Corporations, Democracy, and the U. S. Supreme Court

Mason Gaffney, February 24, 2010

On Jan 21 2010 our High Court shocked Americans by ruling in *Citizens United v. Federal Elections Commission* that a corporation may contribute unlimited funds advertising its views for and against political candidates of its choice – in practice, the choice of its CEO or Directors. The ideas behind this are that a corporation is a "legal person", with all the rights (if not all the duties) of a human being; that as such it has a right of free speech; and that donating money is a form of speech. Already K&L Gates, a top Washington lobbying firm, is advising its clients how to funnel money through lobbying groups or "trade associations". This culminates a long series of actions and reactions (decisions, legislative acts, and electoral results) that bit by bit have raised the power of corporations in American economic and public life. Herein I will take the fall of the corporate income tax as a simple metric of the power of corporations. Nothing about corporations is that simple, however, so I must also touch on other aspects of power.

Some critics react apocalyptically, calling *Citizens United* a death blow to democracy; some cynically, calling this merely making *de jure* what is already *de facto*; some legalistically, saying the Court ruled more broadly than justified by the case brought before it. Supporters, naturally, take this contentedly as righting an injustice of long standing. Some economists would applaud this as a step toward sunsetting the corporate income tax, by electing more candidates beholden to corporate money. Many of them – not all – have been seeking this end for years in their learned journals and op-eds. Even the late Wm Vickrey, otherwise an egalitarian, gave high priority to this change.

This writer does not applaud either sunsetting the tax, or this step. I agree with Joseph Stiglitz that the corporate income tax is mainly a tax on economic rent. That means that a high tax rate does not destroy the tax base. Martin Feldstein, an economist who is as conservative as Stiglitz is liberal, also sees the corporate income tax as a tax on economic rent (JPE 85(2); April 1977, p. 357). It is not the ideal form of such a tax, but it beats any tax on work, or sales of the necessities of the poor, or value-added, or gross sales. Both Vickrey and Stiglitz rate high in the profession and garnered Nobels, so we cannot simply appeal to "authorities". To prepare our minds, let us review some milestones in the history of corporations, especially in America.

This is not a paper on the theory of tax incidence. Such a paper is needed, but would take a heavy tome, most of it devoted to fine-spun and pretentious theories that appear in academic journals, and which fail to convince because the authors are weak on distinguishing land from capital. My own postulates here, in brief, are 1) that corporations own a large fraction of the wealth in the country; 2) much of that wealth is land; 3) taxes that do fall on capital are in part shifted to land; 4) pure land taxes would be better but are not the subject here; and 5) payroll taxes are worse and must bear most of the burdens that are shifted off corporations.

Roman Law knew no such thing as corporate personhood. It grew in Europe after the 12th Century, to be used by bodies both civil (cities and guilds) and ecclesiastical, including universities. "The church" was a huge set of interlocking corporate bodies. Being immortal, corporations would progressively agglomerate land and power, leading to restrictions like the English Statutes of Mortmain (1279 and 1290), and direct attacks like confiscations as by Henry VIII. So when America rebelled in 1776, Europe had had long experience with corporations and relevant law.

England, when it was our "mother country", gave the East India Company extraordinary powers. It was a private corporation acting as the "chosen instrument" of the Crown. Others may investigate which of these powers co-opted the other, but they were a strong combination. The Company's powers included the governance of India, supported by the royal military; and a monopoly of tea export, enforced by the British Navy. Americans' early experience with this monopoly corporation was hostile: we were its angry exploited customer. Its monopoly power, coupled with Lord North's excise tax on tea, led of course to the "Boston Tea Party", an event that modern "tea-baggers" seriously misinterpret as they use it as a symbol to use against all taxes. While they are at it they may unthinkingly support politicians who support corporate monopolies. And yet, "It was the danger of this (tea) monopoly rather than the tax itself, only 5 pence to the pound, that aroused resentment in the colonies" (Henry Steele Commager, *Spirit of Seventy-six*).

