CHAPTER 1

Foundations of Capitalism and the Birth of the Corporation (1776–1880)

This chapter sets the stage for the story of corporate responsibility by tracing some of the seminal ideas underpinning its development. At base are the recognition of the importance of human rights, the Industrial Revolution (the main engine for economic growth), the expansion of free enterprise, and the development and legitimacy of the modern corporation. These key ideas led to events that moved the nation from an agricultural and trade economy to a mature capitalistic enterprise in which corporate responsibility is an important element.

From the beginning of recorded history, human beings have been engaged in what the eighteenth-century political economist Adam Smith called the urge to "truck, barter and exchange." Early on in various civilizations human beings owned, developed, and traded private property. But what distinguishes modern capitalism is not merely private ownership and trade. It is also the development of free markets for exchange, the capacity to organize labor efficiently for the production of goods and services, the ability to accumulate private capital, and the formation and legitimacy of corporations to do these things. Indeed, as Joyce Appleby writes, "capitalism has been described not merely as an economic system but more broadly as a cultural system rooted in economic practices that rotate around the imperative of private investors to turn a profit. Profit-seeking usually promotes production efficiencies [industrialization], like the division of labor, economies of scale, specialization, the expansion of the market for one's goods, and above all, innovation."[1]

Three clusters of ideas initiated and justified capitalism. The first is the importance of basic human rights: rights to freedom, the liberty to work, to own property, and to engage in commerce without interference. While these basic rights seem obvious in the twenty-first century, in seventeenth- and eighteenth-century England and the American Colonies, they were neither obvious nor evident. To understand the story of American capitalism, one needs to understand the evolution of human rights, the backbone of the Constitution and Bill of Rights, and the justification for private property and free exchanges.

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A second set of important ideas that moved commerce from the joint-stock company to the modern corporation was the demand for economic growth, the call for innovation, and the accompanying need for capital to expand production. One of the key components of economic growth is the availability of capital; a second is industrialization, which depends on a productive and organized labor force. Again, this seems obvious, too obvious, to a contemporary reader, but mass production was virtually nonexistent in the seventeenth and early eighteenth centuries. Imagine an eighteenth-century community in which pins and nails were made by hand by individual craftspeople. That was the community in which Adam Smith lived. Smith was the "father" of the idea that economic growth can be achieved through labor, now organized and mechanized.

A third vital idea – the importance of free markets – developed from the argument that unregulated commerce, rather than a mercantile-regulated political economy, can create more wealth and economic growth. Smith was one of the first to argue that free commerce along with industrialization, not government control, is the best means for creating jobs and wealth.

All of these ideas were European in origin, but they soon migrated to America. Interestingly, the division of government from commerce was a New World phenomenon that was not clearly evident in eighteenth-century Europe. One particular event precipitated that idea: the Boston Tea Party. The Declaration of Independence established the colonies, and later the country, as a strong proponent of human rights. Rights issues were central to the abolition movement's arguments against defenses of slavery. The ethics of diversity and equal opportunity that are part of corporate responsibility today are rooted in this critical struggle in American history.

The sense that each person has inalienable rights, as spelled out in the Declaration, and later in the Bill of Rights, and the fear of government interference with commerce, inspired a strong sense of individualism and a belief that anyone could achieve something in the open economy. This chapter discusses some sources of this spirit and how it translates into self-interest, both positively and negatively, in corporate life and markets.

One of the many challenges facing the founders of the United States was the question of whether states had rights that balanced or superseded those of the federal government. This debate became critical in writing the Constitution and later in considerations over a federal currency and banking system. The American financial and banking systems have flourished in part because of the Federal Reserve System (and, obviously, a single currency!), but the idea that federalism should dominate over states' rights was not obvious to all the country's founders. It is a debate that reappears in various formats today, particularly among critics of the Federal Reserve System, and affects corporate responsibility as well.

It is not surprising – given a strong theory of human rights, the justification for industrialization as an engine for economic growth, the realization that labor has productive value, and the advent of free markets – that in the nineteenth century commerce gradually weaned itself from the joint-stock company as the model for commercial organization. The modern corporation as we know it today evolved and began to attain legitimacy.

No commentary on the ideas that affected modern corporate responsibility would be complete without engaging the seminal critic of capitalism, Karl Marx. His ideas concerning the alienation of labor, despite effectively pointing out the weaknesses of free enterprise, also served to raise awareness, particularly among workers, about corporate responsibility. This spurred Americans to *improve upon*, rather than *abandon* the free-enterprise system as we know it today.

Two other sets of ideas that engaged thinking in the nineteenth century, particularly in commerce, were Social Darwinism and the now clichéd idea of the "Protestant work ethic," deriving from earlier Puritanism. Both Darwin, famously for his theory of evolution, and the Social Darwinist, Herbert Spencer, have had a lasting influence on American economic thinking and on corporate responsibility. The German sociologist Maximilian Weber gave weight to the virtues of Puritanism with his idea of the Protestant work ethic. A controversial notion (because of its obvious religious overtones and biases), it nevertheless captures the spirit of American hard work that inspired economic success – an important issue for corporate responsibility in the new age of outsourcing and high unemployment. Puritanism is one of the sources of contemporary conservative thinking that links religion and politics.

There are no claims here that these were the only important ideas or the only seminal thinkers of the seventeenth, eighteenth, and nineteenth centuries, only that they were instrumental in shaping what we think of as free enterprise, human rights, and our present societal expectations of institutional behavior. These thinkers, the impact of their ideas on central historical events, and the fledgling companies that grew out of industrialization paved the way for the development of the modern corporation. This brief history of early ideas and their influence can help explain their continued potency in the debates and expectations about corporate responsibility in later decades discussed in the chapters that follow.

The origins of the modern corporation: the joint-stock company

The origins of corporate responsibility no doubt lie with the origins of human trade itself. Worries about the ethics of traders and merchants can be seen as early as 1750 BCE in inscriptions of the ancient Babylonian Code of Hammurabi (and these carried over from even earlier sets of laws). The story of modern capitalism, however, and the explicit focus on corporate responsibility began later when first capital, and then labor, were organizing forces in commerce. As Charles Denny describes the story,

> [T]he formation of what today is the modern corporation has its roots in the guilds in the fourteenth and fifteenth centuries that were organized to protect craft and trade monopolies. With that model in mind, in the 17th century the Dutch and the English developed chartered trading corporations [called "joint-stock companies"] to protect or monopolize trade or geographic territories as these two countries expanded their global exploration of new territories. The most famous of these were the British and Dutch East India Companies.[2]

At the beginning of the Industrial Revolution in the eighteenth century, free enterprise as we know it today in Western industrialized nations was in its infancy. Britain in particular was governed by a hodgepodge of mercantile laws that restricted trade and commerce, the idea of the modern business corporation was still emerging, and basic human rights (as we understand them today) were at issue. In 1600 the British East India Company received its royal charter from Queen Elizabeth I to create a monopolistic trading company to engage in the spice trade. It was one of the first joint-stock companies – precursors of the modern corporation. By 1647, the company had twenty-three factories in what today is the country of India, and by 1680 it had its own military force there. The Company continued its expansion in India until 1858 when that territory was officially taken over by the British government.[3]

The joint-stock company was an early form of commercial organization, created to amass capital for its owners for expanding its commercial enterprises. Unlike the modern corporation, a joint-stock company did not have limited liability. Depending on the country in which it was chartered, liability was either distributed to shareholders or distributed to them in proportion to their investment, and shareholders were responsible for losses. Usually, joint-stock companies had limited life charters, unlike contemporary American corporations that are granted unlimited life.

