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AMERICAN CORPORATIONS**

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**EIGHTEENTH CENTURY
BUSINESS CORPORATIONS IN THE
UNITED STATES**

BY

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ESSAY IV

EIGHTEENTH CENTURY
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UNITED STATES

EIGHTEENTH CENTURY BUSINESS CORPORATIONS

CHAPTER I

INTRODUCTORY

THE term "business corporation" has no precise technical significance. In latter days it is frequently used in a narrow sense. From it are excluded not only public corporations, such as municipalities, and coöperative associations, but also financial corporations — banks and insurance companies — and public service companies. It includes all that heterogeny of agricultural, manufacturing, mining, development, and commercial companies which have not yet been set off in distinct classes, designated by a special group name and subjected to special legislation.¹ In a broader and perfectly legitimate sense, however, the term may be used to designate all corporations formed with the primary object of securing pecuniary gain or avoiding pecuniary loss, for the benefit of the members. In earlier days such companies were occasionally spoken of as "money" or "moneyed" corporations.² To the end of the eighteenth century, however, not only had no classification of business corporations been developed, but no sharp line was drawn between these and corporations of other sorts.³ In the

¹ It is in this sense that the term is used in W. E. Rappard's *Les Corporations d'Affaires au Massachusetts* (Paris, 1908).

² Daniel Raymond, *Thoughts on Political Economy* (Baltimore, 1820), 425-426.

³ Fisher Ames, in the debate in Congress on the charters to the Bank of the United States, argued that in erecting the Northwest Territory Congress had established a precedent for passing acts of incorporation, and Hamilton did not hesitate to intimate the same: Clarke and Hall, *Bank of the U. S.*, 48, 109. Cf. James Wilson (*Works*, i, 408-411): "States are corporations or bodies politick of the most dignified kind. . . . It will be difficult, I believe, to urge against the power of Congress [1785] to grant a charter to the Bank of North America, any argument, which may not, with equal strength and fitness, be urged against the power of that body to form, execute, and promulgate a charter of compact for new states."

eye of the law a corporation was a corporation — that was all there was to it. The common law as developed with reference to corporations organized for religious or governmental purposes was applied to others organized for business purposes. Legislative committees on corporations handled petitions for charters alike from towns, churches, banks, and manufacturing companies — in New Jersey, at least, till nearly 1840. Differentiation arose only by slow degrees, as the numbers increased and general statutes were passed which applied only to specified groups of corporations. Hardly a beginning of this appeared before 1800. We are then under the necessity of drawing for ourselves the line between the corporations with business purposes and those predominantly for other ends, and the decision is not always easy.¹ This lack of contemporary differentiation, as well as the paucity of the charters, makes advisable the use here of the term “business corporation” in its more inclusive sense.

In colonial days, as an earlier essay has indicated, American corporations for business purposes were few and relatively unimportant. The water company of Boston (1652), not incontestably entitled to corporate rank, and Penn’s *Free Society of Traders in Pennsylvania* (1682), chartered and chiefly owned in England, were the only seventeenth century representatives. The first of these probably did not long survive, and the second, after a very brief active career, lingered on in a comatose condition until 1723. In the eighteenth century, prior to the Revolution, there is first to be mentioned the ill-starred New London trading society, which was established only after certain of its proposed characteristics and purposes were put out of sight, and whose active career was summarily brought to an end by legislative act within a year of its establishment. Less pretentious but more enduring were the two groups of wharf proprietors, in New Haven and Boston respectively, three little water companies in Rhode Island, and a mutual fire insurance society in Philadelphia — all of which survived the Revolution. These comprise the total list of fully American, clearly corporate

¹ Cf. *infra*, 283-285.

business associations in those English colonies which developed into the United States.¹

These pioneer business corporations are of historical interest. It is obvious, however, that their significance, even for their time, was but slight and local, and that they were distinctly exceptions in the business world rather than the rule. They seem, in the main, predecessors rather than prototypes of the present-day business corporation. Only the local public service corporation is well represented, and there is not a single example of the great classes of later days — banks, highway and transportation companies, manufacturing and mining companies.

Other predecessors were the joint stock companies, unincorporated, which long remained the English form for such joint stock enterprise as was beyond the limits of ordinary partnerships. In the colonies these too were comparatively few and far between, possibly in part because of the act of Parliament in 1741 extending to America the operation of the Bubble Act of 1720,² but more largely, probably, because the economic and psychological conditions did not require or favor their development.

Reasons for the paucity of colonial business corporations — applying in several instances equally to the slight extension of other joint stock enterprise — have been suggested in an earlier essay.³ Small-scale enterprise was still the order of the day, particularly in America, where difficulties hindered coöperative action, both by preventing the initial intercourse of men of affairs and by hampering the continuance of all but local relationships. Political conditions operated rather to check than to promote such intercourse, especially between men in different colonies. The independence of temper characteristic of the American colonists was an adverse factor. The technique of using the elements of large-scale enterprise — machinery, power, labor — was still undeveloped, and with a large virgin area to subdue in the most elementary fashion the colonists could

¹ Essay I, 22-25, 41-45, 87-90, and Appendix A of this Essay.

² Essay I, 25-27, 91-99.

³ Essay II, 178.

hardly make large strides in technical progress. Nor were large supplies of capital or labor seeking employment. Moreover, even in the mother country the corporate form was yet applied to a very limited extent to business enterprises, and the most prominent examples of English business corporations were the privileged and monopolistic companies for foreign trade, against which no small prejudice existed. Restraints imposed by the crown and its representatives, upon the rise of manufactures and banking as well as upon direct grants of corporate powers, while not of large importance in this connection, also deserve passing mention.

During the Revolution few corporations of any sort were chartered in the "united states," and but one was created for any business purpose prior to the treaty of Versailles (Sept. 3, 1783). For this fact explanation need hardly be offered. The state legislatures were busied with war measures and the times were too unsettled for new business ventures. Till the great question of independence or submission should be decided, corporate privileges for business purposes were naturally neither offered nor sought.

After the conclusion of peace the situation was materially altered.¹ There was time to turn attention to internal problems; there was no occasion for waiting upon the opinion of the English crown or proprietaries, or their representatives, or Parliament — what was desired might at least be attempted; there was fair prospect of continued peace and opportunity for continuous independent development. Moreover, the need for business enterprises of stability and considerable scale was plainly evident to the newly united states. Means of communication were imperatively demanded, as well by political as by economic considerations; banks were seen to be of prime importance; manufactures soon came to be thought of, by

¹ Cf. Weeden, *Econ. and Social Hist. of New England*, ii, 853, commenting on industrial developments of 1783-89: "Wars that do not actually impoverish their peoples promote organized industries. The necessity of the movement stimulates new inventions and new arrangements of labor. But beyond all this, people sink their individualism for a time, overcome local isolation, and bend together in new work. All this promotes enterprise in the largest sense."

many, as almost equally important. For many enterprises of these types it was inevitable that incorporation, with the privilege of limited liability and the conditions of more stable organization, should be sought. There were several favoring circumstances. Capital, accumulated during the war by many members of the community, was available for investment; fortunes in property other than real estate were undoubtedly larger than before the war. The disbanding of the army set free a labor supply, and throngs of immigrants rapidly added largely to it. The war had done much to bring into mutual acquaintance men of business acumen and property, had forced some experience in cöoperative activity, and had necessitated the exercise of ingenuity in a thousand directions. With the coming of peace these developed resources sought employment in other fields. Moreover, the day was one of bold experimentation, enthusiastic exploitation of new methods, eager exploration of new paths, confident undertaking of new enterprises. One gigantic speculation had been notably successful — the achieving of independence. Political precedents had been broken and new political expedients were being tried. Economic "speculations," new economic devices, likewise came naturally to the fore, and legislatures were willing to permit them and to encourage them as well. Furthermore, the English tradition that corporate powers were to be granted only in rare instances, never deeply entrenched here, was opposed by a strong and growing prejudice in favor of equality — a prejudice which led almost at once to the enactment of general incorporation acts for ecclesiastical, educational, and literary corporations.¹ Partiality in according such powers was to be expected of the English crown, but it was a serious charge to lay at the door of democratic legislatures after a Declaration of Independence which asserted so vigorously the natural equality of rights and privileges. Not least important, the physical ease of securing charters was far greater in the new states than in England, and, considering the royal right of review, greater than in the colonies. Legislatures were not overworked and did business

¹ See *infra*, 16-19.

free of charge and with reasonable promptness, whereas both the cost and the delays incident to securing royal charters always tended to discourage application for them. Finally, the practice in creating corporations for non-business purposes, though it did not lead promptly to granting freedom of incorporation to business corporations, undoubtedly smoothed the way for special acts incorporating business associations.