Some of the original 13 colonies were founded by chartered companies resembling corporations, with powers to grant land. A goal of the American Revolution was to strip these original governments of their corporate powers , and redistribute lands they had granted to their favorites. Descendants of these dispossessed Loyalists and Tories, many living in Canada, occasionally still remind us that we should compensate them as a matter of "honor". Data are vague, and historians coy on the matter, but something like 1/3 of all early colonial land titles changed hands in this period. Hostility ran unusually high: in later wars the winning Americans have rarely confiscated the lands of the losers – unless they were Indians, and not always then. (But see Chandler, Alfred, *Land Titles: a Tale of Force and Fraud*, and J. Franklin Jameson, *The Revolution as a Social Movement*.) If the Dutch-granted "patroon" spreads in the Hudson Valley survived there were special reasons: British troops dominated the lower Valley; Holland became our ally and financial angel during the war; and Robert Livingston, a major landholder, was an influential Revolutionist himself. It was not the national government that confiscated Tory lands, but independent local militia seizing the occasion. Our "Minute Men" were the guerillas then. "The Revolution was in the hearts and minds of men." – John Adams. The British controlled many major cities, but militia controlled the countryside, and made the most of it.

> "The girls in Boston are dancin' tonight; the gol-durned redcoats are holdin' 'em tight
> When we git there we'll show them how, but that ain't a-doin' us no good now"

What did "do them good" and motivate the militia was seizing lands from Tories. The Continental Congress had little tax power. Its currency fell to 2 cents on the dollar, and was "not worth a continental". Commander George Washington lost every battle against the redcoats until Yorktown. He was elsewhere when the Green Mountain Boys, organized to validate their "Wentworth" land grants, enabled General Horatio Gates to turn the tide at Saratoga:

> "Johnny Burgoyne in the wilderness, got his army in an awful mess
> The farmers got mad at the British and the Huns, and captured ten thousand son-of-a-guns"

It was southern militia that drove Cornwallis into his refuge at Yorktown:

> "General Washington and Rochambeau, drinking their wine by the firelight's glow,
> Big Dan Morgan come a-gallopin' in, we got Cornwallis in the old cowpen"
> – (*Soldiers' Joy*)

(On a personal note, the site of the Battle of Cowpens is Gaffney, SC.) Even at Yorktown, de Grasse's French fleet and Rochambeau's French troops and Parisian money played major roles, along with LaFayette, Polish Pulaski and German von Steuben.

After the Revolution, naturally, Americans were not eager to restore the authority of colonial corporations. A common attitude in this era was that corporations are not persons because "They have neither souls to be damned nor bodies to be kicked": they are outside and above social sanctions, sacred or profane. Corporations are "soulless", and their directors' only social responsibility is to the shareholders (or, as it often turns out, to themselves and their top brass).

The U.S. Constitution did not mention corporations, pro or con, and left them to be chartered by the states, as they still are. It has been the U.S.S.C., using its power of judicial review, that gradually built up corporate power (even though the 5th Amendment limits Federal, not state powers). The Constitution does not mention judicial review, either – it is a power that the Court under Chief Justice John Marshall gradually assumed from an early date and has made into a tradition, step by step. A leading case is *Marbury v. Madison*, 1803. Marshall was a Federalist politician and a disciple of Alexander Hamilton, whose chief concern was upholding "property", including property in land and slaves. He had been Secretary of State under President John Adams. Adams when a lame duck appointed him as Chief Justice in order to offset the victory of Thomas Jefferson and his popular party – not that Jefferson in power was as radical as the ringing words he wrote. Marshall was wily and took power effectively over a long tenure, 1801-35. His was the original "Activist Court" that propertied people have supported until it briefly became a pejorative to be used against the Warren Court.

The next milestone was the decision in *Trustees of Dartmouth College v. Woodward*, 1819. The Governor of New Hampshire, William Plumer, and his Legislature sought to take control of Dartmouth College to turn it from an elite private institution into a public university for a wider student body. Dartmouth had been founded by Eleazar Wheelock in 1769 under a corporate Charter from King George III – not a popular name in America. The original purpose was to "save" and instruct the Indians in European ways like drinking rum and privatizing lands.

> *Oh, Eleazar Wheelock was a very pious man;*
> *He went into the wilderness to teach the Indian,*
> *With a gradus and a Parnassum, a Bible, and a drum,*
> *And five hundred gallons of New England rum. – (Dartmouth student song)*

Governor Plumer believed that the Revolution had transferred sovereignty from the King to American legislatures, so he might take control by appointing new trustees.