These early ventures were by and large interested in trade and colonization. They were not industrialized, nor did they measure or value those who worked for them. The joint-stock company was chartered by a government and was not free to engage in commerce unless its enterprises were approved by the government. The British East India Company, for example, seemed to engage in unfettered exploitation and colonization of India, but not without notice of the British government, and the company was taken over by that government in 1858. Thus the notions of a free market, of worker rights, industrialization, and of the separation of commerce from government were not part of the equation. Moreover, joint-stock companies were expected to serve some public purpose or engage in some public service in addition to their commercial goals.[4] That requirement was dropped as industrialization took hold and the modern corporation was conceived.

The human rights basis for American capitalism

The success of free enterprise and modern capitalism in the United States is based on a very simple idea: that humans are independent beings who have basic rights, the most important of which is the right to freedom. Such rights were not evident in the seventeenth-century era of the joint-stock company, but in twenty-first century America they are taken for granted and protected by the Constitution and Bill of Rights. Free enterprise is based on the assumptions that people and companies can move freely, choose and change occupations, own property and businesses, engage in commerce, and trade in open markets. But the rights to choose where one worked, to be paid for one's labor productivity, to be a property owner, to speak freely, and to vote were anomalies in Europe and in America until after the Revolutionary War ended in 1782. America's founders' preoccupation with human rights was a critical thread in the development of corporate responsibility. This interest originated from the work of the British philosopher John Locke (1632–1704), and was propagated by Thomas Jefferson (1743–1826). It is from Locke that Jefferson and others drew their justifications for the equality of human beings and the benefits of a deliberative legislative democracy.

While Locke is not the first rights theorist, he made famous the claim that human beings, just because they are human, have basic natural rights to life, to survival (and thus work in order to survive), to liberty, to wages for one's work contributions, and to property ownership. According to Locke, these were universal and equal rights that every person (or, at least, every adult male) should enjoy. Locke also recognized that labor produces value. How one works the land or harvests the forest enhances that property and produces value, value the laborer should receive based on his labor input. Slavery not only denied persons rights to liberty, it also did not reward labor, both of which, in Locke's view, were violations of basic human rights.

Locke argued further that societies are legitimated through what he called a "social contract," a contract between individuals and government honoring individual rights in exchange for obedience to laws and regulations. Later, in the nineteenth century, the idea of a social contract would be expanded to include the social contract between corporations, individuals, and government. Locke was an early advocate of legislative democracy as the best form of government to preserve these basic rights. Property rights, rights of individuals to own land and other properties, he found, were not only basic rights, but also essential for countering the power of large English landholders and, importantly, the powerful and not always judicious British monarchy.[5] These rights form the basis for the Constitution and Bill of Rights and for the development of the version of free enterprise that has played out in various ways in early American history.

The Boston Tea Party

The ideas discussed above – that every human being has basic rights, that labor has productive value, that industrialization creates economic growth, and that free markets function, and function better than governmental control – originated in England and Scotland. But they were first put into practice in the American Colonies, and became important foundations of the new country, the United States, and its economic development. Interestingly, it was not an abstract idea, but a famous and important event that intensified and enlarged this new thinking.

The division between the public and private sectors of the economy is one of the assumed ground rules of free enterprise, and the battle for less regulation of businesses is an ongoing debate. But this was a new idea in the eighteenth century and had its roots in the Boston Tea Party. While the outlines of this famous event and its role in the First Continental Congress and the unfolding of the Revolutionary War are well recognized, its critical and lasting influence on the direction of American free enterprise is less widely appreciated.

When the British passed the Tea Act of 1773, which lowered the tax on tea for the colonies and allowed the direct importation of tea from the British East India Company, the intent was both to thwart tea smuggling and to revive the failing British East India Company. The colonists, who gathered in the thousands at Boston Harbor to protest the arrival of three British tea ships, resented the Act on both counts. (Similar ships had not been allowed to unload their cargo in Philadelphia or New York.) In protest, on December 16, 1773, about 200 disgruntled Boston colonists boarded the ships and dumped 340 chests of tea into the harbor.[6]

The Boston Tea Party was one of the first antimonopolistic and antigovernment protest movements. The protesters were objecting to the interference with free trade (even if some involved smuggling); the lack of opportunity to compete with "big business" (the British East India Company, chartered by the British Crown and considered an agent of England); lack of representation in Parliament; government control; and corporate–government collusion. Most importantly, the colonists wanted control of their lives and autonomy from the British.

These themes resonate with many of the corporate responsibility issues that surface more explicitly in the twentieth century. The ideas of autonomy, drive for independence from government, and the fear of a monopoly colluding with government foreshadow a number of later American movements to encourage small producers, to restrict overregulation, monopolies, and the power of a military–industrial complex. Some of this thinking is expressed today in the "Tea Party" movement that purportedly represents the "little guy" against big government, and advocates smaller government and lower taxes.[7] In colonial times the Tea Party was an important impetus for revolutionary thinking that gave colonists courage to revolt against the British. From the perspective of the development of capitalism, it created a spirit of individualism and independence and initiated what became commonplace – the division of the public (governmental) from the private (commercial) sectors of the political economy.

The Declaration of Independence and Constitutional rights

As he and others gathered to form a new country, Thomas Jefferson (1743–1826) believed that it was necessary to build and sustain a democratic republic founded on a Lockean notion of human rights.[8] From these formative ideas in 1776 Jefferson, assisted by John Adams, Benjamin Franklin, Robert R. Livingston, and Roger Sherman, wrote and distributed the Declaration of Independence. That document, in turn, helped to shape the Bill of Rights that was incorporated in the US Constitution in 1787. The Declaration famously states that "all men are created equal, that they are endowed by their Creator with certain unalienable rights that among these are life, liberty and the pursuit of happiness." The naming of these rights, in particular, has had a formidable influence today on how Americans think about rights of men, people of color, and the rights of women. The idea of individual rights focused importance on individual autonomy. Later that idea, along with the Boston Tea Party, shaped thinking about the autonomy of *business* in the private sector. This advanced the idea of the corporation as a self-directed legitimate entity, independent of the public or governmental sector of the political economy. Interestingly, the Constitution and Bill of Rights are taken to define citizens' rights within and against the state, but not their rights within families or places of employment in the private sector.[9] This reading probably influenced early notions of corporate responsibility that focused on companies and their shareholders, while paying less attention to employees and even customers.

Jefferson and others who wrote the Declaration of Independence and participated in the writing of the Constitution were critics of slavery, but each valued the independence and preservation of the Union over the abolition of slavery; the threat of secession by the newly formed Southern states overrode the commitment to include freedom for the slaves in the Constitution. That question of priorities still haunts institutions today. When and under what circumstances does national or organizational unity and survival trump individual human rights? This issue not only challenges nations, but also *companies* as they expand their responsibilities and try to survive in a competitive global economy.

Labor, industrialization, and free enterprise

One of the most influential political economists in the eighteenth century was the Scottish thinker, Adam Smith (1723–1790). Smith, called the father of the Industrial Revolution, was the first neoclassical political economist, and one of the earliest defenders of private free enterprise and free trade. These ideas initiated the turning point in commerce: economic growth.

Industrialization and the labor theory of value

Smith's most famous work, *Wealth of Nations*, made a number of contributions to economic theory and to later thinking about corporate responsibility – notably, its substantial critique of mercantilism. Underlying the English mercantile system of strict controls of trade and commerce was the long-held view that there is a fixed amount of wealth (usually measured in gold) in the world so that only by trade, war, or exploitation can a country increase its wealth (and always at the expense of someone else). By contrast, Smith argued that wealth can be created and increased in any society not by hoarding, war, or trade, but through labor. The division and then mechanization of labor created economic value and growth because of the multiplier effect of organizing work and the resulting increase in productivity. According to Smith, and later Marx, *industrialization*, not agriculture, was the key to economic growth in any society.