Together these factors brought about a considerable extension of corporate enterprise in the field of business before the end of the eighteenth century, notably after the critical period of disunion and constitution making had passed. Prior to 1801 over three hundred charters were granted for business corporations, ninety per cent of them after 1789. Judged by twentieth century standards these seem few indeed, but neither in the colonies nor in the mother country was there precedent for such a development; and these American charters reflect a noteworthy experiment in business organization and in public policy toward business enterprise.

In this essay we have principally to examine the course of this development from 1783 to 1800, in different states and in different classes of corporations; the vicissitudes through which the new corporations had to pass; the contributions which they made; the causes of their success or failure; the attitude of the public, and the emergence of public policies toward them. As a preliminary, however, it is necessary to consider briefly the source from which corporate powers were derived in the new political system, the extent to which it was divided or shared, and the methods by which these powers were obtained by those who sought them.

The power of granting corporate privileges, long recognized as an attribute of sovereignty, was assumed by the state governments as the British control was thrown off, and the granting of charters became a function of the law-making body. This was obviously the natural procedure: precedents in parliamentary acts of incorporation and in charters granted by colonial assemblies, while absolutely few in number, were numerous

enough, and no crown existed to assume even a share, indirect or direct, in the chartering process. Reference was not usually made to the power in the newly adopted state constitutions, both because of its implied inclusion in powers of legislation and because the significance of the power was not yet recognized.¹

A single attempt to usurp this power was promptly rebuffed. William Livingston, governor of New Jersey, once followed the common colonial precedent of his jurisdiction by issuing a charter, under the "great seal" of the state but without authorization from the assembly, to the First Day Baptist Church of Hopewell Township, Cumberland County. The patent bore date of March 18, 1778. On Oct. 9, 1779, the assembly "*Resolved unanimously*, that the said charter or instrument of writing is not warranted by law, and therefore void. . . . That the power of granting patents of incorporation, under the present Constitution, is vested solely in the Legislature of the State."²

Livingston acquiesced, and the question was settled for good.

A number of the colonial corporations were in existence when the Declaration of Independence was adopted. The legality of their basis for existence under the new régime was readily open to question. The Pennsylvania legislature repeatedly enunciated the theory that a corporation "deriving its existence and freedoms from the authority of the crown of Great Britain, became upon the declaration of independence of this state from that crown immediately dissolved."³ Certain New Jersey acts contain the same kind of expressions.⁴ In most instances, however, the legislatures were not unwilling to reestablish the old corporations on new charters substantially identical with the old except in pure formalities or modi-

¹ Constitutions of Pennsylvania (1776) and Vermont (1786, 1793) definitely empowered the legislature to grant charters of incorporation: Poore, *Charters and Consts.*, ii, 1543, 1870, 1878. Generally the power was implied.

² William Nelson, in *N. J. Hist. Soc. Proceedings*, 3d Series, iii, 117 (1906).

³ Act of June 19, 1777, rechartering the borough of Lancaster: *Pa. Stats. at Large*, ix, 128. For similar statements, see *ibid.*, x, 83, xii, 68.

⁴ *Session Laws*, 1783, p. 6, Nov. 17, 1784, p. 126 (relating to churches), May 27, 31, 1799, pp. 515, 518 (relating to Princeton and Rutgers colleges). Entirely new charters were given to the five boroughs and cities of New Jersey after the Revolution. For the foundation of the view here cited, see Blackstone, *Commentaries*, i, 484.

fications which time and new conditions made desirable.¹ It happened, however, that without exception the few *business* corporations which lived down to the Revolution had received their corporate privileges from provincial legislatures rather than from the crown or proprietary authorities. Accordingly no objection seems to have been raised to their continuing to exist under the original acts of incorporation, the new legislatures being the direct successors of the colonial assemblies.

Whether the Congress of the Confederation also might grant charters of incorporation was a moot point in 1781 when Robert Morris, newly appointed Superintendent of Finance, wished to have the aid of the commercial bank and requested Congress to establish the institution. The Articles of Confederation, lately ratified (July 9, 1778), were silent on the point. The question was debated in May, 1781, when Congress passed a resolution in favor of the bank, and again in December, when a complete charter of incorporation was granted.² Madison, though approving the scheme for the bank, saw no warrant for believing that Congress possessed the power to incorporate. Writing to Edmund Pendleton, Jan. 8, 1782, he reported

“the general opinion, tho’ with some exceptions, was that the Confederation gave no such power, and that the exercise of it would not bear the test of a forensic disquisition, and consequently would not avail the Institution. The Bank, however, supposing that such a sanction from Congress would at least give it a dignity and preeminence in the public opinion, urged the engagement of Congress [referring to the preliminary resolution]; that on this engagement the subscriptions had been made, and that a disappointment would leave the subscribers free to withdraw their names. . . . The immediate interposition of Congress was rendered the more essential, too, by the sudden adjournment of the Assembly of this State [Pennsylvania], to whom the Bank might have been referred for the desired incorporation, which, it was the opinion of many, would have given them a sufficient legal existence in every state. . . . Something like a middle way finally produced an acquiescing, rather than an affirmative vote. A charter of incorporation was granted, with a recommendation to the States to give it all the necessary validity within their respective jurisdictions. As this is a tacit admission of

¹ Philadelphia’s charter, granted by the proprietor in 1701, was not replaced until 1789.

² *Journals of Congress*, May 26, Dec. 31, 1781.

a defect of power, I hope it will be an antidote against the poisonous tendency of precedents of usurpation.”¹

Only Massachusetts voted against the original resolution, though Pennsylvania was divided, and Rhode Island and Connecticut were not sufficiently represented to count. On the final passage there seems to have been no division. In accordance with the recommendation of Congress, several auxiliary charters or validating acts were passed by different states, including the home state, Pennsylvania.² Opinions differed as to the significance of these different charters. Peletiah Webster said early in 1786 that the state charter given by Pennsylvania merely allayed prejudices: “I never heard that anybody at that time, disputed or called in question the *legal authority* of Congress to give a charter to the bank.”³ James Wilson argued later, and possibly at this time as well, that since the new bank was to be “commensurate to the United States,” the states individually had no powers adequate to incorporate it; “The consequence is that this is not an act of sovereignty, or a power, jurisdiction, or right, which, by the second article of confederation, must be expressly delegated to congress in order to be possessed by that body;” and accordingly he argued that “Whenever an object occurs to the direction of which no particular state is competent the management of it must, of necessity, belong to the United States in congress assembled.”⁴ But undoubtedly many agreed with Madison, and many more did not take the trouble to decide what they thought.

The issue was not again raised while the Confederation lasted under the articles of 1778. Actions, however, spoke louder than words.⁵ When in 1785, for reasons to be mentioned below, the Pennsylvania legislature repealed its act incorporating the bank, the directors were not content to rely upon the federal charter, but took the precaution to secure a new charter from Delaware, prepared to fight the repealing act in the state courts, and within two years accepted a new charter from Penn-

¹ Madison, *Works*, i, 167-169.

³ *Essays*, 454.

⁵ See *infra*, 42-43.

² See *infra*, 38.

⁴ Wilson, *Works*, i, 550-564.

sylvania. Plainly they considered the congressional charter worth little as a practical matter. Furthermore, it is to be noted that inhabitants of Pennsylvania, Maryland, and Virginia, seeking to promote river communication across their borders during these years, undertook the difficult task of securing concurrent charters from the states interested rather than rely upon a congressional charter. The fact was that with peace the Congress had grown weaker and the states took more and more pride in their independence. Whatever the theoretical legality of a charter from the Congress of the Confederation, its practical force would have been *nil* in a state which refused to recognize it, and effective excuses for such refusal would have been easy to find. In this as in other fields the Congress *in fact* did not possess power requisite to the need.

The convention of 1787, which undertook to prepare a plan for a "more perfect union," was aware of this weakness in the old Confederation instrument. Madison himself urged upon the convention the specification of a power of Congress "To grant charters of incorporation in cases where the public good may require them, and the authority of a single state may be incompetent." Pinckney proposed on August 18 that one of the additional powers delegated to the new Congress be "To grant charters of incorporation." Both proposals were referred to committee, but there they slept. On September 14 Dr. Franklin, ex-postmaster-general of the colonies, moved "to add after the words 'post roads' . . . 'a power to provide for cutting canals where deemed necessary,'" and James Wilson of Pennsylvania seconded the motion. Madison thereupon repeated his suggestion in a more general form, urging that "the primary object was, however, to secure an easy communication between the States which the free intercourse now to be opened, seemed to call for. The political obstacles being removed, a removal of the natural ones as far as possible ought to follow."