Daniel Webster, representing the trustees, prevailed upon John Marshall to validate King George's charter on the grounds that a privilege, once given, was a contract in perpetuity and could not be withdrawn –lawyers may cavil over the wording. The effect on academic freedom was to subject faculty members completely to the will of self-perpetuating boards of trustees, a matter covered in this writer's *The Corruption of Economics.* The effect on privileges was to give them *sanctity* (a theological concept), however they originated and whatever damage they do to society at large. Before that the grant of a corporate charter was seen as a *privilege*, not a right; it was a license, not property, something more like your drivers' license, or a license to sell liquor or cut hair. It was subject to conditions, and revocable without compensation. After *Dartmouth* it had the best of both worlds: it was still not taxable as property, but otherwise protected under the 5th and later 14th Amendments.

The next milestone was in 1832 when Andrew Jackson defied the High Court in *Worcester v. Georgia*. Apparently Jackson never actually said "John Marshall has made his decision, now let him enforce it", as often quoted, but that was the idea. Jackson was morally wrong, by modern values – he and Georgia aimed to force the Cherokees from their ancient homeland. Marshall was probably more concerned with the principle of upholding ancient land tenures than with helping the Cherokee people. The point for us here is that Jackson prevailed, after various face-saving moves, demonstrating that a strong assertive President can face down a Chief Justice when he thinks the stakes are high enough. This is relevant today, when *Citizens United* has suddenly raised the stakes high enough indeed.

The next legal milestone was the dreadful *Dred Scott* decision by Roger Taney's Court, 1857. *Dred Scott* demonstrated two things we should note today. One is the tendency of the Court, left to its own devices, to uphold "property rights" of whatever kind, even in human flesh, in disregard of human rights like personal freedom. The other is the tendency of median Americans to react against the Court when it overreaches.

The reaction to *Dred Scott* produced, besides an awful war, *The Emancipation Proclamation* in 1863. This was an extra-legal act that Lincoln felt strong enough to perform after Union troops blocked Lee's invasion at Antietam, and no slave-owner felt strong enough to challenge as invading the "sanctity of property", and no Court to review. Following the war came the Radical Republican Congress that pushed Reconstruction in the South, and the 13th, 14th, and 15thAmendments establishing the freedmen as citizens with full rights. These were radical acts under radical leaders like Thaddeus Stevens, leading towards considerable taxation of real estate in the south, temporarily.

Next came the Grant Administration, 1869-77, filled with bribery scandals and giveaways of public lands to private corporations, mainly to build railways. The Desert Land Act of 1876 also rationalized a giveaway of vast lands plus the Kern River, supposedly to promote irrigation. Mark Twain and Charles Dudley Warner labeled it "The Gilded Age" (the first one), and "The Great Barbecue". These scandals were on a greater scale than anything the states had done in the earlier Canal Boom. Greed in corporate forms rushed in to exploit the sacrifices of millions of soldiers in the bloodiest war in U. S. history.

In 1871 an obscure San Francisco journalist, Henry George, published *Our Land and Land Policy*, with a map showing the extent of the railroad land grants, painting them as broad swaths comprising a large fraction of the west. He somewhat exaggerated their extent since these solid ribbons were actually checker-boarded, but he made his point. Historians like Paul Gates now credit him with being first to sound the alarm, slowly resulting in various political reactions like the Populist, Progressive, and Single Tax movements.

Meantime, propertied northerners recaptured the Republican Party and joined forces with propertied southerners to install Rutherford Hayes as President in the disputed election of 1876 (seethe writer's "Florida Voting, The Stolen Election of 1876, Abram Hewitt, Columbia University, and Henry George", *Groundswell,* November-December 2000). Thus ended Reconstruction and Radical Republicanism.

In 1873 came a great crash, starting a 10-year depression that slowly turned minds again against corporations and the enormous land grants that the "robber barons" controlled. These bided their time until recovery and complacency let our High Court rule in *Santa Clara County v. The Southern Pacific Railroad*, 1886, that the corporation was a "legal person" within the

meaning of the 14th Amendment. The Court hijacked the Amendment, passed to protect the rights and properties of former slaves, to protect corporations.

Critics also say that the U.S.S.C. did not even include that in its decision, but some clerk wrote it into the headnotes. This may have been more sneaky than accidental, but The High Court has reaffirmed this "precedent" since. *Santa Clara* began a legal process of endowing all corporations with personhood, so no state can deprive them of life, liberty OR PROPERTY, so there. The tenures deriving from the notorious bribery scandals of the Grant years are now above the reach of any state. They are endowed with "Sanctity": you offend God Almighty even to question them! That was quite a coup.