Smith's recognition that labor, as well as capital, has value was important for corporate responsibility. Expanding on Locke's idea that labor adds value to undeveloped property, Smith concluded that it is the productivity of labor that creates value, so it is labor that creates economic growth. By paying workers money wages rather than "in kind" goods or land, industrialization both provided incentives to work and produced consumers, an increase in demand, and, if owners reinvested their capital, the expansion of industry. Smith was a strong advocate of allowing workers to choose and change jobs, a concept unheard of in eighteenth-century England. This independence, coupled with industrialization, Smith contended, would lead to labor independence from serfdom and personal individual liberty.[10]

In line with Locke, Smith was also an early critic of slavery for two reasons. First and most obviously, slavery violated the principles of basic equal rights. Second, and these arguments held some sway for the abolition movement, slavery was economically unsound. In a slave economy, according to Smith, productivity was measured in terms of numbers of slaves rather than their individual work contributions, or productivity. This was not only demeaning to slaves but resulted in a highly unproductive workforce.[11]

Self-interest, markets, and free enterprise

Another of Smith's important contributions was his argument that what today we call "free enterprise" is the most viable form of political economy. The idea is that economic value is created by free markets, fair competition, commerce, and free exchange (what Smith termed "the invisible hand" of market exchanges), and not by protectionism, government interference, overregulation, and hoarding of gold. But Smith was not a "laissez-faire" economist, a view that advocates purely unregulated commerce. We should act to pursue our own interests, he held, but within the constraints of fair play, justice, and a rule of law. Smith was an early critic of monopolies, colonization, and even international trade barriers, because he found them antithetical to economic growth and an interference with free exchanges.

Smith famously wrote:

> It is not from the benevolence of the butcher, the brewer, or the baker, that we expect our dinner, but from their regard to their own interest. We address ourselves, not to their humanity but to their self-love, and never talk to them of our own necessities but of their advantages.[12]

Smith's words are sometimes taken to mean we should be at liberty, at least in commerce, to pursue our own self-interests, even greedily, and that self-interest, not benevolence, drives market exchanges. But he qualifies this by arguing that, "Every man, *as long as he does not violate the laws of justice*, is left perfectly free to pursue his own interest in his own way . . ."[13] The proviso demonstrates that Smith was not advocating that "anything goes," or that "greed is good." Moreover, one of the mandates for owners is to reinvest, not hoard, so that economic growth can continue. The idea that individuals and businesses will and should be free to act in their own economic self-interest within certain limits has been fundamental to ideas and expectations of corporate behavior and of corporate responsibility.

Smith was also an early worrier about the separation of management from ownership (agency theory). About the separation of management from ownership, he wrote:

> The trade of a joint-stock company is always managed by a court of directors [executives]. The court, indeed, is frequently subject . . . to the control of a general court of proprietors [owners] . . . The directors of such companies, however, being the managers rather of other people's money than their own, it cannot well be expected, that they should watch over it with the same anxious vigilance with which the partners of a private copartnery frequently watch over their own . . . Negligence and profusion, therefore, must always prevail, more or less, in the management of the affairs of such a [joint-stock] company.[14]

This prescient thinking foreshadows what today economists call "the principal–agent problem," when managerial thinking and individual self-interest are not in line with the interests of the firm or its shareholders.[15]

Smith believed that, although benevolence was a noble personal virtue, business people had no absolute obligation to be philanthropic or benevolent in the marketplace. For Smith, the moral and economic responsibility of any business was to create economic value, and would also entail paying decent wages, reinvesting rather than hoarding capital, and playing fairly while being fiercely competitive. Business philanthropy or benevolence would be a nice, but not imperative add-on. The question of whether and how corporate responsibility translates into philanthropy is still an issue today.

Smith's argument that industrialization, the value and freedom of labor, and a moderately regulated free commerce were the best way to create national wealth set the stage for industrialized free enterprise. Indeed, one commentator claims that for Smith free markets were the means to a moral end, the creation of a free and just, as well as a wealthy nation.[16]

The roots of industrialization in America

The Industrial Revolution

The Industrial Revolution[17] can be traced to late seventeenth-century England, when the increasing demand for goods and technological innovations eventually spurred the creation of factories that employed and organized labor into efficient production on an unprecedented scale. While we cannot deal with every aspect of the development of industrialization in the United States, the textile industry, as it developed in the North, offers one good example of its progression and dramatic impact on the American economy, structure of business, and work life.

The textile industry's rise was made possible by a series of American innovations, from Eli Whitney's cotton gin (1794), which separated cotton seeds from fiber, and thus enabled the easy use of raw cotton grown in the South for textiles, to the invention of the sewing machine (1846) by Elias Howe. Until the 1820s over two-thirds of all clothing was made at home, but by 1860 at least half was produced in factories.[18]

It was Francis Cabot Lowell, a Bostonian inspired by his visit to textile mills in Manchester, England, who established the first textile mill – bringing spinning and weaving together under one roof – in Waltham, Massachusetts in 1813. Soon the nearby town of Lowell became the largest industrial center in America. (See Plates 4 and 5 for images and further description of textile mills in Lowell.) Most of the factories were owned by a small group of capitalists, known as the Boston Associates, and there was enormous overlap of ownership and directories. This allowed common policies and the sharing of technology, and Lowell became the leader in the industry. These early companies were joint-stock companies with shareholders who shared both the profits and the liabilities of their companies.

With industry employing ever-larger numbers of factory laborers, and a great emphasis on productivity, working life in America was changing profoundly. Initially most of the textile factory workers were young unmarried women, although the overseers and owners were male. Early manufacturers built boardinghouses for the women, and the women were carefully monitored. Their lives were extremely regimented, with a wake-up bell at 4:30 a.m., two meals a day, and a "lights out" at 10 p.m. The workday was twelve hours, six days a week, with three holidays a year, and workers were expected to go to church on Sunday.

As Lowell and other villages expanded into towns, many workers lived at home. Immigrants, mostly Irish males, gradually replaced women in the 1840s and 1850s, and by 1860 over 60 percent of textile workers were immigrants. By the 1840s there were movements to organize labor and to reduce the workday to ten hours. Some fledgling labor unions were formed, and there were a few, although ineffective strikes by the women workers. During the period between 1830 and 1850, improved technology boosted productivity by 49 percent, although wages during that period increased by only 4 percent.[19]

While the organization of labor and technology in the early Industrial Revolution in the United States improved production and fueled new economic growth, it also opened the door to worker exploitation on a larger scale. Early on, workers fought, albeit unsuccessfully for their rights. Corporate responsibility was preoccupied with returns for owners and shareholders, and less attention was given to workers, their working conditions, pay, or other rights, despite their productive value. Conditions were no different in England. It is no wonder, then, that the great critic of capitalism, Karl Marx, focused on these inequities.

As the textile industry grew and industrialization spread to other kinds of manufacture, there was a greater need for capital. To lure investors, some protections had to be provided so that investors who were not part of the management would not be liable for industry losses. Thus during the nineteenth century, the joint-stock company model for organization became less useful and gradually gave way to a more favorable model for commercial organization – the modern corporation.

The modern corporation and corporate personhood

The exponential growth of commerce in the nineteenth century created by industrialization called for more efficient and flexible ways to organize companies and raise capital. So states developed their own incorporation statutes that allowed the formation of what today is the corporation. This new form would accommodate large accumulations of capital by a wide range of shareholders and protect owners from organizational liabilities. State charters circumvented federal charters of joint-stock companies, and in addition granted corporations limited liability and unlimited life. The requirement that corporations, like joint-stock companies, must engage in some public welfare or exist for a public benefit was gradually dropped from requirements for incorporation.[20] While this loss may or may not have been good, it opened the door for voluntary efforts toward corporate responsibility, though these appeared only sporadically until the twentieth century.

