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Chapter 1 : Corporations | Wex Legal Dictionary / Encyclopedia | LII / Legal Information Institute

Corporatocracy (/ ËŒ k É”Ë•r p É™ r É™ Ëˆ t É’ k r É™ s i /, from 'corporate' and Greek: Îºï•Î±ï„Î¯Î±, translit. -kratÃ-a, lit. 'domination by', short form corpocracy, is a recent [when?] term used to refer to an economic and political system controlled by corporations or corporate interests.

Thus, the Farm Credit System, for example, exists to improve "the income and well-being of American farmers and ranchers by furnishing sound, adequate and constructive credit and closely related services. Proponents of small government may welcome the introduction of an element of private control into most realms of public administration as a means of preparing for the privatization of federal functions. Democratic socialists may view wholly or even partly owned government corporations as a means of capturing the rents and profits from public activities or natural monopolies for the benefit of the public fisc. Political Insulation Like independent agencies, FGCs allow Congress to insulate a program from the cabinet department that would normally have jurisdiction over it. Congress may feel that a small single-mission agency will be more zealous in furthering a given goal than a department in a multimission agency. Subsidy An FGC may be designed to create a captive agency for a constituency. The eight privately owned GSEs are a particularly effective means of delivering subsidies through the credit markets. Subterfuge FGCs classified as either mixed-ownership or private tend to be given "off budget" status. When Congress operates under spending caps or deficit reduction targets, pursuant to the Gramm-Rudman-Hollings budget reduction process for example, off-budget items are usually excluded from the official total "spent" by the government. Its status as a public or private body shapes the rights and remedies of any person who has a legal or commercial relationship with the corporation, whether she is employed by it, transacts with it, competes with it, makes a contract with it, is injured by it, or commits a fraud upon it. Because FGCs are federal, they are not subject to regulation by the states. Because they are governmental, and often have special powers or access to cheaper capital, they are largely immune from market forces. Because they are corporations, they are exempt from most constraints ordinarily applied to federal agencies. A self-funding, self- perpetuating, profit-making corporation enjoys a degree of potential, and perpetual, independence undreamed of in most agencies. Ordinary state-chartered corporations exist to further privately selected goals, often the quest for private profit. Their liberty to abuse their powers is curbed by market forces and by public and private laws enacted by both the state and federal governments. Ordinary federal agencies are established to further publicly selected goals, defined, in at least a general fashion, by Congress and the President. In practice, neither public nor private accountability mechanisms are necessarily effective when applied to many FGCs. Nor are there any visible limits on the powers that may be granted to private FGCs. The courts have had few occasions to consider whether private or public FGCs undermine the separation of powers or whether the Appointments Clause of the Constitution applies to directors of an FGC. Similarly, because no laws set out the duties of FGC directors appointed by the President, whether they have the same duties as FGC directors elected by shareholders is unclear. In practice, because both market discipline and federal regulatory activity are limited, many FGCs remain free to operate as they wish, regardless of how they are classified. These two cases, together with federal government practices before World War I, establish three clear principles concerning FGCs. First, the federal government may charter private corporations. Third, the federal government may give special advantages and powers, such as state and federal tax exemptions or control of the money supply, to a private federal corporation. No subsequent court decision has seriously questioned any of these general principles. National Railroad Passenger Corp. A corporation created for public purposes over which the government retains permanent control is a federal actor. If an FGC is considered public, then it shares a number of features with traditional agencies. A public FGC must be part of the executive branch of government. On the other hand, if an FGC is considered private, then the Constitution does not apply to most of its activities, unless Congress has exceeded its powers in creating the FGC. Otherwise, the Constitution applies as it would to any other private transaction. State, State Actor, or Private Actor? A congressional declaration that a body is an "agency" or a "private" body may be entitled to great weight, but it cannot be the final word on the subject. Even if Congress can make a heretofore private activity public, it certainly cannot label a public agency private, thus taking it and its employees outside due process and other constitutional restraints. The Supreme Court has addressed the specific legal status of government corporations several times, starting with McCulloch and Osborn. Five years after Osborn, the Supreme Court confronted the following argument: A suit against a bank owned solely by a state government was, in fact, a suit against the state government itself and, therefore, forbidden by the Eleventh Amendment. In some cases it owes its funding to Congress as well. In other cases, some or all of its directors are appointed by the President. An FGC thus may fit the profile of "state"--not just "state actor"--much better than, say, a private parking lot operated on municipal property. Western Union Telegraph Co. The responsibilities of the federal directors are not different from those of the other directors--to operate Conrail at a profit for the benefit of its shareholders. Thus, Conrail will be basically a private, not a governmental, enterprise. In the Regional Rail Reorganization Act Cases, however, the government did far more than passively hold Conrail stock. The federal government created Conrail. It surely cannot be that government, state or federal, is able to evade the most solemn obligations imposed in the Constitution by simply resorting to the corporate form. On that thesis, Plessy v. Ferguson can be resurrected by the simple device of having the State of Louisiana operate segregated trains through a state-owned Amtrak. Lebron was actually an easier case than the Court made it seem. Lebron thus represents a missed opportunity to link FGC case law to the federal actor test. Unfortunately, not every case involving an FGC is likely to be as simple as Lebron. Neither the state action doctrine nor whatever principles that can be extracted from precedent provides a sufficiently clear standard for determining whether an FGC that is