The modern corporation defines our world. The invention of the modern corporation has allowed us to become the wealthiest people in all of human history. It has also allowed us—in just 100 years of industrial enterprise—to march to the brink of collapse, rapidly destroying the planet as a place suitable for human habitation.

Today, when the top 2 percent of us hold as much wealth as the bottom 90 percent, it is an open question whether our democratic form of government can survive in any meaningful way. Here again, corporations are key. How to control the behavior of corporations has become the central question we must all address.

A corporation is a group of people who have been granted a bundle of rights and privileges guaranteed by the government. The government grants those rights and privileges by issuing a piece of paper, a certificate of authority called a corporate charter.

Before there was a United States of America, kings granted corporate charters, creating organizations such as the East India Company and the Hudson’s Bay Company.

As American colonists fought to throw off the rule of English kings beginning in 1776, and created the world’s first constitutional democracy in 1789, they carefully placed the right to charter corporations in the hands of state legislatures. Today every state legislature still has the power to grant, to amend, and to revoke, corporate charters.

Corporations chartered in other states are called foreign corporations. Corporations chartered in other nations are called alien corporations. Legislatures allow foreign or alien corporations to go into business in their states through the same chartering process.

An important new booklet,[1] published this month, describes some of the changes that have taken place in corporate rights, privileges, and behavior, during the last 200 years. Called TAKING CARE OF BUSINESS: CITIZENSHIP AND THE CHARTER OF INCORPORATION, by Richard Grossman and Frank T. Adams, the booklet describes how citizens controlled corporations before the civil war of 1861. Up to that time corporations were chartered for a specific limited purpose (for example, building a toll road or canal) and for a specific, limited period of time (usually 20 or 30 years). At the end of the corporation’s lifetime, its assets were distributed among the shareholders and the corporation ceased to exist. The number of owners was limited by the charter; the amount of capital they could aggregate was limited. The owners were personally responsible for any liabilities or debts the corporation incurred, including wages owed to workers. Often profits were specifically limited in the charter. Corporations were not established merely to “make a profit.” Each corporation was chartered to achieve a specific social goal that a legislature decided was in the public interest.

Early Americans feared corporations as a threat to democracy and freedom. They feared that owners (shareholders) would amass great wealth, control jobs and production, buy the newspapers, dominate the courts and control elections.

After the civil war, during the 1870s and 1880s, these fears began to be realized. Owners and managers of corporations pressed relentlessly to expand their powers, and the courts gave them what they wanted. Perhaps the most important change occurred when the U.S. Supreme Court granted corporations the full constitutional protections of an individual citizen. Congress had written the 14th Amendment to the Constitution to protect the rights of freed slaves, but the court in 1886 declared that no state shall deprive a corporation “of life, liberty or property without due process of law.” Now corporations had real legal muscle.

By the early 20th century, courts had limited the liability of shareholders; corporations had been given perpetual lifetimes; the number of owners was no longer restricted; the capital they could control was infinite. Some corporations were given the power of eminent domain (the right to take another’s private property with minimal compensation to be determined by the courts). Of course a corporation cannot be jailed. It cannot even be fined in any real sense; when a fine is imposed, it is the shareholders who pay it and it becomes just another cost of doing business.

With limits on liability, perpetual life, and the same rights as every citizen, corporate growth was guaranteed.

A corporation brings together three groups of people—investors (shareholders), who are the legal owners; labor; and management, which includes a board of directors.

In theory the shareholders are responsible for all decisions. But a recent book on the modern corporation by Robert Monks and Nell Minow[1] makes it clear that this theory has been an empty fiction for many years. Ownership is now fragmented into shares so small that “the concept of ownership has been diluted to the point of disappearance.” Increasing the number of shareholders reduces the incentive and ability of each shareholder to gather information and monitor management’s performance.