To be sure the change was not that sudden. The law evolves incrementally. As late as the 1970's Justices Rehnquist and White could say that a corporation is just "a creature (creation) of the law", without all the civil rights of natural persons. The ideas finally crystallized in the *Citizens United* decision of 2010 have been bruited about tendentiously for a long time in influential circles, without becoming law. The new decision, however, draws a clear new line in the sand, and will not be ignored.

The reaction to the *Santa Clara* kind of judicial activism was voter receptivity to another wave of reform. History books dwell on changes at the Federal level during The Age of Reform, led by the Populist and Progressive Movements; but the unsung part of reform was that states and cities and counties and school districts struck back at land barons by raising state and local property taxes to finance public schools and public works of many kinds (Paul Gates, *The Wisconsin Pine Lands of Cornell University*, and many other works). 1880-1920 was the golden age of urbanization in the U.S.A., and growing cities taxed property to provide schools to make people literate, and many services like sanitation and water supply to make urban life possible. Henry George was a leader of this movement. Princeton historian Eric Goldman, author of *Rendezvous with Destiny*, speaks to that. "An enormous number of men and women … who were to lead 20th Century America in a dozen fields of humane activity wrote or told someone that their whole thinking had been redirected by reading *Progress and Poverty* …no other book came anywhere near comparable influence … (it) magically catalyzed the best yearnings of our grandfathers and fathers" (Letter to *Henry George News*, Centennial issue,1979).

At the Federal level many dissidents joined to form The Populist Party, winning one million votes and 22 electoral votes for their little-known presidential candidate, James Weaver. In the 1894 by-elections they polled even 50% more votes. They elected six senators and several congressmen and enough influence to pass a desired progressive personal income tax that included a tax on property income. In 1896 they merged with the Democrats, cast out old leaders like Cleveland and went with Bryan and his brain, John Peter Altgeld. Republicans, trolling for their votes, became Progressives themselves under T. R. and Wm. H. Taft, followed by Progressive Democrat Wilson, so for two decades we had two Progressive Parties. Many Progressive Republicans and their ideas even survived the postwar reaction against Wilson. Few have called Andrew Mellon, powerful Treasury Secretary who virtually ruled Presidents Harding, Coolidge and Hoover, a Progressive, and yet he wrote in 1924 that we should tax property-derived income higher than wage income (*Taxation: the People's Business*).

Of course in 1894 our High Court had overturned the Populist personal income tax on the grounds that it included a tax on real estate income, which they construed as a "direct" tax (*Pollock v. Farmers' Loan and Trust Co.*). The U.S. Constitution reads that a "direct" tax must

be apportioned among the states according to population, which the 1894 tax was not. This setback, however, only led first of all to the corporate income tax of 1907, a major blow to corporations, and then in 1913 to the 16th Amendment and the personal income tax. In 1916 the first substantial income tax bill under the amendment exempted most wage and salary income, making this more a tax on property income even than envisioned in the Act that the 1894 Court had disallowed.

In 1912 Hiram Johnson won as Governor of California, defying and breaking (some of) the power of the Southern Pacific Railway Corporation. As part of this movement before and after Johnson, the California Legislature enabled the growth of Irrigation Districts with strong powers to tax lands to pay for remarkable systems of water supply, under which California quickly vaulted into our leading farm state. It was a striking object lesson in how radical Progressive policies of the right kind can attract industry, people and capital. The U.S. High Court had laid the foundation for this in its validation of District powers in *Fallbrook I. D. v. Bradley*, 1896.

Single-taxers were active and visible in the Progressive Movement. Henry George, Jr., published *The Menace of Privilege* in 1905. He included the corporate form among the four most threatening privileges. John Z. White, itinerant single-tax lecturer, was a product of this era, later to make him publish his attack on the Dartmouth College Case Decision in *Public and Private Property*. William Gorgas rose to Surgeon General of the Army, soon to lead the fledgling Single Tax Party (until he died in 1920). Woodrow Wilson placed at least four single-taxers in his Cabinet, including Newton Diehl ("New Deal") Baker and Louis F. Post. Congressman Tom Johnson, later Mayor of Cleveland, helped assure that the income tax act of 1894 included land and dividend income in its base – otherwise we would have had a pure payroll tax and the High Court would have blessed it. Several cities had single-tax mayors, as documented in this writer's *New Life in Old Cities*. Chicago and Milwaukee seized back their waterfront lands from railroad corporations to make their beautiful parks. Single-tax Congressmen Henry George, Jr. and Warren Worth Bailey worked with Claude Kitchin and a socialist or two to frame the income tax act of 1916 that virtually exempted wage and salary income (Elliot Brownlee, Proceedings of Am. Phil. Soc. 129(2): 173-210).