Randolph seconded Madison's motion, and Wilson urged that it was "necessary to prevent a *State* from obstructing the *general welfare*." Rufus King, however, "thought the power unnecessary" — meaning evidently the specific grant of the

power — and argued the inexpediency of mentioning the matter.

"The States will be prejudiced and divided into parties by it — In Philada. & New York, it will be referred to the establishment of a Bank, which has been a subject of contention in those Cities.¹ In other places it will be referred to mercantile monopolies."

Whereupon

"M^r Wilson mentioned the importance of facilitating by canals, the communication with the Western Settlements — As to Banks he did not think with M^r King that the power in that point of view would excite the prejudices & parties apprehended. As to mercantile monopolies they are already included in the power to regulate trade."

This last was a dangerous suggestion. George Mason of Virginia

"was for limiting the power to the single case of Canals. He was afraid of monopolies of every sort, which he did not think were by any means already implied by the Constitution as supposed by M^r Wilson."

Limited, then, to the case of canals, the question was brought to a vote, but even so only Pennsylvania, Virginia, and Georgia voted *pro*, and New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, Maryland, North Carolina, and South Carolina *con*. Accordingly no vote was taken on the wider proposition, and the Constitution issued silent on the subject.²

On the other hand there was no disposition to prohibit to Congress the exercise of the power; the convention went twice on record in favor of giving Congress all powers to legislate in cases where the states should not be severally competent; and the Constitution as adopted contained a clause to this effect. It is highly probable that many delegates to the convention believed with Rufus King that the new Congress would

¹ See *infra*, 81-88.

² Farrand, *Records of the Federal Convention*, ii, 321-322, 324-325, 615-616, 620. Jefferson, in his memoirs (March 11, 1798), said that Robert Morris had proposed that Congress be given power to establish a national bank, but that Gouverneur Morris opposed the idea on the ground that the ratification of the Constitution bade fair to be quite difficult enough without it: Elliot's *Debates*, iv, 611-612. The records of the convention do not substantiate this story, but it is not inherently improbable. Cf. Hamilton's discussion in his opinion on the constitutionality of the bank charter, in *Works*, iv, 116-117.

possess, without specific grant, limited powers to incorporate, and that the omission of authorization in so many words was due chiefly to the fear of unnecessarily arousing sentiment hostile to the whole scheme, which in any case was sure to have a severe gauntlet to run.

This policy was in the main successful. At one point, however, silence was made the ground of attack on the instrument. When the Constitution, adopted without Mason's signature, was subject for ratification, he presented as a dangerous loophole the uncertainty on the subject of mercantile monopolies.¹ To resolve such doubts the Massachusetts ratifying convention, on motion of Samuel Adams, voted to recommend as an amendment "That Congress erect no company of merchants with exclusive advantages of commerce," and substantially the same recommendation was adopted by the conventions of New Hampshire, New York, North Carolina, and Rhode Island. The issue was at no time in the foreground, however, and when the amendment was taken up in Congress — in August and September, 1789, and again in 1793 — the sentiment for it was insufficient even to bring it to a vote.² Had the amendment been adopted, the power of incorporation would have been only slightly restricted, and in the discussion of the Constitution there seems to have arisen no fear respecting the exercise of the power in general.

Soon, however, the question of the validity of a congressional charter under the new Constitution was directly raised by Hamilton's report urging the establishment of a national bank. Madison stressed this point in leading the opposition to the proposal. When the test came, however, the House voted 39 to 20 for the charter, and the Senate too passed it. Randolph

¹ Mason's statement and James Iredell's reply may be found conveniently in Paul Leicester Ford's *Pamphlets on the Constitution of the United States, published during its discussion by the people 1787-1788* (Brooklyn, 1888), 331, 350.

² William V. Wells, *The Life and Public Services of Samuel Adams* (Boston, 1865), iii, 261-269; Jonathan Elliott, *The Debates . . . on the Adoption of the Federal Constitution* (2d ed., Washington, 1836), i, 323, 326, 330, 337, iv, 246; H. V. Ames, "The Proposed Amendments to the Constitution . . .," in *Am. Hist. Assoc. Report*, 1896, ii, 254-255. Such a provision, indeed, was not needed at the time.

and Jefferson supported the strict constructionist view in formal opinions to the President, but Hamilton's argument was more convincing, and the bill was duly signed.¹ In the next Congress, on a motion to declare the bank charter unconstitutional, the House went again on record as a believer in the power, though by a narrow margin — this in the face of a campaign of bitter and effective denunciation of the bank and the funding system, for which the speculative orgy and panic had furnished excellent fuel.²

It is strange but significant that the question was not submitted to the courts during the existence of the first Bank of the United States. It figured slightly, if at all, in the debates of 1811-12 on the recharter of the bank, and slightly also in the debates on chartering the second Bank. It is further significant that by 1816 the scruples even of Madison had been overcome, and that as President he signed, in 1816, the charter for the new bank. Finally, in 1819, Chief Justice Marshall rendered the famous decision of *McCulloch v. Maryland*, affirming the constitutionality of the act.³ Even then the argument of unconstitutionality was not entirely annihilated, and it played a rôle in the Jacksonian war on the bank. Yet one is fain to believe that it was by this time largely a talking point rather than anything regarded as weighty.

The power of Congress under the Constitution to pass acts of incorporation was therefore established, but the reception of the bank charter doubtless militated against all but exceptional use of that power. Interstate communications of various sorts, at least, might well have been set afoot under congressional charter, but the fear of sinister influence at Philadelphia, the jealousy of the dignity of the state legislatures, the wish

¹ Clarke and Hall, *Bank of the United States*, 85-113. The Senate Proceedings do not indicate the strength of the opposition.

² Cf. also the amendment proposed in the Senate in January, 1794, and negated by a narrow margin: "Nor shall any person, holding any office or stock in any institution in the nature of a Bank, for issuing or discounting bills or notes under the authority of the United States, be a member of either House whilst he holds such office or stock, but no power to grant any charter of incorporation, or any commercial or other monopoly, shall be hereby implied": *Annals of Congress*, iv, 31-32.

³ ⁴ Wheaton 316.

to have the ultimate decisions made locally in matters not of universal scope — these shut off at the outset any tendency which might have arisen in favor of numerous federal acts of incorporation. The tendency has never since made its appearance. Corporate privileges, therefore, have been throughout our national life and remain to this day almost solely the gift, directly or indirectly, of state legislatures.¹

A question of jurisdiction was also involved in the case of corporations in the District of Columbia, of which the Bank of Columbia and the Bank of Alexandria were the most noteworthy examples. These had received charters from Maryland and Virginia, after the District had been provided for by federal act. Some anxiety was felt by members of these corporations regarding their legal status. This was dispelled by a federal act of Feb. 27, 1801, confirming the state charters.²

During these years incorporation for business purposes was almost entirely by special act. In other fields freedom of incorporation was early extended and general incorporation acts became more numerous as the years passed. The constitution of South Carolina, adopted March 19, 1778, virtually assured freedom of incorporation for religious purposes, so far as "Christian Protestant" churches were concerned.³ New York passed a general incorporation act for religious purposes April 6, 1784.⁴ New Jersey followed suit March 6, 1786,⁵ and Delaware on Feb. 3, 1787. On April 6, 1791,⁶ Pennsylvania passed a similar

¹ Legal interest attaches to the decision of the Supreme Court of Pa., in the case of *Respublica v. Cornelius Sweers* in April, 1779 (1 Dallas 45-48), which hinged upon the question whether at the time of the defendant's forgery the United States, the injured party, was "a body corporate known in law." The court held that "From the moment of their association, the *United States* necessarily became a body corporate; for there was no superior from whom that character could otherwise be derived. In *England*, the king, lords, and commons, are certainly a body corporate; and yet there was nothing in charter or statute, by which they were expressly so created."

² Bryan, *History of the National Capital*, i, 431, citing A. B. Woodward, in *Georgetown Museum*, Feb. 4, 1801; *U. S. Stats. at Large*, ii, 103-108.

³ Poore, *Charters and Constitutions*, ii, 1626.

