permits the board to point to broad societal concerns—and not just the bottom line for shareholders—when making decisions.

More recently, several states have passed statutes allowing the formation of "benefit corporations," or "B Corporations."[40] These entities pursue business purposes, but also expressly commit to benefiting society. The charter of such a B Corporation will set forth its social policy goals, which might be, for instance, paying foreign workers higher wages, or ensuring that workers are discharged only for cause, or promoting environmentally-friendly policies. Managers of such companies are thus shielded from liability if their actions (such as paying higher wages) harm the shareholders' bottom line. In fact, they could be sued for failing to satisfy their social policy objectives. B Corporations are required to publish their performance on social policy goals against third-party standards.[41]

[39] *See* 15 PA. CONS. STAT. § 1715.

[40] In 2010, Maryland became the first state to pass B Corporation legislation. MD. CODE CORPS. & ASS'NS § 5–6C–01 *et seq.* Since then, Hawaii, Virginia, California, Vermont, New Jersey, and Washington have done so. *See* HAW. REV. STAT. § 420D–1 *et seq.*; VA. CODE § 13.1–782 *et seq.*; CAL. CORP. CODE § 14600 *et seq.*; VT. STAT. TIT. 11A, § 21.01 *et seq.*; N.J. STAT. § 14A:18–1 *et seq.*; WASH. REV. CODE § 24.03.490 *et seq.* Other legislation is aimed at the same basic goal. For example, California has also passed legislation allowing "flexible purpose" corporations, 2012 Cal. SB 1171 (2012), and some states permit low-profit limited liability companies

Implicit in some of the discussion in favor of other constituency provisions and B Corporation laws is the idea that it is wrong to focus exclusively on maximizing profits for shareholders. At its bluntest, some of the discussion equates profit maximization with rapaciousness. But, as Milton Friedman and others have argued, doesn't profit maximization benefit society? Why should someone who has risked her capital by investing in a corporation not depend upon the managers to work diligently to provide a return on that investment? And the people thus enriched can decide what to do with that money. People who make money usually spend some portion of it, which spurs economic growth. Even a modest stockholder, blessed with a profit, may expand her house or buy a vacation home or hire gardeners and landscapers. This is all positive economic activity. Moreover, people with more money often make (sometimes stunning) charitable contributions. And, last but not the least, people who make money pay taxes.

Perhaps the move toward B Corporations simply permits everyone to decide what is important to her. If one wishes to invest in a company that gives away 50 percent of the corporate profits for some social cause, she should be able to do so. And the managers should be able to do so. On the other hand, one who wants to invest to maximize her return should be able to do so. She can then decide how that money should be used (including, of course, for social causes).

Another timely issue is the propriety of corporation political activity. It raises the interesting question of the constitutional status of a corporation. Corporations are entitled to some constitutional protections but not to others. For example, the Privileges and Immunities Clause[42] does not apply to corporations.[43] Thus, a state is free to exclude a corporation from entering its territory. On the other hand, the Commerce Clause permits corporations to enter states to engage in interstate commerce.[44] In *Citizens United v. Federal*

as they intended. Companies that pass muster with B Lab get to call themselves "certified B Corps."

[42] U.S. CONST. art. IV, § 2. That clause, which provides that the citizens of one state "shall be entitled to all privileges and immunities of citizens in the several states," means (roughly) that Virginia must accord to Pennsylvanians the privileges and immunities it accords its own citizens. Because the clause does not apply to corporations, one state could deny a corporation founded in another state the privilege of doing business. This fact was relevant to the development of personal jurisdiction doctrine. If Virginia could bar a Pennsylvania corporation from entering the state, for instance, Virginia certainly had the lesser power of permitting the corporation to enter, conditioned upon its appointment of an agent for service of process and its consenting to *in personam* jurisdiction. Paul v. Virginia, 75 U.S. 168, 177 (1869).

Election Commission,[45] the Supreme Court affirmed that corporations enjoy First Amendment rights. The Court struck down a federal ban for corporate expenditures on "electioneering communication" or for speech directly advocating the election or defeat of a candidate in a federal election. The decision has prompted considerable debate about the proper role of corporations—more specifically, corporate money—in political discourse.[46]

Because *Citizens United* addressed an absolute ban on corporate expenditures, it probably does not invalidate state statutes that merely cap political contributions. For example, New York law provides that corporations cannot contribute more than $5,000 per year to any candidate or political organization.[47]

D. Historical Development of Corporate Law in the United States

In the pre-revolutionary period, colonial legislatures granted corporate charters on the authority of the British Crown. After independence and the ratification of the Constitution, state legislatures took up the role and continued to grant corporate charters. After the War of 1812, economic activity blossomed, demonstrated by increased numbers of corporations. Reflecting the expansion of the country, many of these were formed to operate banks, canals, roadways, and, later, railroads.

In 1791, the federal government passed legislation creating the Bank of the United States. There was considerable doubt about whether the federal government had the power to incorporate for general economic purposes, but the Supreme Court upheld the legality of the Bank.[48] There are today various federally chartered entities, including the American Red Cross, the United States Olympic Committee, Fannie Mae, Freddie Mac, Boy & Girl Scouts, Federal Deposit Insurance Corporation and Disabled American Veterans.

Nonetheless, incorporation has been overwhelmingly the product of state, not federal, action. Almost all of the law concerning for-

[45] 130 S. Ct. 876 (2010).

[46] *See, e.g.*, James Bopp, Jr., et al., *The Game Changer: Citizens United's Impact on Campaign Finance Law in General and Corporate Political Speech in Particular*, 9 FIRST AMEND. L. REV. 251 (2010); Matthew A. Melone, *Citizens United and Corporate Political Speech: Did the Supreme Court Enhance Political Discourse or Invite Corruption?*, 60 DEPAUL L. REV. 29 (2010); Ciara Torres-Spelliscy, *Has the Tide Turned in Favor of Disclosure? Revealing Money in Politics After Citizens United and Doe v. Reed*, 27 GA. ST. U. L. REV. 1057 (2011).