Section 1 of the Fourteenth Amendment to the United States Constitution states in part:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

This amendment, adopted in 1868, was framed to free and protect slaves from discrimination and the lack of due process. But it was also interpreted as applying to joint-stock companies, corporations, and other organizations as well, and this became important for thinking about corporate responsibility. This turn of events originated in 1819, well before the adoption of the Fourteenth Amendment, when the Supreme Court ruled that the Trustees of Dartmouth College could act as a corporate body. By this decree they would be able "to have, get, acquire, purchase, receive, hold, possess and enjoy ..." properties and to "accept and receive any rents, profits, annuities, gifts, legacies, donations or bequests ..." for their use.[21] This landmark decision gave corporate bodies, those chartered, or, later, incorporated, the same rights as individuals to buy, sell, own, and disperse property. The decision was qualified in the conclusion with the statement that "[a] corporation is an artificial being, invisible, intangible, and existing only in the contemplation of law."[22] Thus, according to this decision, corporations were unlike natural (human) beings and had only those rights conferred to them by the law.[23] This prompted an early eighteenth-century legal expert to declare, "Did you ever expect a corporation to have a conscience, when it has no soul to save and no body to incarcerate?"[24]

Still, another Supreme Court decision in 1886, *Santa Clara Cnty* v. *S. Pac. R.R. Co.*, took a different stance. In that case, Chief Justice Morrison Waite stated that the Court would not consider "whether the provision in the Fourteenth Amendment to the Constitution which forbade a state to deny to any person within its jurisdiction the equal protection of the Constitution, applied to corporations. We are all of the opinion that it does."[25] In other words, joint-stock companies, chartered organizations, and corporations had the same rights, or at least the same legal rights, as individuals under the Fourteenth Amendment – rights to due process, property ownership, and equal protection – a claim that has been upheld ever since 1886. Later, in 1889 the Supreme Court ruled that a corporation was a legal person.[26] Corporations could not vote or hold office, but a century later, in *First National Bank of Boston* v. *Bellotti* (1978) the Court ruled that corporations have rights to free speech.[27] In all of these cases the corporation was considered an artificial entity with legal rights and, of course, responsibilities connected with those rights.

As we learned in the Introduction, in 2010, the Supreme Court in *Citizens United* ruled that corporations (both for-profit and nonprofit) and unions could contribute freely to political campaign advocacy "so long as they do not coordinate their efforts with campaigns or political parties."[28] The reasoning behind this decision, following an earlier 1906 decision, was that the corporation was an "association of [natural] citizens,"[29] and thus like individual natural citizens could freely participate in political campaign advocacy.

Whether corporations are artificial entities or merely associations of individuals has been debated since *Santa Clara,* and it makes a difference in thinking about whether and in what ways corporations are responsible. US law treats corporations as legal persons and tends to hold corporations themselves, and not merely the managers and employees who make up the corporation, accountable. In fact, we refer to companies as if they are individual entities, and we speak of corporate responsibility as if it applied to a single entity, even though we cannot actually shake hands with companies or lock them up. If corporations are legal persons, and thus artificial entities, this makes sense. In practice it is often difficult to disaggregate responsibility to individuals in a large firm.

On the other hand, if corporations are merely aggregates of individuals or "associations of citizens," every individual in a firm would have to be held accountable, to some extent, for untoward activities. Since that sort of disaggregated accountability is impossible in practice, companies might escape litigation by the mere fact that those responsible cannot always be discovered. Whether corporations *should* enjoy many of the same rights as individual citizens has been debated since 1819. Nevertheless, the debate has not affected their legitimacy to be treated as legal persons under the law.

Despite these questions, modern incorporation enabled companies to raise a great deal of capital, and it separated companies from federal charters (and thus federal control) with state incorporation. As independent organizations, companies could own property, manufacture, provide services, and engage in free-market exchanges, all of which expanded the growth of industrial capitalism.

States' rights and banking

In the long struggle to balance states' and federal rights and jurisdictions, the individual states prevailed when it came to incorporation and the formation of the modern corporation. As it turned out, the state of Delaware, having laws most favorable to commerce, became the most popular state for incorporation. This states' rights movement to control business formation and organization was not challenged by the federal government.

The state–federal struggle had played out earlier in the writing of the Constitution, on the question of legalizing slavery, and the subsequent Civil War (known in the South as the "War between the States"). Another "war" occurred in establishing the federal banking system in place today. One of the reasons the free-enterprise system, and in particular the financial and banking sectors, work and work well is the central banking that exists through the Federal Reserve System. A second reason is that the United States has a single currency. These two phenomena seem "natural," but they each have a murky history. When the country was first founded, part of the debate centered on whether the country should have a central banking system. Alexander Hamilton (1755–1804), the first Secretary of the Treasury, argued for what he called the Bank of the United States and a national mint. Jefferson, on the other hand, feared centralization as a path to federal tyranny. Jefferson wrote:

> [The] Bank of the United States . . . is one of the most deadly hostility existing, against the principles and form of our Constitution . . . An institution like this, penetrating by its branches every part of the Union, acting by command and in phalanx, may, in a critical moment, upset the government.[30]

However, Hamilton, with the backing of the president, George Washington, was successful in establishing the first Bank of the United States in 1791. Its purposes were: providing a repository for federal funds; issuing paper money; loaning money to the government; and forming a source of capital for investors.[31]

But its future was not promising. Under that system, the Bank issued its own money, but state banks also issued their own bank notes. The First Bank lasted until 1811 when the government transferred its funds to other state banks, effectively closing the Bank. In 1819 the Second Bank of the United States was formed, located in Philadelphia, and run by Nicholas Biddle. The Second Bank was attacked with allegations of corruption during the administration of the seventh US president, Andrew Jackson (1767–1845). Jackson feared the power of the Bank (and he may have surmised that its directors were corrupt as well), so he effectively shut it down by diverting its revenues to some state banks. It would not be until 1913 that the Federal Reserve System as we know it today was established.[32]

The chaotic system of state and national issuance of monies lasted until 1863, when Congress imposed a tax on state banknotes, effectively eliminating these currencies from circulation.[33] The unity of the monetary system on a federal level facilitated trade and commerce across the expanding country as well as trade between states and the territories.

Individualism and self-interest "rightly understood"

This chapter has discussed the importance of the Boston Tea Party and the ideas of Adam Smith to American advocacy of individualism and individual rights. In addition to Smith, two other figures were important to advancing this embrace of individual rights and liberties. The first, George Washington (1732–1799), was a man of action, not abstract ideas. As the commander of the Continental Army, his strong commitment to independence and autonomy from the British was an inspiration to his soldiers. Often described as undisciplined, poorly clothed, and badly armed, the motley Continental Army lost most of its battles. It eventually defeated the British, in no small part because of Washington's inspiration and commitment to liberty, and his ability to convey to each soldier the importance of that liberty to his wellbeing.[34] As first president of the newly formed nation, Washington was later cast as a larger-than-life figure personifying the spirit of American liberty in the story of the nation's founding.

Another person important to the discussion of individualism was Alexis de Tocqueville (1805–1859). Although de Tocqueville, a Frenchman, visited the United States for less than six months in 1831, he made astonishing observations about the character of America and its citizens. His book, *Democracy in America*, became a reflection on who Americans were or might be, and, in turn, influenced American notions of individualism, democracy, industrialization, and the defense of the independence of businesses to do as they pleased. Throughout his book de Tocqueville raised the question of how America became so powerful in such a short time. He credited that success to America's interpretation of the democratic system as a reinforcement of the individualism that pervaded every aspect of American life. De Tocqueville saw that citizens' freedom to develop their own opportunities was as important as "the rule of majority." He also observed that Americans seemed to love to organize in voluntary associations, which was not common in Europe. De Tocqueville viewed these three ideas – liberty or autonomy; a commitment to popular sovereignty (the rule of a representative government elected by a popular majority); and organizing in voluntary associations – as America's unique strengths. Another characteristic he noted was the "general equality of conditions," which was "[a]mongst the novel objects that attracted my attention during my stay in the United States."[35]

De Tocqueville also recognized that along with individualism there was an element of self-interest, but he interpreted it as "self interest rightly understood,"[36] recalling Adam Smith's thinking that separated self-interest from egoism and greed.