⁴ *Session Laws*, 23-25.

⁵ *Laws* (ed. 1797), ii, 879.

⁶ *Session Laws*, 255.

act granting freedom of incorporation "for any literary, charitable, or for any religious purpose."¹ In 1794 New Jersey provided similarly for "societies for the promotion of learning."² In 1796 New York and in 1799 New Jersey extended the privilege to library companies.³ In 1788 Virginia and in 1798 Kentucky provided likewise for fire companies.⁴ There were probably a few other general incorporation acts.⁵

For a business purpose, however, there appears but a single clear instance of the grant of freedom of incorporation before the end of the century. By act of Feb. 21, 1799,⁶ the Massachusetts General Court provided,

"That when any number of persons shall, by writing, associate and become Proprietors of any Aqueduct, or of any funds raised for making and constructing the same, for the purpose of conveying fresh water, by subterraneous or other pipes, into any town or place within this Commonwealth,"

the holders of a majority of the shares might apply to a justice of the peace of the county where the aqueduct was to be located, stating the name of the association and the objects of the proposed meeting, and this justice was authorized to issue a warrant to some proprietor directing him to call the meeting. The proprietors duly met were to become a corporation, with power to arrange for future meetings, elect moderator and directors, etc., as they chose. Voting rights were to be one vote per share. Fines for breaches of by-laws, not exceeding \$30, might be imposed. Real estate "necessary for the purpose of their institution," to a maximum of \$30,000, might be held. Digging up streets to lay pipes was to be subject to authorization by local selectmen, though without inconveniencing passers-by "with their teams and carriages." A stock book was to be regularly kept, "to the end that the Proprietors of the shares in any such corporate property may be known." In case of dissolution (but not otherwise) proprietors were individually

¹ *Pa. Stats. at Large*, xiv, 50-53.

² *Session Laws*, 950.

³ *N. J. Session Laws*, 644; *N. Y. Laws* (ed. 1887), iii, 695.

⁴ *Stats. at Large* (Hening), xii, 530; *Ky. Laws* (ed. 1799), 78.

⁵ Cf. Griffith, *Annals of Baltimore*, 138; Scharf, *Chronicles of Baltimore*, 264.

⁶ *Mass. Laws* (ed. 1801), ii, 843-847.

to be liable till all contracts then subsisting were satisfied, until six years had passed. Malicious injuries to aqueducts were penalized at \$20, half going to the informer, and towns were to have privileges of drawing water, free, for extinguishment of fires.

The act was probably utilized, for Massachusetts special acts incorporating water companies abruptly cease in this year; but I have been unable to trace the companies so erected. It was not until 1811 that freedom of incorporation was extended to any important class of business corporations, and only in the forties did such acts become common in the United States.

A North Carolina statute passed late in 1795, entitled "An act to encourage the cutting of Canals by subscription,"¹ approximates a general incorporation act and has been called one.² This provides "That when any number of subscribers shall or may have agreed to cut a canal or canals, and formed themselves into a company for that purpose," they may exercise the right of eminent domain to accomplish the project, provided that the canals do not injure "houses or other valuable improvements greatly to the injury of the proprietors," that bridges over the canals be freely provided for the use of the proprietors and the public, that landowners may drain their abutting lands into the canals, and that if any canal should not be completed within seven years after a court order to appraise such lands, these should revert to the original owner, his heirs or assigns. The act, moreover, permits "That the said com-

¹ *Session Laws*, 2-3.

² Baldwin, *Bus. Corps.*, 467. The preamble recites: "Whereas it has been demonstrated by the experience of the most improved and well cultivated countries, that opening communications by cutting canals, has been productive of great wealth and convenience: And whereas it has been represented to this General Assembly, that cutting canals through peninsulas or narrow necks of land, swamps and marshes, from one part of a river, creek, bay or sound, would greatly facilitate and encourage merchandize, and consequently contribute to the wealth and revenue of this state, by opening a more easy, safe and short conveyance for the produce of the greatest part of the country, to sea port towns and safe harbours; and also be productive of the most salutary effects, by draining noxious marshes, swamps and low lands, which will promote health, reclaim immense quantities of our most fertile lands, and in a peculiar manner tend to the wealth and welfare of this state, which it is the most ardent desire of this legislature at all times to promote by every useful undertaking."

pany may sue and be sued, plead and be impleaded, under the denomination of the canal company," and authorizes suits against delinquent subscribers. No specific grant of a corporate franchise is made, however, and the companies formed under it are to be regarded merely as joint stock companies with one or two privileges (not even limited liability) commonly associated with corporations. Furthermore, it is doubtful if the companies were, strictly speaking, organized for profit. Upon completion of its canals and bridges each company is required to submit an account of the expense to men appointed by the local county court, and their report is to be there recorded. Thereupon the canals are to

"be rented out annually, by order of the court, at public vendue, and a toll shall be fixed yearly, if required by said court, for every kind of boats and rafts; and the rent as received annually, be paid to the subscribers, in proportion to their several subscriptions, until the several payments shall amount to the sum recorded in said court or courts, with six per cent. interest thereon; then the said canal or canals, with all the appurtenances thereunto belonging, shall be free from all toll, for the good and use of the public; any law, usage or custom to the contrary notwithstanding."

This in a day when six per cent was a low rate of interest, and when canal companies were commonly authorized to receive as high as fifteen or twenty-five per cent, indicates that the companies were merely agencies for accomplishing a local public utility by a semi-private, semi-public method.

The effect of this act is not clear. Certainly in 1796 one finds a number of canal corporations chartered by the state. It is to be doubted whether it proved of material importance, although a number of companies were probably organized under its authority.

Special acts of incorporation, though recognized by clear thinkers like James Wilson and Thomas Paine¹ as essentially different from ordinary legislative acts, ran through much the same process. The initiative, as in the case of "private acts" generally, came almost invariably from the private individuals who were interested in the accomplishment of the objects of

¹ See *infra*, 311-312.

the incorporation. The first step was usually for these interested parties to present a petition asking leave to present a bill of incorporation, giving reasons, at more or less length, in favor of the petition. In some instances committees were appointed, in one or both houses, to consider this preliminary question; and these committees sometimes took occasion to consult freely with the friends of the measure. Lobbies were not uncommon. In some cases it was required — and eventually this requirement became quite common, for certain classes of corporations — that the intention to present the bill, with the purport of the measure, be advertised for some weeks in the localities affected and the proposition be submitted at the ensuing legislative sitting. New England towns quite frequently took advantage of this opportunity to express their sentiments for or against a proposed highway or water company. Thereafter the bill went through its three readings, consideration by special committee or committee of the whole and before the body of each house, and after passage became effective upon the signature of the governor. Thereupon, if the association were already formed, the corporation came at once into legal existence; if the subscription had yet to be made, the corporate powers descended upon the body of subscribers when they formally organized in accordance with the act, or upon the president and directors when they were duly chosen.¹

In one class of cases corporate privileges were not bestowed by the act itself, either *praestanto* or *in futuro*. Here the legislature prescribed in detail the process and method of organization and the provisions to govern the going concern, but left to the governor the formal investiture with corporate powers. This method, following the English practice of parliamentary acts supplemented by crown patents of incorporation, was employed in the incorporation of all the highway companies chartered by Pennsylvania and New Jersey up to 1800, and continued to be the common method for such companies till

¹ Both the names of certain corporations and the tenor of their charters indicate that sometimes the corporation proper consisted not of the stockholders, but of the executive board.

the second decade of the nineteenth century in New Jersey and till the third in Pennsylvania.¹ It does not appear to have been used in other states or for other types of companies. The state of Vermont, however, reverted still more closely to an English model in chartering her first business corporation. In November, 1791, the legislature granted the exclusive privilege of locking the Connecticut River at Bellows Falls to William Page, Morris K. Lewis, and associates, with power to take tolls; but instead of directly conferring corporate powers provided "That it shall be the duty of his excellency the governor, to issue a charter to the . . . associates . . . , and to incorporate them into a body politic" by a specified name. The rights thus secured were the subject of exchange during the next year, but in October, 1792, evidently at the instance of the capitalists, a new act was procured which besides altering the grant bestowed corporate powers as if they had not been hitherto granted.²

It will be convenient to discuss the corporations in a few principal groups, but before entering upon that discussion a general view of the charters granted will be serviceable. Here are presented, therefore, a chart and a series of tables based upon the list of titles of corporations which is given in Appendices A and B. Since the list must be incomplete the tables are not wholly accurate, but it is unlikely that sufficient new charters will come to light to alter materially the situation here disclosed.³

In the period concerned no classification of business corporations had developed. The charters are here classified, therefore, on a common sense basis, upon which a few comments are in point. The banks were entirely joint stock commercial in-

¹ Not all companies took the trouble to secure the formal patents, and they seem to have neglected it with impunity. See Hazard, *Register of Pa.*, ii, 291-300.

