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The Origin and Necessity of Corporations

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The origin & necessity of corporations

1.

The Origin & Necessity of Corporations

Among the provisions of the Law designed to further the welfare of man, in establishing & maintaining enterprises of national & individual interest, none are of greater importance than those which respect corporations.

By a Corporation is meant an institution, consisting of one or many persons, created by charter from the legislature; and constituting an organization capable of perpetual existence; and of acting with the unity, precision and harmony of a single individual.

Writers upon legal subjects differ somewhat in their estimate of the character of corporations, as well as with regard to their origin: Blackstone writes of them as "franchises"; Marshall speaks of them as "existing in contemplation of law"; Kyd as political persons; and yet another distinguished writer speaks of a corporation as: "a body created by law.

2.

Municipal corporations were, according to some authorities, founded by the Romans; to others, by the Greeks, and yet another and respectable, class of writers, attribute their origin to the earliest periods of political society, - at a time, when, men were driven to congregate in hamlets and cities, as a means of mutual protection, and of inaugurating among themselves, schemes of local and special utility.

Selfishness seems to have been the normal condition of human thought-purpose & the impelling motive to action, - in early stages of national existence: Esau's hand was against every man & every man's hand against him: enterprises though involving thousands, were seldom undertaken from considerations of public benefit; The highest aspiration of rulers was



personal power and dominion; & it was only when, by almost imperceptible steps, the sentiment of national unity was suggested, by the instinct of self-preservation, that this essential element of power and success was tolerated.

(Next, springing out of public ones, private corporations were introduced, - and these, united make up the atom of good, in Society, which we find warring for centuries against the forces of evil, in church and state, have made no uncertain record in the history of the world. This necessity of corporations, as a corrective of abuses, and an element of social progress, must in all cases be the condition precedent of their creation.

"The public benefit", says one distinguished author, is deemed sufficient consideration of a grant of corporate privileges": "With respect to acts of incorporation", says another, "they ought never to be passed, but in consideration of services to be rendered to the public.

Blackstone, too, without whose testimony, upon topics connected with the law, evidence however abundant, seems incomplete, gives his opinion in this wise: "These artificial persons +++ (Corpora Corporata, subsist for the advancement of religion, learning and commerce, in order to preserve entire and forever, those rights and immunities, which if they were granted to those individuals of which the body corporate was composed, would upon their death be utterly lost and extinct."

4.

(It is both interesting and gratifying to note the course of these organizations, as they emerge from the mists, - the semi-obscurity of the earliest times, in political history, through the tumultuous changes of nations and peoples, Commencing with the ancient governments of Greece and Rome, travelling with them along the path of empire, through and over conquered kingdoms and dependencies, vitalizing, energizing; influencing and modifying their policy; yet, ever faithful to the original conception, - the interests of the people.

3.

Clinging tenaciously to many of the forms with which they were invested, originally, - though greatly obscured in the conflict of nations, - at times lost to sight but for ecclesiastical guises, which they were forced to assume, - they have started forth with such renewed vigor in modern times and especially in our day and country, that they are more numerous and powerful than ever. before

(The fact that municipal corporations are in some sense, an embodiment of the idea of sovereignty, and in that sense, the most important of human agencies, does not appear to have enlisted the attention of early rulers, else much that is unjust in the conduct of sovereigns towards their subjects, might have been avoided; and the granting of corporate privileges, instead of having been an unwilling

5

experiment, to be denied after partial trial, as in France, - ~~their-active-agency-in-the-affairs-of-estate~~ might have prevented much despotism and many of its barbarities.

Corporations having been of very early origin, ~~at~~ Solon of Greece, and later and more fully, Numa of Rome, applied their principles in the organization of societies of tradesmen, and to rival factions of their citizens, (R & S), with a view of quieting civil distraction. Fire companies thus organized, were invested with special privileges; the adherence of individuals to the state was secured, and adherence to leaders of faction overcome. (In prosecuting their conquests, the Romans invariably carried their (corp) municipal institutions with them; colonies planted in France, Spain, Britain, and other countries, subject to Roman sway enjoyed, in some sort, elective privileges, which in England, especially, were enlarged to the great benefit of the kingdom; and foreshadow our present, though more elaborate system of voting by ballot. (The Italiens, at a later period, were enabled, through great commercial prosperity, and because of the distraction of the German emperors by religious differences, and by reason of the impending wars of the crusades, to purchase from the Feudal Lords, the privileges of free citizens, - and

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to model anew the Italian cities, under laws of their own making: these "Charters of Community", so called, enfranchised their vassals, and gave the death-blow to the Feudal system: and thus in France, Germany, & England, the arts were encouraged, and an advanced step made in favor of political freedom.

(Next in importance, to the results compassed by these bodies, though not accomplished in order of time, are the achievements of those private companies, which were formed to meet the demands of commerce between western Europe and the East; following which, universities, colleges and banks were introduced. As Greece and Rome, from position and attendant circumstances, - were first to make practical use of municipal corporations, so the Italians in later times, are seen to pioneer every incident of importance connected with private companies.

The Bank of Genoa, having been the first of its kind, Venitians, Dutch and English, imitated the example: thence the wide extended and important monetary systems, of the old and new worlds. Another important class of corporations, were those created for purposes of trade, manufactures and literature. The English granted charter rights to companies of Weavers, Tailors, Fishmongers: The French founded the university of Paris; & the universities of Oxford & Cambridge, and other celebrated schools in Europe, which before were without charters, became incorporated.

7.

The rivalry among rulers to secure foothold in America, the spirit of adventure consequent upon its discovery, and the increasing commerce of Western Europe with the East, led to further demands for private companies; the most important and powerful created about this period, were the East India Company chartered (1579), having for its field of operations, a large part of Hindoostan, and ruling 1 000 000 000. of people. The Hudson Bay Company, (1607; regulating trade and making laws for a large portion of British America: the Levant(Sevant?) Company, controlling commerce in the Mediterranean Sea & influencing powerfully the relations of Turkey, Egypt and other powers of southern Europe. To enumerate all the

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enterprises to which corporations are being, or have been applied, and which could not be successfully conducted without them, or, to set fourth adequately the necessity which led to their creation, would be impossible in this place; but of the institutions enjoying corporate privileges, and which contribute essentially to the happiness of civil, social and religious existence, are, Public Schools, Rail-Roads, Telegraphs, & Ocean-steam Companies; these with others heretofore mentioned aiding in developing the resources of a continent, and adjusting the relations of its inhabitants with the civilized nations of the Earth, give to Bodies Corporate a power and influence in regulating human affairs unequalled by any other known legal agency.