> The Americans, on the other hand, are fond of explaining almost all the actions of their lives by the principle of self-interest rightly understood; they show with complacency how an enlightened regard for themselves constantly prompts them to assist one another and inclines them willingly to sacrifice a portion of their time and property to the welfare of the state.[37]

De Tocqueville's reflections captured both America's mindset and self-portrait in the nineteenth century, the view that individualism and individual liberties trumped other concerns, and the belief that all citizens are equal. (He bracketed the omission of people of color, Native Americans, and women in this reflection.) De Tocqueville also saw the paradox and problems with slavery, then a driving force for a successful economy in the southern part of the country. He wrote, "The destiny of the negroes is in some measure interwoven with that of the Europeans . . . The most formidable of all the ills which threaten the future of the Union arises from the presence of a black population upon its territory; and in contemplating the cause of the present embarrassments or of the future dangers of the United States, the observer is invariably led to consider this as a primary fact . . ."[38]

De Tocqueville's contribution to corporate responsibility was in helping Americans become more aware of their culture and value priorities. Americans began to realize how much they valued individualism and independence, and how self-realization framed their philosophy of business. It was de Tocqueville's thinking (as well as Smith's, probably instigated by the Boston Tea Party), that commerce and, later, the corporation, like individual citizens, should be allowed to operate independently without government interference. While de Tocqueville's recommendation for resolving the issue of slavery – to deport the black population back to Africa – was not a popular or viable recommendation, he was prescient in predicting that race would continue to be a formidable problem for some time.

The evolution of rights in the nineteenth century

American individualism, the Declaration of Independence, the Bill of Rights, and much of the Constitution, while narrowly interpreted at first, sparked ideas concerning property rights, rights of women and children, and eventually rights of people of color and Native Americans. Because of Locke and Jefferson, an emphasis on rights began to influence the way we think about corporate responsibilities to various stakeholders. With globalization, this concern with rights has extended to multinational corporate responsibilities in the diverse cultures and settings in which they operate. But the evolution of these rights in nineteenth-century America developed in some surprisingly contradictory ways.

Rights of women and children

Although early interpretations of the Bill of Rights and the Constitution presumed that basic rights were to apply to white adult males, rumblings about rights for women and children began early after the nation's founding. When the textile industry was established in Massachusetts in the 1840s, most of the mill workers were women who often tried, unsuccessfully, to improve factory working conditions and wages. The women were gradually replaced by male immigrants who were less likely to demand worker rights.

Unlike England, there were fewer child laborers and their work was easier than that of the weavers and sewers. Still, in 1832 the New England Association of Farmers, Mechanics and Other Workingmen, a fledgling organization, publicly condemned child labor:

> Children should not be allowed to labor in the factories from morning till night, without any time for healthy recreation and mental culture, for it endangers their well-being and health . . .[39]

Not until the twentieth century, however, were enforceable child labor laws enacted.

Other such rights movements existed in the nineteenth century as well. The kernels of the movement to free slaves and to give women equal rights could be seen in the 1840s. The question of slaves and slavery, of course, was the dominant preoccupation, but there was a small but fervent feminist movement as well. Until 1848 women did not have rights to free speech, to vote, or the right to sign for property ownership. In divorce cases, men were granted the rights to keep the children and to own the property. The first American Anti-Slavery Society was founded in Philadelphia in 1833. Women were a part of the Society, but they were not allowed to speak. The first movement for women's rights was organized by Elizabeth Cady Stanton and Lucretia Mott in 1848 in Seneca Falls, New York. The Declaration of Sentiments was issued at that Convention. It advocated granting slaves, women, and men equal rights. After Seneca Falls, women were allowed to speak in public, and some states adopted laws that protected some rights of married women, including the right to keep the children in case of divorce. The right to vote was not granted to women until 1920.[40]

Slavery, civil rights, and the Emancipation Proclamation

The most important series of political events in nineteenth-century America were the Civil War, the freeing of slaves, and the presidency of Abraham Lincoln, all of which had lasting effects on the expansion of human rights, the increased role of the federal government, and eventually on commerce and corporate responsibility.

There were many sorts of arguments defending slavery. Many contended that slavery was sanctioned by the Bible so long as slaves were treated fairly. Some even argued that the black race was appointed by God to serve as slaves. According to one thinker, James Thornwell, slavery was "the universal custom of mankind."[41] He and a colleague, Matthew Bledsoe even suggested that Christianity sanctioned slavery and that those opposing slavery were atheists![42] Others adopted Jefferson's arguments that people of color were a lower order intellectually, or were naturally of a lower status than white people, to defend enslavement as no worse than using animals for labor. The famous senator from South Carolina, John Calhoun, defended slavery on the pragmatic grounds that slaves were needed to bring the economy back up for the cotton growers in the South.[43] Calhoun had some reason. Without slave labor, the large tobacco and cotton plantations in the Southern states were not economically viable. Here again, the question of efficiency and economic survival is juxtaposed against the freedoms of certain classes of people. This argument, in other forms, is sometimes echoed even today in the defense of sweatshop labor as providing jobs (albeit jobs at below local minimum wage) and cheap goods for the rest of us.

Whether Abraham Lincoln, the sixteenth president of the United States, initially was opposed to slavery remains a debate. The Civil War was begun as a war to hold together the Union of all the states, not primarily to free slaves. Midway through the conflict, however, Lincoln realized that freeing slaves was a necessary war measure, both from a Northern states rights-based abolitionist perspective and to provide much needed manpower to win against the Confederacy.[44] Hence, in 1862 Lincoln issued the Emancipation Proclamation that declared:

> That on the 1st day of January, A.D. 1863, all persons held as slaves within any State or designated part of a State the people whereof shall then be in rebellion against the United States shall be then, thenceforward, and forever free.[45]

With the end of the Civil War in 1865, one of the bloodiest wars in US history, and the adoption of the Thirteenth Amendment to the Constitution, slavery was ended permanently and nationwide. Two further amendments extended Constitutional rights to black males. The Fourteenth Amendment, ratified in 1868, granted civil and legal rights to all men born and naturalized in the United States, except Native American Indians, giving citizenship to all former black male slaves. The Fifteenth Amendment, ratified in 1870, extended them the right to vote, stating that the "right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude."[46]

The nation then engaged in reconstruction with the aim to ensure equal rights in every state. Unfortunately, the reinstitution of states' rights by Congress in 1877 virtually halted the Reconstruction Era and the civil rights movement in the South. The Southern states were then *de facto* allowed to create their segregationist policies, thus ending the idea that all men were equal in the South. This ideal would not be resurrected until 1954, nearly a century after the Emancipation Proclamation.

Nevertheless these amendments clarified that all men *should* enjoy equal rights and opened a wedge for the institution of rights for women and Native Americans. The Fourteenth Amendment was also instrumental in helping formulate the idea of the modern corporation and its legal status as an autonomous entity. But before turning to that, there are other important elements in the development of capitalism to be examined: the value of labor in the Industrial Revolution, the justification of free enterprise, and the American preoccupation with individualism as well as liberty.

Property rights and abuses

The American focus on individualism and the Lockean principle that individuals have rights to own private property fostered optimism that anyone could own property and even become a large and probably rich property owner. The Homestead Act was based on that proposition. Two phenomena, however, contradicted that ideal: the settlement of the West ignored the property rights of Native Americans; and the spread of company towns, towns owned and controlled by companies, ignored worker rights.