² See Essay II, 277, and *infra*, 168-169.

³ The writer has been unable to secure access to complete files of the session and compiled laws of all the states, which are the safest sources of information; but he believes the list not far from complete and that no title is incorrectly included. The list may be compared with that in S. E. Baldwin's essay on "Private Corporations," in *Two Centuries' Growth of American Law* (*Yale Bicentennial Pubs.*, New Haven, 1902), 287-301, from which it differs considerably.

FIGURE I. EIGHTEENTH CENTURY CHARTERS TO BUSINESS

Sources	Totals	Per cent	Colonial	'81	'82	'83	'84	'85	'86	'87	'88	'89	'90
United States . . .	2	.6		B									
Maine	23	6.9											
New Hampshire . . .	32	9.5											
Vermont	20	6.0											
Massachusetts . . .	60	17.9	D	B	B	b		bb		M			
Rhode Island . . .	21	6.0	www										
Connecticut	45	13.4	xD			m						M	
New York	28	8.4		B									M
New Jersey	13	3.9											
Pennsylvania . . .	23	6.9	I	B				I	B				
Delaware	3	.9						B					
Maryland	21	6.3			C	C			I				B
Virginia	22	6.6					CC		C	CCC	C		
North Carolina . . .	11	3.3								C		CC	
South Carolina . . .	10	3.0						C	CC	C			
Georgia	1	.3											
Kentucky	1	.3											
Totals	335	100.2	7	I	3	I	3	3	3	7	5	3	4

A Agricultural B Banking b Toll-bridge
 C Canal, etc. D Dock I Insurance

stitutions. Eleven of the thirty-three insurance companies were mutual, for protection against fire losses; of the stock companies, a few were specifically chartered for fire or marine insurance, but the large majority were privileged to write both kinds of risks, while several charters were broad enough to include life insurance, of which practically none was written. The term "highway companies" is used in preference to "transportation companies," since every company here included engaged merely in constructing and maintaining the basis of communication, not in conducting transportation. No distinction is made, in the group of charters for the improvement of inland navigation, between canal companies and others; for the

CORPORATIONS, CLASSIFIED BY SOURCES, YEARS, AND PURPOSES

'91	'92	'93	'94	'95	'96	'97	'98	'99	'00	Sources
B										United States
c	c	bb	bb	bcc	bbc	bbbb ccw	bd	B	I	Maine
	bbb bcc	b	bb	bbb bbd	cct	bb bw	c	ITT	bbt	New Hampshire
c	c		c	bbc	t	bb ct		bt TT	TTT TW	Vermont
	bb bbb ccc	bbc	bcm	BBI ww	bbt www wm	btt www ww	ibw www	BII TTT	BIT TTM	Massachusetts
B	bb		btt	B	c			II	BBI IIIT	Rhode Island
	BBB			BIC TTTT	bbL	ibt TTT TTW	btt TTTT WW	TT	CTT TTT WW	Connecticut
B	BCC	B				bTM	III CTT	TTTT TWW	TT TTT	New York
M	b			bc	c	bc	b	bwx	cw	New Jersey
c	CT	bb CCA	ITT	b	TT	b	bb CT			Pennsylvania
		c			B					Delaware
ib	w	B	I	BIB ICC CTT	bct		ibtT	c		Maryland
	BB	c	I	c			IC		CT	Virginia
	c			C			C			North Carolina
			b				IC		cw	South Carolina
								c		Georgia
								b		Kentucky
9	31	15	17	42	32	41	36	33	39	Totals

L Land M Manufacturing
 T Turnpike W Water supply
 m Mining
 x Commercial

precise means used varied with the locality rather than with the companies or charters.

Figure 1 gives a bird's-eye view of all the charters granted, distinguished by sources,¹ years, and purposes. Table I, in its three parts, gives a summary view in figures, grouped by sections, periods, and general purposes. Table II shows the charters classified by purposes and years. Table III shows them classified by states and purposes. Table IV brings out certain facts correlating the number of charters with the population in the several states.

¹ Maine charters were, of course, granted by the Massachusetts "General Court."

TABLE I. SUMMARY OF EIGHTEENTH CENTURY CHARTERS TO BUSINESS CORPORATIONS IN THE UNITED STATES, GROUPED BY PERIODS, SOURCES OF CHARTERS, AND GENERAL TYPES

Sources of charters	Colonial	1781-85	1786-90	1791-95	1796-1800	Total charters	Per cent
United States		1		1		2	.6
New England	6	4	4	69	117 *	200 *	59.7
Middle states	1	2	4	22	38	67	20.0
Southern states		4	14	22	25	65	19.4
Western states					1	1	.3
Total charters	7	11	22	114	181 *	335	100.0
Per cent	2.1	3.3	6.6	34.0	54.0		
General type	Colonial	1781-85	1786-90	1791-95	1796-1800	Total charters	Per cent
Financial	1	5	5	29	27	67	20.0
Highway		5	14	78	122	219	65.4
Local public service	5			4	27 *	36 *	10.7
Business (proper)	1	1	3	3	5	13	3.9
Total charters	7	11	22	114	181 *	335	100.0
Sources of charters	Financial	Highway	Local public service	Business (proper)	Total charters	Ancillary, additional, or joint charters	Total corporations
United States	2				2		2
New England	33	130	30 *	8	200 *	8	192
Middle states	16	42	4	5	67	7	60
Southern states	16	47	2		65	3	62
Western states		1			1		1
Total charters	67	219	36 *	13	335	18	317
Ancillary, additional, or joint charters	5	13			18		
Total corporations	62	206	36 *	13	317		

* Charters to water supply companies issued under the Massachusetts general incorporation act of Feb. 21, 1799 (*Laws*, ed. 1801, ii, 843-847), cannot be found and are not included.

Certain characteristics of the movement are evident from a glance at Table I. But two per cent of the eighteenth century charters were granted before the Revolution; eighty-eight per cent were granted after 1790, and three-fifths of these in the last five years. The thirty-three charters granted in 1781-90, moreover, created but twenty-five distinct corporations. The progress of the movement is further brought out by annual

averages of charters and new companies for five-year periods, as follows:

ANNUAL AVERAGES		
Period	No. of charters	No. of companies
1781-85	2.2	1.2
1786-90	4.4	3.8
1791-95	22.8	21.6
1796-1800	36.2	35.8

New England strikingly leads in the number of charters, with sixty per cent of the total; the others are about equally divided between the middle and southern states, if Maryland is counted with the latter. In the decade 1781-90, on the other hand, more charters were granted south of Mason and Dixon's line than north of it; the south shared but slightly in the boom in charter granting after 1790 which so markedly affected New England. One remarks the absence of charters among western states, except for the lone one granted in 1800 by Kentucky.

The dominant type is clearly the highway companies, which constituted nearly two-thirds of the total number; the financial corporations made up twenty per cent, the local public service companies ten, while the business corporations proper added less than four. The local public service companies were largely confined to New England, business corporations proper to the New England and middle states.