Historically, labor has not sought control of decision-making, leaving that to management. Instead, labor has settled for a growing share of profits. In the past decade, labor’s share and its power have steadily diminished.

The board of directors is appointed by management. Its compensation is set by management. The average corporation director puts in less than three weeks each year but draws compensation ranging from $20,000 to $60,000 or more.

“But since they are selected by management, paid by management, and perhaps most important—informed by management, it is easy for directors to become captive to management’s perspective,” say Monks and Minow.

Management has the Board of Directors in its pocket. This leaves but one remaining check on management—the shareholders. Management is directly accountable to the shareholders; at least that is what the theory says. But the reality is quite different. Monks and Minow trace, step by step, court case by court case, the disintegration of accountability in the modern corporation. Particularly during the 1980s (when Monks was a top Reagan appointee), corporate managers cut their last remaining ties of accountability to shareholders.

People like to think that the power of management is balanced by the power of shareholders. "This remembered sense of balance is so powerful that it persists despite unmistakable proof that it no longer exists," say Monks and Minow. "Management accountability to shareholders is more than an economically beneficial arrangement; it is the basis on which we, as a matter of public policy, give legitimacy to the impact that private entities have on our lives. We would no more create a private entity without accountability than a public one; we don’t want corporate dictators any more than we want political ones. But today, any remaining accountability is little more than a vestige of the original contract, the last remaining trace of the myth that no one seems to want to give up.”

Monks and Minow describe in detail the tools that corporate managers developed during the 1980s to diminish the decision-making power of shareholders. They argue persuasively, and in detail, that today the modern corporation is run by management chiefly for the benefit of management. Though shareholders continue to benefit from profitable decisions, shareholders no longer call the shots. Management rules the roost.

But even management is not entirely in control. Monks and Minow argue at length that the modern corporation has a life and a logic all...
its own. The main goal of a corporation is to gather benefits for its members, and to pass costs on to others—to "internalize" benefits and to "externalize" costs.

"Despite attempts to provide balance and accountability, the corporation as an entity became so powerful that it quickly outstripped the limitations of accountability and became something of an externalizing machine, in the same way that a shark is a killing machine—no malevolence, no intentional harm, just something designed with sublime efficiency for self-preservation, which it accomplishes without any capacity to factor in the consequences to others."

What about government regulation? Monks and Minow argue that governments do not have what it takes to control corporations. "In fact, government is now as much a creation of business as the other way around," they say. Historically, they argue, corporations have turned government controls into corporate shields. And: "...the actual impact of all the laws, all the regulations, and all the bureaucrats on large corporations is surprisingly small."

What is left?

Grossman and Adams suggest that anyone concerned about justice—anyone skirmishing with corporations to stop them from doing harm—should focus attention on the corporate charter, the original source of control created for us by the earliest Americans—a source of power still available to us today, if we will only explore it and put it to use.

All state legislatures still have the right to grant, to amend, and to revoke corporate charters. Legislatures are still responsible for overseeing corporate activities through the chartering process.

Citizens can define and control corporations. It will require some homework, examining state histories and precedents, examining the charters of existing corporations, thinking creatively about how to assert control, focusing, and organizing.

Grossman and Adams say, "Our right to charter corporations is as crucial to self-government as our right to vote. Both are basic franchises, essential tools of liberty."

WE STAND IN PERIL OF LOSING OUR LIBERTY AND OUR LIVES—THE HEALTH OF OUR PLANET AND OF OUR CHILDREN—if we do not learn to control corporate behavior. THIS MUST BECOME A CENTRAL FOCUS OF OUR WORK, LOCALLY, NATIONALLY, AND WORLDWIDE. THE BEHAVIOR OF CORPORATIONS IS CENTRAL TO EVERY DANGER THAT THREATENS US. THERE IS NO MORE CRUCIAL CHALLENGE THAT WE FACE

--Peter Montague


Descriptor terms: corporations; corporate charters; shareholders; labor; corporate accountability;