One of Locke's great contributions to capitalism was his claim that as human beings we have rights to own property, particularly unowned property we improve with our labor input. That notion that individuals and organizations have rights to property ownership was central to the great privately owned industrial development in the North in the nineteenth century, and the growth of the privately owned agricultural slave economy in the South, although in both instances the value of labor was secondary in acknowledgement and reward.

President Thomas Jefferson accomplished the expansion of the United States (and thus property) in 1803 through the Louisiana Purchase. Despite various criticisms from Congress, Jefferson bought the large tract of land from the French for $15 million, virtually doubling the size of the new country. The two-year exploration and mapping of this new acquisition by the scouting party of Meriwether Lewis and William Clark, blazing the trail for Western land development, itself became a famous chapter in US history. By expanding the country almost twofold, the Purchase offered new opportunities for entrepreneurs and settlers.

Thus began a long process of transferring Western land from indigenous habitation to public, then private ownership. In 1862 President Abraham Lincoln signed the Homestead Act, aimed at increasing settlements in the West. Settlers were given 160 acres of unclaimed land, which they could then purchase for $1.25 an acre, so long as they resided on the land for five years and developed it in some way through mining or farming (echoing Locke's idea of how labor enhances property value).

By 1900, 80 million acres of public land had been distributed, allowing the habitation and growth of the Western part of the United States.[47] Good transportation was essential for bringing cotton from Southern plantations to the Northern textile mills and for distributing tobacco throughout the whole country. The Erie Canal (completed in 1825) and the transcontinental railroad (completed in 1869) further facilitated the settlement and development of the West. This helped to link what was a very large expanse of territory together as one country, enabling the growth of a large, rich, and industrial nation.

The downside, of course, was that much of this land had been inhabited by Native American Indians, who had imagined that the land belonged to the spirits and was simply "lent" to those who used it. The idea of rights did influence this sad chapter of American history, though in a negative, rather than positive respect. The so-called "rights" of the Native Americans, particularly their rights to territories they had inhabited for centuries, were ignored, as Native Americans were gradually displaced, and their numbers dramatically reduced. Native Americans were not considered to be American citizens until the Indian Citizenship Act of 1924 granted them full citizenship and thus the right to vote.[48] Land ownership (except collectively through tribal trust land) remains elusive to most individual Native Americans, and controversies about the rights to develop and extract resources from the land continue to plague descendants of the displaced Native Americans, who remain one of the poorest American minorities.

The "company town"

Another anomaly in thinking about property rights and rights of workers in the nineteenth and even early twentieth century was the "company town."[49] According to Hardy Green in his book, *The Company Town*, two sorts of these towns evolved in the nineteenth century. The first was based on a paternalistic and semi-benevolent model of providing workers with adequate housing at low rents, as well as other amenities. The development of the town of Pullman in Illinois (about which more will be said in the next chapter) was one such idea. (See Plates 24 and 25.) Workers at Pullman were virtually required to live in the town, rents were cheap, and the flats and houses were adequate. There were also "inspectors" who made sure the houses were well kept and that its worker-inhabitants led respectable lives as defined by Mr. Pullman himself. This sounded idealistic, but in truth Pullman workers were virtually chattels to the town and the company. When the Pullman Company fell onto hard times, workers were laid off and rents were raised. Workers, organized under Eugene Debs, later a famous socialist candidate for president, struck but the strike failed and many were jailed.[50] So what one writer described as the "benevolent well-wishing feudalism"[51] of Pullman had failed.

A second form of the company town, according to Green, was less benevolent and more exploitative of workers. These towns were prevalent in mining communities. In a typical coal mining town, for example, the housing was rudimentary and there were few amenities. Workers were paid in company scrip that could only be used at the company store. As with the other company towns, workers who were fired lost their housing, and those who engaged in strikes were arrested and replaced, sometimes with convicts.[52]

These towns, which were widespread across the country, exemplified a growing trend: company owners – by their presumption that owners who provided jobs could do as they pleased with no regard to *worker* rights – distorted the original Lockean notion that linked workers and their labor to property rights and value. The value of labor, recognized by both Locke and Smith, was downgraded in this era of industrial expansion, and property rights superseded those of workers. Corporate responsibility, when initiated at all, was focused on fiscal returns to owners and shareholders.

Critiques of nineteenth-century capitalism

Marx and the alienation of labor

While free enterprise was growing in America and industrialization was beginning to thrive in Europe, Karl Marx (1818–1883) became one of its strongest critics. Marx's well-known, divisive views on capitalism, of course, have had a profound impact on world politics reaching into the twenty-first century; American industry and corporations have, in one form or another, had to answer to the challenge of Marx's ideas about the treatment and role of labor ever since.

From his exile in England (Marx's views were considered too radical by his countrymen in Germany) he observed both the contributions and the evils – particularly in the abhorrent working conditions in factories – of the growth of industrialization. Marx was not opposed to industrialization per se – in fact, like Adam Smith, he argued that without it most nations could not increase their wealth to meet the basic needs of their citizens. He thus viewed it as critical to alleviating the poverty that was rampant throughout Europe.[53] (Interestingly Jefferson argued that *agriculture*, not industry was the most favorable to free labor and economic growth.)

While Marx embraced Smith's theory of the value of labor (now organized and mechanized), he nevertheless found fault with the forms of democratic capitalism that grew out of Smith's thinking.

While Marx acknowledged the gain to labor of massive opportunities for employment and wages, and the value of workers' independence to choose and change jobs (versus earlier forms of serfdom), he noticed problems with this so-called freedom. During much of the nineteenth century in England and America, there was an excess of workers, working conditions were terrible, and people were paid just enough to subsist. If someone became ill or was slow, there were thousands in line to replace that person. Workers were measured by their productivity (as if machines), but one was never paid the full value of one's labor input, nor was that possible under capitalism since capital was needed to expand output. Marx called these sets of circumstances the "alienation of labor."[54]

Today the word "alienation" is seldom used to refer to labor issues. But Marx's critiques of factory working conditions, the anonymity of workers, and poor pay eventually led to labor reforms, including child labor legislation, safety reforms, and eventually minimum wage laws. The treatment of workers is still a major factor in assessing corporate responsibility, particularly in the age of multinational companies and offshore labor, and even in the United States with regard to domestic labor. Walmart, for example, has been cited for underpaying workers for overtime, not giving sufficient breaks, and discrimination, although it is now addressing these issues in a positive manner.[55] Other fairly obvious issues around questionable treatment of workers, including safety, pay, comparable worth, and sweatshop labor, are not universally resolved, but, because of Marx, these have become fundamental issues in corporate responsibility.

As a revolutionary, Marx believed that workers would revolt against the abhorrent factory working conditions and poor pay he witnessed in England, and form a new, worker-controlled political economy. His utopian ideal, communism, envisioned an industrial, moneyless state in which the community holds the property, and distribution is based on need. (Note that the Soviet Union was formed as totalitarian socialism, not the anarchical version of communism that Marx had in mind.)