The more detailed tables reveal further facts. The years 1791-92 show a rapid increase in new charters. In the single year 1792 more corporations were created than in the entire decade 1781-90. Except Kentucky and Georgia, all of the states had swung into line by 1792, and only Delaware and South Carolina failed to grant at least one charter in that year. The high point of the period is 1795, due chiefly to New Hampshire's large contribution; but from this year on a high level is maintained — from the average of thirty-seven per annum there is no deviation greater than six. Before 1791 nearly half the charters and more than half the corporations chartered were for the improvement of inland navigation. Disregarding spo-

TABLE II. EIGHTEENTH CENTURY CHARTERS TO BUSINESS CORPORATIONS, CLASSIFIED BY PURPOSES AND YEARS

Purposes	Colo- nial																	Totals	Per cent				
	1781	1782	1783	1784	1785	1786	1787	1788	1789	1790	1791	1792	1793	1794	1795	1796	1797			1798	1799	1800	
Banking	1	3		1	2	3	5	1	2	3	11	5	2	9	12	5	5	3	3	3	34	10.2	
Insurance			1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	33	9.8	
Financial	1	1	2	1	1	2	1	1	1	4	8	3	4	3	4	10	2	3	6	7	67	20.0	
Inland navigation			1	1	2	3	5	1	2	3	11	5	2	9	12	5	5	3	3	3	74	22.1	
Toll-bridge					1	1	2			1	10	6	7	14	6	14	7	3	2	2	73	21.8	
Turnpike											1	1	3	6	6	10	11	15	20	72	72	21.5	
Highway			1	1	3	1	5	1	2	4	22	11	12	29	24	29	23	21	25	219	219	65.4	
Water supply											1				2	4	6	4	4	4	32	9.5	
Dock															1	1	1	1	4	4	4	1.2	
Local public service											1				3	4	7	4	4	4	36	10.7	
Manufacturing									2	1	1		1			1	1		1	1	8	2.4	
Mining																					1	.3	
Agriculture													1								1	.3	
Land																1					1	.3	
Commercial																					2	.6	
Business (proper)									2	1	1		1	1		2	1	1	1	1	13	3.9	
Grand total	7	13	3	3	3	7	5	3	4	9	31	15	17	42	32	41	36	33	39	335	335	100.0	
Per cent																					100.0	100.0	

radic or experimental charters, one may date the beginning of the *movements* for the various types as follows: 1783, inland navigation; 1790, banks; 1791, toll-bridge; 1794, insurance; 1794, turnpike; 1795, water supply.

Banking and insurance charters were about equally numer-

TABLE III. EIGHTEENTH CENTURY CHARTERS TO BUSINESS CORPORATIONS, CLASSIFIED BY STATES AND PURPOSES

Sources of charters	FINANCIAL		HIGHWAY			LOCAL PUBLIC SERVICE		BUSINESS (PROPER)		TOTALS
	Banking	Insurance	Inland navigation	Toll-bridge	Turnpike	Water supply	Dock	Manufacturing	Miscellaneous	
United States	2									2
Maine	1	1	7	12		1	1			23
New Hampshire	1	1	5	19	4	1	1			32
Vermont			5	5	9	1				20
Massachusetts	7	5	5	14	9	15	1	4		60
Rhode Island	4	6	1	3	3	3				20
Connecticut	5	2	2	3	23	5	1	1	3	45
New York	4	3	3	1	13	2		2		28
New Jersey			4	5		2		1	1	13
Pennsylvania	3	4	5	5	5				1	23
Delaware	2		1							3
Maryland	3	6	4	4	3	1				21
Virginia	2	3	14		3					22
North Carolina			11							11
South Carolina		2	6	1		1				10
Georgia			1							1
Kentucky				1						1
Total charters	34	33	74	73	72	32	4	8	5	335
Ancillary, additional, or joint charters	5		8	4						17 ¹
Total corporations	29	33	66	69	72	32	4	8	5	317

¹ One bridge and canal company occasions an additional subtraction.

ous, though insurance *companies* slightly outnumbered the banks. Highway companies were about equally divided among the three types — inland navigation, toll-bridge, and turnpike. Water companies constituted nearly the whole of the local public service companies and were about as numerous as the banks or insurance companies. Manufacturing companies, few

though they were, constituted sixty per cent of the business corporations proper.

In order of ubiquity the inland navigation companies come first; of this type every New England, middle, and southern state chartered at least one. Toll-bridge companies appear in twelve states; banking, insurance, and water companies in

TABLE IV. COMPARISON OF STATES WITH RESPECT TO POPULATION, 1800, AND NUMBER OF EIGHTEENTH CENTURY CHARTERS TO BUSINESS CORPORATIONS

Sources of charters	No. of charters granted	No. of charters per 100,000 population, 1800	Per cent of total charters granted	Per cent of total population, 1800	Rank with respect to no. of charters granted	Rank with respect to population, 1800
United States	2	. . . . .	.6	. . . . .	. . . . .	. . . . .
Maine	23	15.2	6.9	2.8	5-6	14
New Hampshire	32	17.4	9.5	3.5	3	11
Vermont	20	12.3	6.0	2.9	9-10	13
Massachusetts	60	14.2	17.9	7.9	1	5
Rhode Island	20	28.9	6.0	1.3	9-10	16
Connecticut	45	18.0	13.4	4.7	2	8
<i>New England</i>	200	16.3	59.7	23.2	1	3
New York	28	4.8	8.4	11.1	4	3
New Jersey	13	6.2	3.9	4.0	11	10
Pennsylvania	23	3.8	6.9	11.3	5-6	2
Delaware	3	4.6	.9	1.2	14	17
<i>Middle states</i>	67	4.6	20.0	27.6	2	2
Maryland	21	6.1	6.3	6.4	8	7
Virginia	22	2.4	6.6	16.6	7	1
North Carolina	11	2.3	3.3	9.0	12	4
South Carolina	10	2.9	3.0	6.5	13	6
Georgia	1	.6	.3	3.1	15-16	12
Other southern states . . . . .	. . . . .	. . . . .	. . . . .	.5	. . . . .	. . . . .
<i>Southern states</i>	65	2.9	19.4	42.0	3	1
Kentucky	1	.4	.3	4.2	15-16	14
Other western states . . . . .	. . . . .	. . . . .	. . . . .	3.0	. . . . .	. . . . .
<i>Western states</i>	1	.3	.3	7.2	4	4

ten. The leading states in chartering particular types were: banking, Massachusetts, with 7 out of 34; insurance, Maryland and Rhode Island, each with 6 out of 33; inland navigation, Virginia, with 14 out of 74; toll-bridge, New Hampshire, with 19 out of 73; turnpike, Connecticut, with 23 out of 72; water supply, Massachusetts, with 15 out of 32; manufacturing, Massachusetts, with 4 out of 8. North Carolina and Georgia chartered none but navigation companies, Kentucky only a

bridge company. The predominating type in Maine and New Hampshire was the toll-bridge, in Connecticut and New York the turnpike, in Virginia and South Carolina as well as their sister southern states (except Maryland) the inland navigation company.

The leadership of the New England states is emphasized by the detailed tables. Each ranked higher in number of charters than in population in 1800, while elsewhere each state ranked lower. The story is the same if one compares percentage of charters with percentage of population. Rhode Island, with 1.3 per cent of the population, granted nearly as many charters as Virginia, with 16.6 per cent of the population; Connecticut, with 4.7 per cent of the population, granted more charters than the four states south of Maryland, which contained 35.2 per cent of the population. For New England as a whole 16.3 charters were granted per 100,000 population (1800), as compared with figures for the middle states of 4.6 and the southern states of 2.9. In this comparison Rhode Island leads with 28.9 charters per 100,000 population, but backwoods Vermont, the lowest New England state, shows a figure of 12.3 to contrast with 6.1 for Maryland. In each section there is an approach to uniformity in density, although in this respect Maryland clearly belongs with the middle states.

The New England states also lead in types of charters. All but one of the various types are represented there, and two of its types (mining, land) are not elsewhere represented. In every type but inland navigation companies, in which the south is ahead, it leads. On the average each New England state chartered seven types of corporations, each middle state five, each southern state three. Here Connecticut leads, with eleven different types represented.

A recapitulation of the corporations with more than one charter is of interest. The case of the Bank of North America at its original founding was peculiar, as already noted. Joint charters, however, were necessary in the cases of bridges which spanned boundary rivers and in cases of improvements in navigation which affected such rivers or streams or swamps

TABLE V. CORPORATIONS WITH CHARTERS FROM MORE THAN ONE SOURCE

United States	1781	Bank of North America
Massachusetts	1782	
New York	1782	
Pennsylvania	1782, 1787	
Delaware	1786	
Maryland	1784	Potomac Company
Virginia	1785	
Virginia	1787	Dismal Swamp Canal Company
North Carolina	1790	
South Carolina	1787	Catawba and Wateree company
North Carolina	1788	
Vermont	1791	Bellows Falls canal company
Vermont	1792	
New Hampshire	1792	
New Hampshire	1792	White River Falls Bridge company
Vermont	1795	
Pennsylvania	1793	Brandywine canal company
Delaware	1793	
Vermont	1794	Water Queche Falls canal company
New Hampshire	1796	
New Jersey	1795	Easton Delaware Bridge company
Pennsylvania	1795	
New Hampshire	1795	Cornish Bridge company
Vermont	1797	
Pennsylvania	1798	Trenton Delaware Bridge company
New Jersey	1798	

crossing state lines. For charters by different authorities to the same corporation there was a precedent from colonial days: in 1769 the royal or proprietary governors of New York, New Jersey, and Pennsylvania granted simultaneous and equivalent charters to *The corporation for the Relief of Widows and Children of Clergymen in the Communion of the Church of England in America*.¹ Often such charters were granted without serious delay, but there are several instances of delays of two or three years, which must have been at least very disconcerting to the promoters. Moreover, not only the charters but supplementary acts as well required concurrent action, and numerous instances

