

Rechtsgeschichte Legal History

www.rg.mpg.de

<http://www.rg-rechtsgeschichte.de/rg26>
Zitiervorschlag: Rechtsgeschichte – Legal History Rg 26 (2018)
<http://dx.doi.org/10.12946/rg26/449-450>

Rg **26** 2018 449–450

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Corporations in the British Empire in the Wake of the American Revolution

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Corporations in the British Empire in the Wake of the American Revolution*

Corporations and American Democracy's exploration into the history of the corporation is prompted by recent decisions in the Supreme Court of the United States. In both *Citizens United* and *Hobby Lobby*, the litigants, lawyers and those on the bench engaged in a debate about the rights of corporations. Lamoreaux and Novak's edited collection asks what the original understanding of the corporation was at the time of the American founding. The answer given in the ten essays has important ramifications for contemporary law-making in the aftermath of these two landmark cases. Using research on the original understanding of law and ideas at the time of the founding, jurists have a better understanding of the American constitution and its intended meaning. This line of judicial reasoning means that historical research is firmly on the lawyer's agenda. Arguments steeped in originalism often appear as judicial ammunition for those on the political right who are resisting change and seek continuity with the past. While the use of historical study in the courtroom has a political objective, scholars on both the left and right have perused legal-historical research under the cloak of originalism.

The ideas embodied by the American constitution at the time of the nation's founding tend to be seen as truly American. The founding fathers and American colonists were, however, familiar with English law and the concept of the corporation as defined by it. In English law, a corporation, such as a city, town, guild, club, body, or business, was characterised most clearly by its legal personality. This was separate from the individuals who came together jointly to create it. The corporation would thus have an infinite life span that was independent from the finite lives of its owners. The corporation would have the ability to own property and enter into contracts in its own corporate name. The latter would mean the corporation was liable for its

debts, and it was capable of possessing limited liability. To become a corporation in 18th-century England, an organisation needed a charter. A charter was usually obtained through the parliamentary process, and parliament was the main regulator of corporations. A collective would petition parliament to obtain exclusive corporate status.

This system of corporate chartering was not an English invention. England copied this model from other jurisdictions. Antecedences can be found in Dutch company law, for example. While this method of corporate promotion and regulation was not British in origin, it was used throughout the colonies of British Empire. Cawston and Keane's *The Early Chartered Companies* shows that Britain's colonial possessions were, for the most part, settled through chartered companies. After those communities were established, the system of trade and commerce created in the British Empire was organised through the same mechanism. Chartered companies were the principal instrument used to raise the capital, which was necessary to create long-distance networks and foster global trade. The global lineage of corporations and corporate charters is hard to trace; the present volume focusses on the American experience.

Charters in the thirteen states, which later became part of the United States of America, were either granted by parliament in England or the governors of colonies. When the states became independent, this was a moment for the greatest divergence from the English model. A clear bifurcation of the English and American systems is visible in a number of contexts, but most curious here is the American obsession with »corporations«. In the language of English trade and commerce, the word »company« is used predominantly. The expression »corporation« is an unashamedly legal term; it has a firm and uncompromising legal definition. In the English commer-

* NAOMI R. LAMOREAUX, WILLIAM J. NOVAK (eds.), *Corporations and American Democracy*, Cambridge / MA: Harvard University Press 2017, 528 p., ISBN 978-0-674-97228-5

cial world, the growth of corporations, unincorporated entities, joint stock companies, and partnerships gave rise to much confusion. As those in English society were unable to tell whether an organisation was a corporation or not, they navigated this dilemma by using a non-legal term, such as »company«. This proved to be a safer and more accurate option. Economists now adopt the same policy with the term »firm«. In the event that it is not clear if a business fulfils the legal requirements needed to become a corporation, the entity is described as a »firm«. Ronald Coase's *The Nature of the Firm*, first published in 1937, was one of the first texts to give rise to this style of economic analysis.

American legal scholars seem to be, by contrast, confident in stating that what they are dealing with is a corporation. This is also due to path dependency and the particular economic context of the nation's founding. It was created at the time when, in English society, share markets were regionally disintegrated, spatially separated and buoyant. Provinces in regions, such as the north-west and north-east of England, generated excess wealth through exporting goods, such as cotton, wool and other merchandise. Merchants, traders and businessmen then looked to invest their profits into new financial schemes. Those organisations took the form of both corporations and unincor-

porated companies. By contrast, looking in the American mirror, society consisted for the most part of migrants who were relatively poor. Limited liability – and, in other words, corporationhood – was the kick that individuals needed to persuade them to invest in what would otherwise be a risky venture. There were of course the non-profit corporations, which were a different phenomenon on both sides of the Atlantic.

Overall, the edited volume provides answers to relevant questions in contemporary political and legal debate about corporate personhood, corporate power and corporate responsibility. It pushes past the story of the origins to note changes in development until the present day. The volume is divided by period, which is helpful in signposting when and why those changes took place. The standard of research is very high, with each essay containing rigorous analysis and carefully scouted material. The edited collection contains a natural blend of economic and legal history, which will please readers from either community. It will be of interest to any reader who wishes to know more about how American lawyers, politicians and businessmen devised their own system of corporate regulation once they had ended their tie with the British Empire.



Cecilia Cristellon

Ansie conversionistiche e riforme mancate nella Roma del 18° secolo*

Una notte del 1749 la giovane ebrea romana Anna del Monte, diciottenne membro di un'importante famiglia del ghetto, fu prelevata in casa dagli sbirri e condotta alla Pia Casa dei Catecumeni – un'istituzione fondata nel 1542/43 per ospitare

coloro che intendevano convertirsi al cattolicesimo. Nel caso di Anna, si voleva sondare la sua volontà di convertirsi e indurla a compiere tale passo. Questo rapimento era una misura legale – come è noto anche dai lavori di Marina Caffiero –

* KENNETH STOW, *Anna and Tranquillo. Catholic Anxiety and Jewish Protest in the Age of Revolutions*, New Haven/London: Yale University Press 2016, 312 p., ISBN 978-0-300-21904-3;

vedi anche il contributo »Nicht-christen in der Geschichte des kanonischen Rechts« di CHRISTOPH H. F. MEYER in questo numero.