By 1917 the old Populists could say they had achieved most of their goals through other Parties. The postwar reaction of 1920, however, was all the Court needed to rule in *Eisner v. Macomber*, 1920, that the I.R.S. could not tax unrealized capital gains without another Act of Congress – an Act that Congress never provided. This has provided a major loophole ever since, both for corporations and their shareholders.

Meantime in England a parallel movement led by the "Radical-Liberals" installed in series three PM's: Henry Campbell-Bannerman, Herbert Asquith, and David Lloyd-George. In 1909 Lloyd-George, then Chancellor of the Exchequer under Asquith, introduced his radical "People's Budget", including a token tax on the hitherto untouchable ancestral lands of the Lords. When the House of Lords vetoed it, Asquith demonstrated how a strong executive can overawe such a body: he prevailed upon King Edward VII to threaten to "pack" the House by creating new peers. The Lords bowed to superior fire power and passed the budget – an event known since as the Constitutional Revolution in England. Americans were watching.

Within the economics profession a new school of thought, "Institutionalism", flowered for many years. Veblen was a leader of thought, although he shunned any active role. Professor John R. Commons of Wisconsin developed the thought at length – he saw the corporation as much

more than merely another “economic agent”, as the neo-classicals would have it. Commons was also more a single-taxer than not, although shunning purism. Adolph Berle and Gardiner Means’ 1933 book on *The Corporation and Private Property* made a strong impact on thinking at a time when corporations were on the defensive, justifying a raft of new regulations only dismantled in the recent Age of Milton Friedman. These are likely to be re-legislated after the last great crash, although it will take years to develop a new crop of economists free of libertarian utopianism and methodological obscurantism.

1937 saw the next milestone when President FDR, at the height of his electoral strength, tired of having the High Court reject his programs. He copied Lloyd-George’s 1909 success against the House of Lords. He didn’t just threaten to “pack” the Court by adding new justices, he played hardball with the Reorganization of Judiciary Act. This did not go down easily and a major battle loomed, when Justice Owen Roberts, who had been joining in 5-4 majorities against the President, prudently changed sides in a minimum wage case. It’s been called “The switch in time that saved nine” (cutely mimicking an old saying that many young people today never heard). It demonstrated that there are limits to the Court’s power to override a united electorate. As “Mr. Dooley” had quipped, “The Supreme Court follows the election returns”.

All along, though, an accumulation of small actions was helping corporations at the expense of labor. The Warren Court, 1953-69, did many notable deeds for the common man and woman, but it did not stop the decremental fall of the share of corporate income tax revenues in Federal finance. 1968 was the milestone year when the payroll tax quietly surpassed the corporate tax as the second biggest source of Federal Revenue. Just think: the corporate income tax of 1907 antedated the payroll tax of 1935 by 28 years, and it was another 33 years, 1935-68, before the payroll tax took in more money than the corporate tax did. That was a revolution indeed, but so quiet and gradual that most people never noticed. Nor was that the end of it: by 2008 the corporate tax raised just 11% of Federal revenues, compared with 38% for the payroll tax, nearly 4 times as much. That is a measure of the growing power of corporations in politics.

On top of that, *personal* income taxes on corporate dividends and capital gains have been singled out for preferentially low rates. In 2003 President Bush and his Congress lowered the tax rate on both dividends and capital gains to 15%, so that a smaller share of the personal income tax now comes from corporate shareholders. As late as in the Tax Reform Act of 1986, dividends were taxed like other “ordinary” income. So, briefly, were capital gains. President George H. W. Bush then devoted most of his presidency, and sacrificed a second term, to get a token cut in the capital gains rate. It was the thin end of a wedge, leading soon to the present cap of 15%. “Capital gains”, so-called by Congress, derive from many sources, but one of the biggest is sales of corporate stock.

And so things stood until January 21, 2010, when the High Court authorized corporate leaders to contribute unlimited amounts of their shareholders’ cash to political causes. This poses a challenge to our tabloid-and-TV-numbed generation. Will “ordinary” taxpayers rebel, as they did in the American Revolution, Emancipation, the Progressive Age of Reform, and the New Deal; or will corporate power wax unchecked until it replaces democracy altogether? Cyclical theory says we will have another anti-corporate reaction, but history also records tipping points in the decline of nations from which they do not recover for generations, if ever. This one may be a squeaker.

