The Corporation: A Movie Review

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The Corporation is a 145 minute documentary produced in Canada in 2003 by Mark Achbar, loosely based on the book of the same name by Joel Bakan. It was initially aired as a three part series in February 2004 on TVOntario, Ontario’s public television station, and reaired in October 2004 across Canada on Vision TV, Canada’s Faith Network. It was screened in Chicago on July 16-29, 2004 at the Landmark Century Centre Cinema, and, though it received positive reviews, quickly disappeared from the silver screen. It is now being marketed for use in universities, accompanied by extensive Study Guides for the following disciplines: Environmental Science, History, Philosophy & Ethics, Business, Economics, Law, Politics, Media & Communications (see www.thecorporation.com).

The documentary has been extensively reviewed by movie critics. One can find 94 reviews of The Corporation on the website www.rottentomatoes.com, of which only 9 are dubbed “rotten,” garnering the film an average rating of 7.5 (out of 10). The Economist even deigned to review it (May 6, 2004), and, despite some valid criticisms of the film, concludes that it is “a surprisingly rational and coherent attack on capitalism’s most important institution.” So why are we stepping in to review the film at this late date? Ours is an unusual movie review, in that we are not going to assess it qua documentary or cinematographically, but rather by how its content strikes a business school professor and a former CEO and director of major corporations.

To understand the spirit and take of the film is simple; it could just as well be titled “Michael Moore and Noam Chomsky Meet the Corporation.” But, lest you think our review will be negative by virtue of our finding the “business bashing” of the film off-putting, stick around for our punch line. Our review is subdivided into three parts, corresponding to the serialized parts of the film and named accordingly.

The Pathology of Commerce
The landmark 1886 US Supreme Court ruling, in Santa Clara County vs. Southern Pacific Railroad, was that the word “person” in the Fourteenth Amendment applies to corporations as well. The first sentence of the Fourteenth Amendment reads: “All persons born or naturalized in the United States, and subject to the jurisdictions thereof, are citizens of the United States and of the states wherein they reside.” This use of

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“person” refers to only to natural persons. The second sentence of the Fourteenth
Amendment reads in part: “… nor shall any state deprive any person of life, liberty or
property, without due process of law.” When various California counties decided to levy
taxes on the Southern Pacific Railroad, the railroad decided to fight this action by
claiming that it was denied due process of law. To due this they argued that the use of
“person” in the second sentence refers not only to natural persons but to “legal persons,”
i.e., corporations.

This interpretation of the word “person” in the Fourteenth Amendment was established
by the Supreme Court in the 1885 case San Mateo County v. Southern Pacific Railroad.
When in the 1886 Santa Clara v. Southern Pacific Railroad case Supreme Court Chief
Justice Waite stated “The Court does not wish to hear argument on the question whether
the provision in the Fourteenth Amendment to the Constitution … applies to these
corporations. We are all of the opinion that it does,” he closed the issue.

This interpretation of the word “person” in the Fourteenth Amendment is not, as is
sometimes contended, a bit of casuistry. Roscoe Conkling, the attorney who argued the
two Southern Pacific cases before the Supreme Court in 1882, was a member of the Joint
Committee of Fifteen which had drafted the Amendment in Congress in 1867-68.
“Citing the then unpublished report of the committee in his appellate brief, the ex-Senator
from New York categorically declared that the legislative purpose of selecting the
language which appeared in the Amendment was to accomplish this very object.” 2 He
argued that the two sentences related to two separate elements, which were “… finally
grouped and formulated together, for convenient submission to the States, into a single
proposal of amendment.”

The Corporation uses this “personhood of the corporation” as its takeoff point, asking the
question, “If the corporation is a person, what sort of person is he?” It then moves on to
illustrate six sets of corporate behaviors, along with punch lines evaluating these
behaviors. These punch lines are then listed on a Personality Diagnostic Checklist,

2 William F. Swindler, “Roscoe Conkling and the Fourteenth Amendment” Supreme Court Historical
Society 1983 Yearbook.
after which Robert D. Hare, a Ph.D. in psychology, is asked what he would dub a person with these characteristics, to which he responds, “A psychopath.”\(^3\)

And so the major conclusion, at about the 40 minute mark of the film, is that “the corporation is a psychopath.”