¹ Essay I, 128.

of inconvenience appear because of the necessity of getting two legislatures to come to agreement.¹

In connection with this view of corporate charters a few statements may be hazarded regarding the principal features of the business cycles of the years 1781-1800. The crests of the waves of business activity were (1) late in 1784, (2) in 1792, (3) in 1795, and (4) in 1799. The troughs of depression were (1) 1786, (2) 1793, (3) 1797. Immediately at the close of the war enthusiasm ran riot, and an incautious and thoroughly unhealthy business boom occurred. The reaction was severe, intensified by political chaos and economic disorganization. The expansion of 1787-92 was tremendous, yet not wholly abnormal, for it was accompanied by notable successes in political reconstruction, funding the public debt, and extension of commercial banking. The stock market panic of the spring of 1792 was premature. The deeper reaction which began later in that year was due, even more than to domestic over-expansion, to a reaction abroad, the developments of the French Revolution, and the interference with American commerce. The improvement of 1795 and the severe depression of 1797 were likewise intimately linked with foreign conditions. Throughout these years, however, a gradual economic growth is to be discerned in spite of fluctuations in the most sensitive economic activities.

The correspondence of the chartering of business corporations with these general business conditions is revealed graphically by Figure 5, which shows the number of charters granted in each year of these two decades. Here one may see reflected the sharp upward swing of 1789-92, the reaction which followed, and the recovery of 1795. The slight popularity of the corporation before 1790 and its widespread use after 1795 prevent closer correspondence in earlier and later years.

A complete, well-rounded discussion of these corporations is at present impossible. Which were floated, which succeeded and

¹ The charter granted in 1800 by Virginia to a turnpike company was to be inoperative till Maryland granted a similar charter to the same associates. In general turnpike companies extended their operations only to the state line, and concurrent charters were unnecessary. Cf. also *infra*, 136-137, 140-141, 176.

which failed after flotation, and what was the degree of success or extent of failure cannot be ascertained with accuracy or fullness. Nevertheless, for certain companies considerable detail is accessible. Illuminating though often disappointing histories have been written of the banks of North America, the United States, New York, Hartford, and New Haven; the Potomac navigation, the Santee and Cooper canal, and the Middlesex canal; the Beverly cotton manufactory; and a few other companies. The preceding essay attempts such a history of the

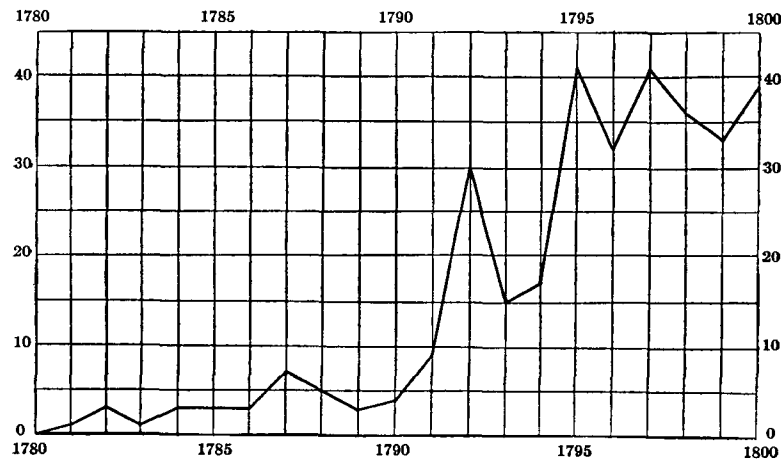


FIG. 5. AMERICAN ACTS OF INCORPORATION FOR BUSINESS CORPORATIONS, 1780-1800

Some charters were probably issued in 1799 and 1800 under the Massachusetts general incorporation act for aqueduct companies; these are not included here. No deduction is made for joint or successive charters for a single object, but the White River Falls bridge-canal charter of 1792 and 1795 is shown as but *one* charter in each year.

most pretentious manufacturing corporation. For many other companies there are scattering bits of information. In view of the general ignorance of these early companies and the comparative inaccessibility of the material in print regarding many of them, it has seemed desirable to present in this essay in summarized form most of the data yielded by a somewhat careful examination of secondary sources, including local histories, and of selected collections of manuscripts and contemporary newspapers and magazines. A more exhaustive study of such sources and an examination of certain collections of corporate records

or local manuscripts would furnish much additional material; but it is an open question how thoroughly it is at present profitable to go into these sources. The chapters which follow reflect a compromise between thoroughness and superficiality.

Incidentally there will be mentioned certain lower forms of organization in nearly every field of business which the corporation entered. There were voluntary associations of neighbors for making mutually satisfactory provision of water, similar "companies" of neighboring landowners for protecting or improving their lands by common action, joint stock companies for building roads or toll-bridges, for buying and selling lands, and for manufacturing and mining purposes. Some of these did not differ much in practice from the smaller corporations; in several cases legislative authorization was secured; and not infrequently a new corporation was merely one of these associations "erected," as the phrase went, into a "body corporate and politic," with the accompanying privileges of definite framework, indefinite life, and limited liability. In the main, however, new corporations were started "from the ground up," and these less formal associations constituted generically, but usually not individually, a transitional form of organization.

Of the various groups of corporations the banks — first to appear, largest in capital, individually most important and most successful — will be considered first. The highway companies, subdivided into canal and inland navigation companies on the one hand, and bridge and turnpike companies on the other, deserve attention next as the most numerous and most pervasive examples of the corporation in this period. Finally will be considered the smaller groups of insurance companies, "aqueduct companies," manufacturing companies, and the few scattering examples of other types.

CHAPTER II

BANKING COMPANIES

THE colonies boasted no banks of discount and deposit. So-called "banks" there were, of course, the term commonly signifying mere batches of "bills of credit" issued by public authority. At best the colonial "banks" were merely public trustees or private contractual associations which made loans on collateral, usually for a considerable term, generally with real estate mortgages as security, the currency passed being merely paper certificates which expressed on their face a value in terms of hard money which in exchange they more or less approximated. Barter and book credit were much used, and under conditions which made them, despite their inherent clumsiness, far more tolerable than in our more specialized age. Mercantile needs were supplied, so far as they were supplied at all, by English merchants, individual local capitalists, or longer book credits. Considering the part which commercial banks proper played in America from their first organization after the Revolution, it is not easy to explain the lateness of their appearance. A. O. Eliason, in his study of *The Rise of Commercial Banking Institutions in the United States*,¹ explains the tardiness of the rise on the ground of "peculiar conditions of colonial trade of industry," viz.:

"There were no manufactures requiring extensive capital and banking facilities; the financial aid necessary to carry on the operations in the agricultural and domestic systems was supplied by individuals in the Colonies; the retail trade and the coasting and shipping industries were conducted on English capital; the banking for the merchants was done in England; and colonial merchants, with the aid of their own capital, and their banking connections in England, were able to give to individuals and small traders, the limited banking services and accommodations which they required."

¹ Minneapolis, 1901.

Other retarding factors were unwholesome banking traditions in the colonies, popular fears of special privileges, prejudices against moneyed institutions, and the suspicions of the home government of colonial financial moves.

The narrow-minded policy of the British government in attempting to keep America economically bound in swaddling clothes after it had outgrown them doubtless led to Robert Morris's efforts, in 1763 and 1774, to establish a commercial bank in America, and the disruption of foreign mercantile relationships during the war was unquestionably partly responsible for the conditions which in 1781 imperatively demanded the establishment of the Bank of North America.¹ Its success, in spite of business difficulties and political hostility, was well-nigh phenomenal; and in the light of this success the floating of the next banks in Boston and New York is easily understood. The continued success of all three in the face of trade depression, coupled with increasing business activity—speculative and otherwise—which marked the period from 1788 to 1798, sufficiently explains the noteworthy growth of the banks before 1800. Their success encourages the belief that the time was really ripe for them earlier, and that if they could have got a foothold in colonial days they would even then have proved their worth.²

In 1779, 1780, and 1781 young Alexander Hamilton repeatedly pressed upon Robert Morris one plan or another for a bank,³ and in June, 1780 (opened for business July 17; the last instalment called in November 15), there was actually established in Philadelphia an institution which was known as the *Pennsylvania Bank*, with a capital of £300,000 in Pennsylvania currency furnished by opulent, patriotic Philadelphians. The sole purpose of this organization, however, was "furnishing a supply of provisions for the armies of the United States." There were borrowings and note issues, but no more than were

¹ Eliason, *op. cit.*, 19, 54-55; cf. Robert Morris's letter to Congress, July 29, 1782, in *Journ. of Cont. Cong.*, xxii, 432.