not wholly owned by the government is public or private. On one hand, Congress chooses the instruments that are necessary and proper to achieve valid ends. Because private enterprise is a valid means to valid ends, the fact that the government facilitates the creation of private enterprise does not render that enterprise either public or invalid. Indeed, any rule requiring FGCs to comply with the constitutional mandates applicable to federal agencies could easily extend to all other private corporations. If the state action doctrine means anything, it is surely that the government cannot contract out of the Constitution. Mixed-Ownership FGCs For the same reasons that a wholly owned corporation should be treated as a federal actor, both Lebron and the state action doctrine suggest that any mixed-ownership FGC in which the federal government owns more than half the shares should be treated as a federal actor for constitutional purposes. If shareholding is very dispersed, no group may have complete control of a mixed-ownership FGC. In such cases, coalitions may form and shift from issue to issue or year to year. These esoteric contingencies illustrate the difficulties that can result from the unclear status of mixed-ownership FGCs, but they are largely theoretical at present. As a result, although the government retains its statutory directors, it no longer has any shares in the large majority of "mixed-ownership" government corporations. Conversely, sometimes Congress designates a corporation as "mixed-ownership" even when there is no plan to sell any stock to private investors. These "public" directors sit alongside the private directors elected by the shareholders. Nondelegation of Public Powers to Private Groups If an FGC is a private body, its establishment can be viewed as a delegation of public power to a private group, much as authorizing an administrative agency to regulate is a delegation of legislative power. Viewed this way, it seems natural to ask whether there is a nondelegation doctrine for private groups akin to the nondelegation doctrine that prevents Congress from delegating standardless rule-making power to the executive branch. The agency version of the nondelegation doctrine limits delegations of legislative power; but the power of the agency to execute the laws is unquestioned. When a private body is the delegate, whether it has any right to exercise government power--legislative or executive-- is an issue. In Carter Coal, the Supreme Court struck down a statute authorizing coal producers and mine workers to vote on a regional basis to set hours and wages that would bind dissenters. Justice Sutherland described the statute as "legislative delegation in its most obnoxious form; for it is not even delegation to an official or an official body, presumptively disinterested, but to private persons whose interests may be and often are adverse to the interests of others in the same business. The Carter Coal doctrine is known as a nondelegation doctrine, but this name is misleading. Unlike the real nondelegation doctrine, which relies on the separation of powers to prevent Congress from making standardless delegations to administrative agencies, the Carter Coal doctrine is in fact a prohibition against self-interested regulation. The Carter Coal doctrine seeks to prevent private individuals from judging or regulating their own causes. If the President neither appoints nor removes private FGC directors, there is a strong argument, deriving from separation of powers cases, that FGCs cannot be given public powers. Settled constitutional principles prescribe that the only government agencies that may exercise executive powers are those in the executive branch. One way to read these cases, perhaps the most persuasive way, is to view them as concerned with the balance of power among the branches. Actions that weaken the President without transferring authority directly to Congress are less likely to be held unconstitutional. This view provides a simple way of reconciling Commodity Futures Trading Commission v. Although Morrison did not concern a delegation of power to a private group, Morrison asserts that there are core presidential powers with which Congress may not "interfere impermissibly," including the power to ensure the "faithful execution" of the laws. Second, the distinction between public and private functions is very vague. If either doctrine were made clearer, one side effect might be to reduce the sphere of action for FGCs. Assuming that the Carter Coal doctrine is still valid, nonetheless, it seems very unlikely that any existing FGC would be declared unconstitutional under it. Competition alone, even competition by an FGC powerful enough to set the market price, is not a constitutional violation. Modern FGCs do not legislate and do not ordinarily issue regulations binding anyone but themselves and their employees. Nor do most modern FGCs exercise powers traditionally reserved to the state. Limited Market Discipline FGCs are most commonly created to operate a self-sustaining bank, insurance, or other commercial activity. In either case, an FGC is usually created with the hope that it will be more efficient than a traditional government department. Although efficiency is a core justification for the existence of FGCs, in practice, FGCs are subject to a very limited degree of market discipline from bondholders, competitors, and shareholders. The absence of market discipline suggests that FGCs have little incentive to be efficient. As a result, FGCs are probably not as efficient as proponents hoped. Of course, this does not mean that FGCs are inevitably inefficient or that they could not become efficient if confronted with competitors. At one time or another proponents have claimed FGCs are appropriate for both commercial and noncommercial purposes, as the most efficient form of nationalization, and as preparation for eventual privatization. Truman summed up the received wisdom-- still current today--when he stated, "Experience indicates that the corporate form of organization is peculiarly adapted to the administration of governmental programs which are 1 predominantly of a commercial character; 2 are at least potentially self-sustaining; and 3 involve a large number of business- type transactions with the public. When Fannie Mae was established in it was the only truly national purchaser of home mortgages. Return on equity is perhaps the simplest crude measure, but its value is limited. Just because an FGC produces a high return does not mean that it is efficient. A fair comparison with the private sector must account for whether the FGC operates in a competitive market and whether it has comparable access to capital. The FGC may have been created to provide other social outputs, which are external to the FGC, or inherently hard to measure. Delivering is likely to be expensive; refusing to do so is likely to cause severe credit shortages in the relevant markets and to cause a great decline in confidence in the other FGCs in the credit markets.