The legal anthropomorphization of the corporation is a foil that allows the filmmakers to brand the corporation a psychopath. In the film only Milton Friedman provides a counter to this treatment of the corporation. He says, “Can a building have moral opinions? Can a building have social responsibility? If a building can’t have social responsibility, what does it mean to say that a corporation can? A corporation is simply an artificial legal structure. But the people who are engaged in it… what of the shareholders? what of the executives? what of the employees? They all have moral responsibilities.”

Moreover, one cannot tar brush all corporations with collective guilt just because some corporations have committed “sins.” It's highly unlikely that any one corporation committed all of these six “sins.” It's improbable that it has committed many of them. Nonetheless, this list is totally checked off in *The Corporation*, as an indication of collective as well as individual guilt.

What does society do to psychopaths? It puts them in an asylum. Is this the cure that the filmmakers intend for corporations? We are left hanging, as the film moves on to another theme.

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\(^3\) On January 28, 2004 Dr. Hare posted a demurral of the use of his interview in the film. See [http://www.psykpoat.no/linker/avisklipp/CommHareCorparation.html](http://www.psykpoat.no/linker/avisklipp/CommHareCorparation.html)
The theme of the next 50 minutes of the film is that there are no limits to what the corporation can exploit for profit. The litany of examples presented include (1) the race of biotechnology companies to patent genes (e.g., “terminator seeds”) (2) the development of planned communities by corporations (Disney’s Celebration, Florida depicted as an “imperialistic cocoon”), (3) the reaction of gold traders to the destruction of the World Trade Center on 9/11 (“how much will the price of gold go up?”) , (4) the privatization of water in Bolivia (World Bank induces Bolivia to give water rights to Bechtel), (5) air and water pollution (give example). Unfortunately, the film does nothing more than provide a partial catalog of these exploitations, leaving one with the impression that “corporations are exploiters,” but again not telling us what it recommends as an antidote.

Three examples that struck us as provocative but empty were the discussions regarding corporate espionage, regarding persuading children to nag parents to purchase cereal, and regarding the use of public relations firms to create “spin” relating to corporate indiscretions. Each of these activities, provided that it uses legal means, is perfectly legitimate. No one expects corporations to work in the dark about what their competition is doing. No one disputes the role of advertising in conveying information about products and persuading consumers to purchase them. In our legal system even the guilty are provided with defense counsel, whose job is to create “spin” sufficient to create reasonable doubt in the mind of the judge and jury.

Our take on the issues raised in this section of the film is that these are matters for society to adjudicate. When society feels that certain actions are inimical to its well being, it enacts laws curtailing or prohibiting these actions. Simple clear examples of this are the treatment of smoking and drinking of alcoholic beverages. The Eighteenth Amendment prohibiting intoxicating liquors (and its repeal, the Twenty First Amendment), the ban on liquor ads and cigarette ads in some media, and the various bans on the use of cigarettes and liquor are evidence that society has the means to deal with activities that are not in the social good. Of course voluntary moves on the part of individual organizations (e.g., banning of smoking in office buildings) are welcome. But the marshalling of societal opinion and its conversion into law is the only real antidote for limiting corporate activity.

Again only Milton Friedman provides a counter to this treatment of the corporation. “How do you define socially responsible? What business is it of the corporation to decide what is socially responsible? That is not their expertise. That is not what their stockholders asked them to do. So I think they are going out of their range and it’s certainly not democratic.” The democratic way is to have society decide that certain activities are socially responsible.

The film could have mentioned yet another activity in which corporations actively engage but which are clearly illegal: price fixing. One of us has over the past 30 years worked
on the prosecution of a number of such activities\textsuperscript{4}. The other has been an officer of a corporation accused of such activities. The existence of laws against this activity seems insufficient to deter corporations from engaging in it. This does not mean that we do not need such laws. Rather, it means that when society decides that certain activities are illegal they should declare them so and then enforce these laws.