² Eliason (*op. cit.*, pp. 59-61) overemphasizes the significance of the development of manufactures for the development of the banks. Cf. *infra*, chap. 5.

³ See esp. Hamilton, *Works*, i, 116, 162, 223. Cf. Dunbar, *Economic Essays*, 89-90.

organized especially for farmers and mechanics and was modelled somewhat after the Union Bank in New London (1792). A capital of \$50,000 was raised at the outset, fifteen directors elected, and the bank opened for business Aug. 22, 1800. A dividend was declared Feb. 22, 1801, and for a number of years the bank was highly prosperous. Although competition in time reduced its dividends, it survived all ups and downs, and eventually increased its capital to \$150,000, besides accumulating a surplus. In 1865 it became the *Washington National Bank*, and since 1902 it has operated as the *Washington Trust Company*.¹

Connecticut increased her already large quota by others at Middletown in 1795, which was not organized till 1801, and at Norwich in 1796.² The only one south or west of Connecticut was the \$100,000 *Bank of Delaware* at Wilmington, chartered February 9, organized June 5, and opened Aug. 17, 1795.³ The Duke de la Rochefoucault Liancourt, who travelled in the country in 1795-97, commented acridly on this Wilmington bank as needless, adding:

"It will, however, have the same effects as all the small banks established on the continent; it will increase the means of speculating stock-jobbers and adventurers; and will sooner or later, like most others, prove pernicious to the cause of morality, and destructive to those whose speculations are at present aided by its discounts and the paper money which it issues."⁴

All three of these, now nationalized, still exist.

Mention remains to be made of another bank established under an act containing no banking provisions. In the spring of 1799 Aaron Burr manoeuvred through the New York legislature a perpetual charter for the *Manhattan Company*, whose ostensible purpose was the furnishing of a supply of pure water for the city of New York, but whose more important underlying

purpose was the establishment of a bank under influences more cordial to the democratic party than were the older institutions. A maximum capital of \$2,000,000, in \$50 shares, was authorized, and while the charter was to be forfeited if the company should fail to provide a satisfactory supply of water within ten years, a clause was inserted authorizing the use of any surplus for any purpose not prohibited by constitution or laws of the state or the nation. In the select committee of the Senate, to which he had secured the commitment, a motion was made to strike out this clause. Upon inquiry "Burr avowed the design of using the surplus capital to establish a Bank or an East India Company, or any thing else the directors might choose, since the furnishing a city of fifty thousand inhabitants with water would not remunerate the shareholders." Later, when the bill was referred to the chief justice by the Council of Revision, he reported adversely, since the result of the clause in question could not be foretold, and it was contrary to the policy hitherto pursued "that the powers of corporations relative to their money operations should be of limited instead of perpetual duration." Nevertheless, thanks to Burr's political power and skill, the committee, the Council of Revision, and the Federalist legislature all passed the bill, and Jay, the Federalist governor, signed it, despite the decided opposition of the "most respectable mercantile and monied interests." The act passed early in April; early in June the intention to set up a bank was announced, and banking operations were actually begun in September.¹ As the "Manhattan Bank" the institution has lived and prospered.

Probably there were some other attempts to establish banks which came to naught. In New Jersey, for example, there was an effort to establish a bank in September, 1795. Advertisements were published over the state for subscriptions to a million dollars in \$10 shares for a bank in Trenton adapted to local needs. "The plan of this Bank," ran the advertisement,

¹ *Session Laws*; Stokes, *Chartered Banking in R. I.*, 13; Frederick Denison, *Westerly (Rhode Island) and its Witnesses . . . 1626-1876* (Providence, 1878), 259-264; "Historical Table of Banking Institutions . . ." in *Third Annual Report of the Bank Commissioner [Rhode Island]*, 1910, p. 263.

² Caulkins, *Norwich, Conn.*, 366-367.

³ H. C. Conrad, *History of Delaware . . .* (Wilmington, 1908), i, 342-343.

⁴ *Travels in North America*, ii, 266.

¹ Parton, *Life of Burr*, 237-239; M. L. Davis, *Memoirs of Aaron Burr*, i, 413-417; letters of Robert Troup in King, *Rufus King*, ii, 597-598, iii, 34, 43; Domett, *Bank of N. Y.*, 57-58. For the water operations, see *infra*, 252.

of the banks of Alexandria, Richmond, and Pennsylvania with respect to public stocks.¹

Little attention was paid to the protection of the corporate estate. The first Massachusetts insurance charter (*Massachusetts Fire*, 1795), however, required that the capital should be invested in federal or Massachusetts state debt, or in stock of the national or Massachusetts banks, and "that if any loss or losses shall at any time diminish the capital . . . no dividend shall be made, until such loss or losses be completely restored." This was followed thereafter in that commonwealth. In New York and elsewhere, the latter provision was commonly found in joint stock insurance charters. But no system of reserves was provided for. Bridge charters often incidentally mention reserve for reconstruction in case of decay or destruction, as for example, the Easton Bridge company authorizing dividends out of the clear profits, "deducting first all contingent costs and charges," and "such proportion of the said income as may be deemed necessary for a growing fund to provide against the decay, and for rebuilding and repairing of the said bridge." It does not appear that the companies often made any such reserve.

It seems usually to have been expected that all the net profits would be paid out regularly. Indeed, a common provision was that dividends of all the profits should be made semi-annually, though many charters left the amount to the discretion of the directors, and many more failed to mention dividends. Few companies actually set aside any surplus, and dividends consequently commonly fluctuated with the annual earnings.

Not only did the legislatures grant corporate privileges. They generally also displayed a favorable attitude toward the corporations. Limitations of capital and real estate were liberal, and usually enlarged upon request. Pennsylvania public service companies, indeed, were authorized to increase the capital beyond the specified amount as needed to complete the undertaking, and Massachusetts charters for such companies imposed

¹ The president and cashier of the Bank of Pennsylvania were forbidden any concern in dealing in stocks, on penalty of \$10,000.

no limitations at all. While time limits were usually set for beginning or completion, or both, of bridges, canals, and turnpikes, extensions of time were seldom, if ever, refused; and it is probable that the restriction was intended merely to prevent "dog-in-the-manger" tactics. Increases in the term of franchise were sometimes made for additional encouragement, or as an offset to new competition introduced.¹ Other modifications of charters were granted with no little freedom.

Lottery privileges were granted in a number of cases, as a supplementary aid, notably for the New Jersey manufacturing society (1791), the Santee and Cooper canals, the two principal Pennsylvania navigation companies (1795), the South Hadley Falls canals (Massachusetts, 1796), the Pocomoke (navigation) company (Maryland, 1796), the Amoskeag Canal (New Hampshire, 1799), and three New Jersey bridges (1790-92, 1798). Probably the ill-success of lotteries in the period when the corporations were most in need of additional funds, and a growing public opinion against them — both probably related to the growth of corporations, whose shares had many of the advantages without most of the disadvantages of lottery tickets — prevented larger resort to this means.²

Exemptions from taxation were occasionally granted, either to the property of the corporation or to the workmen employed. Exemptions from militia duty also appear. Usually both types of exemptions were limited to a period of years. Both were given only where a strong case for "encouragement" was made out, notably for manufacturing corporations.

Furthermore, when occasion demanded, the legislatures frequently responded to appeals for loans or subscriptions to shares. Here one should carefully distinguish two diverse motives contributing to induce state subscriptions. These were (1) a desire for direct pecuniary gain, by productive investment of state funds; and (2) a desire to promote operations within the state

¹ E g., Essex Merrimack Bridge, Charles River Bridge: *Mass. Priv. and Spec. Stats.*, i, 370, 403, 525, ii, 61-62.

² Governor Hancock's message of May 26, 1791 (*Resolves*, p. 8), contains an argument against lotteries, at a time when they were greatly in vogue but were being forced out partly by the competition of the business corporation.

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