Here is a summary from that brief history of the problems with treating corporations as “legal persons”.

1. Corporations never die, never pay estate taxes, never divide their wealth among succeeding generations. In this they resemble medieval Churches that agglomerated over many years so much land they threatened the state itself – resulting often in massive confiscations, as by Henry VIII.

2. Besides not dying, corporations merge with or otherwise acquire other corporations, progressing, if unchecked, from competition to cartel to oligopoly to monopoly.

3. A corporation is by nature a combination in restraint of trade – that is, a union of many individuals with their wealth to act as a unit, dealing with customers, suppliers, and workers. It took Thorstein Veblen, a thinking man, to bring out this fact that should be so obvious. The courts, historically, have borne down on labor unions as illegal combinations while, as a matter of course, treating this combination of lands and capitals as an individual.

4. Corporations enjoy the legal privilege of limited liability.

5. The ownership of corporations is, or may be made, secret. Many stocks are recorded in “street names” – a favorite being “Cede and Co.” Hugo Chavez is one such owner whose name has been revealed: others might be Al Qaeda, the Nazi Party, the heirs of Mao tse-Tung, La Cosa Nostra, or anyone. No citizenship is required for a corporation to sway American government more than almost any citizen.

6. No person is easily held responsible for corporate acts. The first duty of CEO’s is to the shareholders, so they say, to dodge guilt for any outrage against others. Most shareholders, in turn, have little idea what their CEO’s are doing.

7. The internal governance of most corporations is intensely undemocratic

8. The corporation cannot be jailed, and its officers seldom are, as they have great opportunities to pass the buck

9. The corporation has no spiritual counselor or confessor to prick its conscience.

10. Before January 21 the attitude, as expressed by Justices White and Rehnquist in the 1970s, has been that corporations are “creatures of the law”, not equal to natural persons in their civil rights. Suddenly to reverse this now is to upset many expectations that relied on the previous rule.

Finally, what can we do about the High Court’s marriage to corporate power? I first list what I consider ineffective remedies, and then those that can work, and work quickly.

1. Ineffective remedies

a. Justices may be impeached. This has succeeded only once, to my knowledge, in 1804, when a justice was obviously insane.

b. Within a State a Justice may be recalled, as Rose Bird was. There is no such provision for Federal judges.

c. A President can appoint anti-corporate judges as vacancies occur. This will happen at best over a long time-span, but it needs to happen fast because with their newfound

pecuniary “free speech” corporations will soon control both Congress and the Executive even more than they do now.

d. Congress can tighten restrictions on foreign corporations contributing through American subsidiaries. This is better than nothing, but does not affect American-chartered corporations, whoever actually owns them.

e. Congress might ban political advertising by any non-citizen, including any group that includes a non-citizen. This would entail forcing corporations to identify their shareholders. This proposal may entail too many steps to be implemented quickly, if at all. As a layperson I would refer that point to learned counsel.

2. Effective remedies

a. The Executive and the Congress can play hardball by drafting new legislation to curb corporate contributions, and threatening covertly to raise the corporate income tax as a bargaining chip – a big chip! This calls for a leader who sees the imminent danger, and is willing and able to act firmly and decisively, and communicate credible threats covertly without breaking any rules, a la FDR. Washingtonians are skilled and experienced in this sort of thing.

b. The Executive can introduce legislation modeled on the 1937 Reorganization of Judiciary Act. This act would have given the President power to appoint six new justices. It was a credible threat that worked by turning FDR’s 4-5 minority into a 5-4 majority, in spite of a great outcry against it. It is what we need today. It is radical, yes; but the Court’s ruling is radical, and calls for a remedy equally strong or stronger.

c. Could a simple act of Congress declare that a corporation is not a legal person? Perhaps so, perhaps no, we need learned counsel to tell the odds. However, a straight line is the shortest distance between two points, and this action would bring the issue quickly to a head.

In summary, we have seen that the United States was born in rebellion against corporations. The U. S. Supreme Court soon began restoring their power. When it overreached, strong executives and popular movements set it back: under Andrew Jackson, Abraham Lincoln, Teddy Roosevelt, and FDR. Today it has overreached again; it remains to see if a new movement or leader will arise to set it back again.