Reckoning
The next 30 minutes of the film are devoted to showing the corporation’s indifference to democratic values when these conflict with the pursuit of profit. It gives credence to Edwin Black’s thesis that IBM was complicit with the Nazis, indicates that there was an attempt by business leaders to overthrow Franklin D. Roosevelt in 1934, and views the Summit of the Americas trade agreement as an attempt to privatize everything. The voice over intones about the corporation, “Is it narcissism that impels them to seek their reflection in the regimented structures of fascist regimes?”

This is followed by 25 minutes devoted to examples of a countervailing grassroots movement that seeks to limit corporate power. The two examples cited are the successful fight by the residents of Cochabamba, Bolivia, at the privatization of the water system and the legislation passed by the citizens of Arcata, California, to limit the number of chain restaurants that could open in their environs.

At last we see the punch line of the film. What do we do with that psychopathic, exploitative, indifferent-to-democratic-values entity, the corporation? We overthrow it… by legal means (as in Arcata), or by going to the streets (as in Cochabamba). We see that the film subtly advocates a form of Marxism, Karl’s, not Groucho’s, as the only antidote.

Conclusion
To paraphrase Churchill\textsuperscript{5}, the corporation is the worst form of business organization except for all those others that have been. But even Churchill would agree that there is always room for the corporation to serve the public good better.

The film squanders the opportunity to make a real contribution to improving the conduct of corporations. We wholeheartedly believe that corporations need to become better corporate citizens, for the concept of the corporation as we know it to survive long term. At the moment, the pendulum has swung too far toward total focus on growing the shareholders’ investment at any cost to society. Our fear is that, without serious debate and concerted action, the pendulum will be pushed too far toward total politicization of

\textsuperscript{4} Folding Carton, Sugar, Fine Paper, Corrugated Container, Gas Meter, Industrial Gas, Glass Bottles, Toilet Seat, Ocean Shipping, and Infant Formula are some of the antitrust litigations AM has helped prosecute.

\textsuperscript{5} “Many forms of Government have been tried, and will be tried in this world of sin and woe. No one pretends that democracy is perfect or all-wise. Indeed, it has been said that democracy is the worst form of Government except all those others that have been.” Winston Churchill \textit{Hansard (House of Commons Debates)} November 11, 1947
the corporation, thereby greatly diminishing its capacity to perform its economic role in society.

In his book (though not in the movie) Joel Bakan develops a number of recommendations about corporations. In his view, corporations are entirely dependent upon the state for their creation and empowerment. As a creation of government, the corporation must be measured against the standard applicable to all government policies: Does it serve the public interest? Most corporate law statues include provisions that permit governments to dissolve a corporation, or seek a court order to dissolve it, if the government believes that the corporation has grossly violated the public interest. These laws are known as charter revocation laws and are applied frequently to small corporations. For example, California suspended 58,000 corporations for tax evasion and failure to file proper statements in 2001-2. Bakan believes the time has come to use that power against large corporations who have violated the public interest. We agree that this idea is worthy of serious consideration.

Bakan also believes that corporations should be subjected to robust democratic controls. His suggestions for improving the conduct of corporations are to:

• Improve the regulatory system and make it more effective

• Protect and enhance the roles of trade unions and other workers’ associations in monitoring and regulating the behavior of corporations

• Strengthen political democracy by publicly financing elections, phasing out corporate political contributions, and placing tighter restrictions on lobbying and the “revolving door” flow of personnel between government and business

• Determine what social groups and interests ought to be governed and protected by “public regimes,” rather than be subject to the potential exploitation by corporations, and then implement the required steps to do so

• Create an international environment wherein nations work together to shift the ideologies and practices of international institutions such as the IMF away from market fundamentalism and its facilitation of deregulation and privatization

And here is where we part company. These suggestions are moot, implying more societal control of corporations than what makes economic sense. Nonetheless, if these ideas would have presented and debated in the movie, the film could have been a major force in improving corporate conduct in a lasting way.