One other take-away from Marx's political theory is highly relevant for corporate responsibility, particularly for the post-2008 economic meltdown. In his seminal work *Das Kapital* (*Capital*), Marx contended that one of the weaknesses of capitalism was the preoccupation with money as an end and a means. This preoccupation, he predicted, would lead to trading and leveraging money for its own sake as a commodity, and then leveraging those trades, and so on – presaging today's capital markets, options exchanges, and, of course, the bundling of mortgages, hedge funds, and the super leveraging of capital. Without a strong economic base, these sorts of markets, he claimed, could produce a "house of cards" and in a way, as evidenced in the financial meltdown of 2008, he was correct.[56]

While a truly Marxian utopia has never proven viable, his criticisms of labor and the working conditions of the early Industrial Revolution set the stage for the formation of labor unions, contemporary criticisms (and defenses!) of sweatshops,[57] minimum wage legislation, ideas of comparable worth, and some forms of equal opportunity and antidiscrimination legislation that are part of corporate responsibility today. The debate of executive pay in the United States is surely partly sparked by post-Marxist thinking. And after the 2008 meltdown, it is worth thinking about the role of capital in free markets, an idea that only lately is creeping into the corporate responsibility conversation. Both Marx and Smith would have been highly critical of what is sometimes perceived as a preoccupation with money for its own sake rather than as a means for economic growth and the expansion of economic value-added. Marx goaded defenders of free enterprise into answering such questions as "For whom is economic development a benefit?" "How is free enterprise important for a good society?" He challenged us in ways that have helped to improve and preserve viable forms of capitalism that meet moral as well as economic priorities.

Two influential ideas: Social Darwinism and the "Protestant work ethic"

While free enterprise was growing in America and industrialization was beginning to take hold, two nineteenth-century Europeans were important influences on thinking about commerce and industrial leadership: Herbert Spencer, the British Social Darwinist; and Maximillian Weber, the German sociologist and father of the term, "Protestant work ethic."

Evolution and Social Darwinism

Around the same time that advances were being made with regard to individual rights in nineteenth-century America (by way of the freeing of slaves, and the Thirteenth, Fourteenth, and Fifteenth Amendments) there was much excited talk about the most important discovery of science during that era – the British naturalist (1809–1882) Charles Darwin's theory of evolution, made public with the publication of *On the Origin of Species* in 1859. While evolutionary biology is today widely accepted as the most verifiable biological theory of human origins, it remains controversial to some ways of religious thinking in America that consider it a threat to creationism.[58] Interestingly, ideas about evolutionary theory were part of the intellectual dialogue early on in the nineteenth century. Darwin's theory built in part upon the late eighteenth-century French scientist (1744–1829) Jean-Baptiste Lamarck's thesis that over time organisms evolve from simple to very complex phenomena. But Lamarck also claimed that acquired, as well as biological traits were passed on to one's children.

The theory of evolution is important to thinking about corporate responsibility because that theory was adopted as a theory of social, as well as biological evolution. Much of that dialogue was centered on the sociologist and political thinker, Herbert Spencer (1820–1903), the father of what was later termed, not always with approval, Social Darwinism. Darwin argued, in brief, that all human beings are descendants of simpler species through a process of natural selection, wherein the strongest and most adaptable species survive. But it was Spencer, not Darwin, who coined the term "the survival of the fittest."[59] In Spencer's view, this term applied not only to natural species, but to human social evolution as well. Buying into Lamarck's thesis, he even contended that social structures and individual behavior biologically affect one's offspring, and, when further passed down, the species.

According to Spencer and his followers, social evolutionary processes take place without regulations, laws, and government mandates, since these artificial interferences affect the evolution of the human species and its social progress. Spencer wrote, "To interfere with the process [of spontaneous evolution] by producing premature development in any particular direction is inevitably to disturb the true balance of organization by causing somewhere else a corresponding atrophy."[60]

Spencer would agree with Locke that each of us has basic equal rights, but these are defined as the negative liberty to be left alone without interference. Assisting those who cannot help themselves, we will create a weak species unable to survive under different environmental and social conditions. Thus Spencer argued vehemently against vaccinations, environmental reforms such as sewers and clean water, welfare or charity, and orphanages. He also objected to wealth inheritance, since the latter, he contended, bred lazy individuals who would weaken our social structures and pass on these weaknesses to their offspring.

Spencer was one of the "fathers" of meritocracy: the view that if left alone, those who are the strongest and smartest will and should succeed; the rest will not and should not. This view lives on today in the belief that the best will or should rise to leadership positions in our organizations and our political economies, and we should look for, encourage, and reward this. Critics of antidiscrimination and equal opportunity legislation often use Spencerian arguments to claim that these regulations give undue advantage to women and minorities, the usual alleged victims of discrimination, some of whom may not be fit for offices or leadership positions.

Spencer was an early libertarian. He had what one might call a "Night Watchman" view of the state[61] (i.e., one that values negative rights). Spencer was against taxation, public services, public health measures, federal money and banking, and even public education. This is not a form of genocide, although Spencer was accused, wrongly, of that. Rather, it is a radical individualistic view of human nature coupled with a neo-Darwinian belief.

What is striking about Spencer's philosophy, and most germane to corporate responsibility, is his own encounter with the limits of laissez faire. Spencer believed that the most evolutionarily progressive joint-stock company should be run democratically so that each individual could be free to control his choices and work. But he found that most companies were run like the military with little in the way of liberties for managers and workers. Spencer considered the factory system at the end of the nineteenth century to be despicable because it restricted a worker's ability to make choices. "The wage-earning factory worker . . . has rarely an opportunity of doing anything more than decide in what mill he will pass the greater part of his dreary day. The coercion of circumstances often bears more hardly on him than the coercion of a master does on one in bondage."[62] Thus while social progress is sometimes made through laissez-faire conditions, Spencer found two debilitating circumstances – management hierarchies and poor labor conditions – that interfered with the social evolution of human beings to have the liberty to succeed or fail.[63]

With the exception of establishing democracy in the workplace, many American industrialists adopted Spencer's thinking, including the American industrialist, Andrew Carnegie (1835–1919), about whom we shall read more in the next chapter. Carnegie, a poor and poorly educated Scottish immigrant to the United States, became an industrial titan, eventually selling his company to US Steel. He amassed great wealth but, agreeing with Spencer that inheritance is ruinous to character, he gave most of his money away, primarily to education and libraries. Carnegie wrote:

> There are but three modes in which surplus wealth can be disposed of. It can be left to the families of the decedents; or it can be bequeathed for public purposes; or, finally, it can be administered during their lives by its possessors . . . Why should men leave great fortunes to their children? If this is done from affection, is it not misguided affection? Observation teaches that . . . it is not well for the children that they should be so burdened. Neither is it well for the state.[64]

While Social Darwinism in its radical formulation may seem passé, its ideas – of radical individualism, a minimum state, and the ideal of meritocracy – are still evident today. Spencer's influence appears in arguments for the idea that companies and individuals have few responsibilities other than their own self-interests, reducing corporate responsibility to managing the interests of shareholder-owners, and business ethics to fiduciary accountability. There are a number of advocates of the idea that human rights should be defined merely as negative rights – the liberty to do as one pleases, so long as it does not interfere with anyone else's liberty, with no positive claims against others except to be left alone.[65] This view reduces corporate responsibility to the obligation not to deliberately harm others if that negatively affects their individual freedoms, and makes no requirements to create value-added for any stakeholders other than shareholders, even for employees or customers, except when it serves to improve the interests of the company and its owners.

Puritanism and the "Protestant work ethic"

Ideas drawn from science – from Social Darwinism, to the value of technological innovation and the ideal of progress – have played an important role in the development of American society. Religion, Puritanism in particular, also produced deep and influential undercurrents in American values affecting government, commerce, and culture in the eighteenth century.

Puritans came to Plymouth, Massachusetts in 1620, as a result of the Protestant Reformation in England, to gain religious freedom and founded what today is the Congregational Church in the United States. Their conservative religious views and initial defense of separation from the Church of England – like other Protestants, they were convinced that it had not adequately separated itself from the Catholic Church – likely influenced the Constitutional division of church and state in the United States.[66] Today, remnants of Puritanism are reflected in conservative, secular constructions of corporate responsibility.

