

LAW, BUSINESS CORPORATIONS AND SOCIAL CHANGE

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It is almost axiomatic that the modern business corporation cannot be fully understood without reference to the role of law in its development. The corporation derives from legislative charter, and operates in a marketplace that is conditioned in almost every aspect by public policy. In its relationships with customers and competitors, its owners and employees, the corporation follows codes of conduct sanctioned and regulated by law. This is not to suggest a process of development with the law as change agent and the corporation as dependent variable, for obviously much of the law bearing on corporate behaviour is itself the product of corporate political or legal action. But at the least we must consider the law as a language to express and enforce primary social forces and basic patterns of institutional change.

The best survey of the history of the modern corporation, by Alfred D. Chandler Jr.¹ describes a process of institutional evolution driven primarily by market and technological forces, a process that was, however, contingent on complex organizational strategies to maximize the efficacy of basic business operations. Market and technological forces created opportunities, but only organizational innovators survived to seize the benefits. The evolution of business organizations, however, was neither steady nor smooth. The story of the transition from the age of the owner/manager, operating his or her single product firm in a local market, to the era of management-run multi-product firms operating in multiple markets, is a story of the persistence of tradition in the face of disaster, resistance to change by managers at virtually every turn, and the pursuit of individual executive power and privilege despite significant costs to the organization as a whole. Organizational change was hard won and far from inevitable. Those who categorically define all business people as innovators simply confuse successful exceptions with the behaviour of the genus as a whole. The failure rates of corporations, big and small, provide compelling testimony to the force of these arguments. Systemic economic growth over this period was dramatic, but it was a harsh system in which individual organizations normally enjoyed a very limited lifespan.

In all this change, the law was both a tool of competition and the object of social struggle. Business competitors, consumers, workers and spokespersons for the "community interest" all sought to enhance their relative social and economic positions through the establishment of state-sanctioned rights for themselves and

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¹A. D. Chandler, *The Visible Hand: The Managerial Revolution in American Business* (Cambridge: Harvard University Press, 1977).

duties for others. Organizational change within the corporation was conditioned by such rights and duties, but only to the extent that the law represented power relations. It is these we must study to grasp fully the processes of change. Labour laws, for example, clearly shape organizational character and behaviour in important ways, but labour laws themselves obviously derive from broader social phenomena that must be examined carefully if we wish to appreciate the role of law as an agent of change in this sphere.

Many years ago, I wrote a doctoral dissertation examining the origins of the regulatory state in the Canadian economy entitled, "Security and Enterprise." Although this study saw publication under a different title,² the original formulation suggests one aspect of my response to the basic question posed at our conference: "What do you consider to be the primary determinants of openness/resistance to change?" Since the economic historian W.T. Easterbrook strongly influenced my approach, my main contribution to our larger discussion takes the form of a quotation that sums up his basic argument, an argument that I believe has widespread ramifications for understanding social action and organizational change in many institutions:

I think it may be argued that entrepreneurial strategy in general may be described in terms of techniques designed to reduce uncertainty to the level of risks against which appropriate action may be taken; that is, in terms of a principle of "conservation of certainty." In the study of long-run change, however, the concept must be broadened to embrace the whole range of the uncertainties that bear on entrepreneurial decision making, not only those associated with economic competition, price fluctuations, income changes, but also those present in political unrest, social instability, problems of sanctions. The so-called "competitive struggle" then, takes the form of grappling with uncertainties rooted in economics, politics, and society, and for that matter, in the psychology of the individual.³

The law constitutes one expression of this search for certainty or security. Similarly, different patterns of organizational behaviour depict alternate strategies to achieve protection against risk. Organizational change always threatens established power and working relationships. Some gain and others lose no matter what the general institutional prospect of gain, so we cannot construe openness/resistance to change as a dichotomy simply expressing healthy and pathological behaviour. Workers resist changes that threaten their job security, but so do middle managers and senior executives who feel similarly threatened. Autonomous professionals promote regulatory codes that enhance their market power, as do farmers, textile mill owners, and university professors. The law is frequently one of the instruments of change, but the value of

²T. Traves, *The State and Enterprise: Canadian Manufacturers and the Federal Government, 1917-1931* (Toronto, University of Toronto Press, 1979).

³W.T. Easterbrook, "Uncertainty and Economic Change" (1954):*J. of Economic History* 349.

innovation/transformation usually depends upon whose ox gets gored. We must take care to avoid whiggish interpretations of innovation or presume that value-free definitions of such processes are possible despite the bias in our language and culture towards this position.

The second issue posed by this conference is whether there is a unique Maritime character to any of these issues and the process of social change in the area. Once again, I would like to warn against ahistorical approaches to this topic. The notion of "regionalism" is no more a natural phenomenon than nationalism or any other form of social consciousness. It is a social product, fought over and encouraged by different social forces.⁴ As such, it is subject to the same phenomena that play on the formation of the legal system. Whether these phenomena take a particularly unique form in the Maritimes is a debatable point. I suspect not. Undoubtedly there is a specific configuration of institutions, political, cultural and social relations that can rightly be distinguished from those in other areas of the world, and to that extent there is a Maritime "identity." But whether this identity itself serves as a causal explanation of other phenomena such as the pattern of economic change or the role of the law in shaping economic institutions within the area is much more problematic.⁵ At the very least, claims for Maritime exceptionalism should always be scrutinized carefully through comparative studies.

⁴E.R. Forbes, *Maritime Rights: The Maritime Rights Movement 1919-1927* (Kingston: McGill-Queens Press, 1979).

⁵For an interesting discussion of the economic issues, see K.E. Inwood, "Maritime Industrialization from 1870 to 1910; A Review of the Evidence and Its Interpretation" (1991) 21:1 *Acadiensis* 132.