The Puritan ethic was rooted in: the belief that only a select few would be included in salvation; the encouragement of direct personal religious experience; strictly ascetic personal practices; and non-ritualized worship services. Many of the Puritans were Calvinists (the highly strict line of beliefs emphasizing predestination over man's free will). They advocated a philosophy and values later defended by Max Weber (1864–1920), who famously coined the phrase "Protestant work ethic."

Max Weber made essential contributions to the theory of social science, and to thinking about corporate responsibility. Weber, among others, raised an important critique of "positivism" – the methodology of allegedly theory-free empirical observations – questioning whether it was the appropriate methodology for the social sciences.[67] A positivist would likely exclude corporations from moral analysis, for example, since as organizations they are unobservable social actors. Thus corporate responsibility would be reduced to a set of individual responsibilities, and we could not hold an organization legally or morally liable. Weber sought to free us from this positivist, individualist analysis of corporate responsibility.

In his last work, *Protestant Ethic and the Spirit of Capitalism*, Weber formulated an enduring view of free enterprise, both as a response to Marxism and, in part, to explain the spirit of modern Western capitalism. He concluded that rational asceticism, hard work, wealth accumulation, and frugality best describe, if not prescribe the underlying spirit and success of modern capitalism, and he traced their origins to Calvinist Protestantism.[68] Weber argued, in brief, that the free enterprise industrialized system best exemplified the virtue of a rational economy, a view later reiterated by Frederick Taylor (1856–1915), a leading thinker of the Progressive Era (see Chapter 3, p. 111).

What was distinctive about modern capitalism, Weber pointed out, was that it was "the rational capitalistic organization of (formally) free labour."[69] By this he meant that modern capitalism had evolved through the development of private property, capital investment, the organization and industrialization of a free labor force, and the rational development of technologies, administration, and book-keeping (what today we call accounting practices). Capitalism functioned, and functioned well only under a well-developed rule of law; thus the most industrialized capitalist nations were those with well-developed governance structures.

Moreover, according to Weber, capitalism and capitalists are driven by the desire to accumulate wealth. "Man is dominated by the making of money, by acquisition as the ultimate purpose of his life."[70] However, "[e]conomic acquisition is no longer subordinated to man as the means for the satisfaction of his material needs."[71] In other words the spirit of modern capitalism and its distinguishing moral feature was the combination of accumulation, hard work, *and* frugality. The ideal moral executive was a person bent on creating great wealth for its own sake systematically and rationally without any self-interest in that acquisition for his own material wellbeing. So the rational capitalist, Weber argued, made sure he paid labor adequately for its contributions both to encourage and reward skills and to develop a sense in all workers that laboring for its own sake was its own reward. Thus the origin of the phrase "work ethic." Corporate responsibility, then, was the responsibility of a firm to create conditions where labor works its best to create wealth and is self-rewarded for those efforts. Wasting time was thus "the first and in principle the deadliest of sins."[72]

Weber then made an argument that was more controversial. He traced the origins of modern rational capitalism to *Protestant* Puritanism, contending that it was the Puritans and their Calvinist ancestors, not the Jewish or Catholic business people, who provided the "moral energy"[73] behind the rational asceticism (hard work, wealth accumulation, and frugality) that was the underlying spirit of modern capitalism. It was from the Puritan sense of "rational conduct on the basis of the idea of a calling"[74] that individuals developed a commitment to doing "good works" – the foundation of rational capitalism. This asceticism turned with all its force against one thing: "the spontaneous enjoyment of life and all it had to offer."[75] Thus the phrase "Protestant work ethic" was born.

Despite obvious religious biases, what was important was the phrase "work ethic," the thought that working was an end in itself, but only under the conditions of capitalism. Marx thought work was an end in itself as well, but only under conditions *alien* to capitalism. For subsequent thinking about corporate responsibility, meaningful work and reward became important topics, particularly in the late twentieth century (by which time it was divorced from any particular religion). Weber's concern was that capitalism would be identified with gross materialism and the accumulation of wealth for the sake of the individual alone and not for its own sake. This anticipated, in this century, the infamous quotation "Greed is good" – certainly antithetical to Weber's thinking.

American idealism and utopian communities

While religion and moral uprightness have influenced ideas about the American work ethic and, arguably, industry and corporate culture, they also sometimes led more directly to the formation of business. American idealism, the value of independence, and the capacity for self-invention in a relatively new nation produced a number of visionaries who sought to create more perfect societies. Before the Civil War, Americans of various faiths, beliefs, and political persuasions experimented with alternative communities – utopian schemes that would supersede the flawed social arrangements of the day. Some did so out of a millennial vision of Christianity, seeing the Judgment Day at hand. Others were secular and advocated various non-Marxian socialist models of economic organization to combat the growing ills of industrialization. Still others mixed Christian ethics, socialist economics, and radically new ideas about gender, sexuality, and family life.

In 1848, one such visionary, John Humphrey, devised an elaborate new version of Christianity proposing that perfection could be achieved on Earth. Noyes combined a deep religious devotion with a new version of marriage that allowed for multiple partners – "complex marriage," he termed it. His Oneida Community rested on an economic system that used careful planning to rationalize agricultural and craft production, including a board of directors composed of the functional heads of the community's various enterprises, and a system of capital budgeting to project investment needs for the coming year. Yet production was also democratic in the sense that anyone could take on any job if they could qualify, and managers were simply the most skilled workers in that area.

Although most of the experimental communes failed or fell apart by the Civil War, the American experimentation with alternative ways of organizing society continued. A number of the most famous of the old collectives, such as Oneida, refashioned themselves essentially as business enterprises after the Civil War. The Amana Community of Iowa, founded in 1854, retained much of its reformist spirit in the decades that followed the Civil War, but survived by technological ingenuity that led to a highly successful product line: the Amana refrigerator and other household appliances. These early experiments with alternative communities led to further important innovations in business models, as discussed in the next chapter.

From rights to responsibility

The chapters to follow will pick up the threads of the themes identified in this chapter, as they tell the history of corporate responsibility. These include the advocacy of human rights, the value of labor, the Industrial Revolution, the evolution of free enterprise, and the emergence of the modern corporation. That human beings are equal and should have basic rights to life, liberty, survival, and property ownership became part of the moral ground of eighteenth- and nineteenth-century thinking, at least in England and America. "Rights talk" today is assumed as part of the discourse in business and corporate responsibility.

Positive rights, as Jefferson spelled out in the Declaration of Independence, and merely the right to be left alone, as Spencer proposed, are both important to thinking about corporate responsibility. For Smith, Jefferson, Marx, Lincoln, and Spencer, the conclusion that all human beings (or, in some cases, males) are equal by birth and have equal rights to liberty, however defined, is a dominant theme. While it is easy in hindsight to criticize these thinkers for not including Native Americans, people of color, and women, Locke, Smith, and Jefferson nevertheless set the parameters for strong justifications, later, for the expansion of rights to all living human beings. Slavery, the abolition movement, the Civil War, and the development of a more nuanced Constitutional basis for human rights (with the Thirteenth, Fourteenth, Fifteenth, and later amendments) were seminal events that laid the groundwork for a rich notion of corporate responsibility today.

The origins of American industrialization and private enterprise and the division between the public and private sectors, as shown in this chapter, are all grounded in a substantive theory of human rights. Also critical to the story are the importance of labor, the labor theory of value, which translates into the work ethic explained by Weber. At the same time there is the ongoing presence and third “voice” of the public square so keenly observed and articulated by de Tocqueville.

The next chapters follow the history of corporate responsibility from 1880 onward and the events and ideas that shaped that history, exploring: how they became part of the institution of capitalism; the legitimization of the corporation and its effect on the social contract; the struggles between power and responsibility; the evolving responses to corporate accountability; the ends for which a company is legitimized, and the various means to achieve these ends. These trace the evolution of answers to this book’s key questions: *To whom, for what, and how is the corporation responsible?*