Chapter 2 : Corporatocracy - Wikipedia

The Mayer proposal for corporate governance and the policy changes that are necessary to develop it will return corporations to long-term sustainable investment, combine profitable operations with adherence to ESG and CSR principles, and sharply reduce short-termism and activist attacks.

We apologize for any inconvenience, our office will be closed today due to threats from California wildfires. For a young entrepreneur looking to form a corporation, these documents may seem overwhelming and may discourage a potential business from incorporating. The reality, however, is that the vast majority of corporations do not need most of these documents. Large Corporations It only gets complicated when a corporation becomes "large" where federal regulations begin to take effect. A simple way to know if your corporation is "large" is if your corporation is being publicly traded listed on a Stock Exchange or sold on an OTC market. As mentioned above, most corporations are closely-held not publicly sold and state law tends to have relaxed requirements to form a corporation to spur more business within the state. For almost every conceivable situation, a corporation will begin as a closely-held corporation. Needed Before moving forward with the governance documents for an LLC, a distinction must be made between "required" governance document and "needed" governance documents. The "required" governance document entails the document that LLCs must have as mandated by state law. Without this document, the state may not recognize a business as an LLC. The "needed" governance document is not mandated by state law, but it is a document that every LLC should have to prevent future complications and possibly catastrophic lawsuits. Also to note, LLCs are generally required to file an annual or biennial report with the state. However, this article will not be addressing these reports. The Certificate is issued by the state and requires a potential corporation to file its Articles of Incorporation with the state accompanied with the necessary state fees. The Articles of Incorporation sets forth the basic information of your business. Generally, states have minimal requirements for the Articles: Beyond these minimal requirements, the Articles will usually identify the incorporators of the corporation the person responsible for signing and filing the Articles. The Articles may also supply the number of directors and the names of the first directors. Most, if not all, states have a standard Articles of Incorporation form that outlines the minimal requirements for the state. An applicant can simply fill in the blanks, sign, and file that form to be incorporated. However, depending upon the complexities of your corporation e. A professional should be consulted when considering these special provisions. The Certificate must be kept with the registered agent. In fact, a number of states do not even require the operating agreement to be in writing to be enforceable. However, the operating agreement may prove to be the most important governance document an LLC can have and so every LLC should have a written operating agreement. Due to the relaxed requirements for the Articles of Organization, some of the most important governing aspects of an LLC are left unwritten. Similar to the bylaws of a corporation, the operating agreement fills in these blanks. These provisions give structure on how the corporation is governed. Many bylaws contain indemnification provisions that may protect the directors, the officers, or both, as well as a severability clause that allows the bylaws to survive and be enforced even if a particular provision is held to be invalid. The bylaws must be consistent with the Articles of Incorporation and if any discrepancy arises, the Articles hold precedence. The bylaws can be amended as needed and the bylaws should specify the procedures for amendment. Needed Governance Document - Minutes of Meetings Every corporation is required to have annual meetings for both shareholders and directors. A corporation can also call special meetings for shareholders and directors. The minutes are used as the official record for these meetings. Although the minutes are an important part to the governance of a corporation, minutes should remain light. Only information of substance should be included, while extensive details on what was presented excluded. For more information on the meeting minutes, please refer to the comment of meeting minutes. Committee Charters For many corporations, the only governing board they will have or need is the Board of Directors. However, larger corporations may have specialized governing needs i. Often these needs are federally mandated and so the board may formulate a committee of inside and outside directors to govern these committees. These expectations are generally spelled out in a code of ethics the expectations shareholders have upon the corporation and its governing body and in a code of conduct the expectations the corporation has upon the employees. These documents are not necessary for smaller corporations where the shareholders, directors, and officers are the same people. However, for larger corporations with many independent employees and many independent shareholders, these codes become important.

Chapter 3 : SYNNEX Corporation - Governance

A government corporation is a state-owned entity that is created in order to pursue commercial or industrial activities on behalf of a national government.

Characteristics[edit] Edmund Phelps published an analysis in theorizing that the cause of income inequality is not free market capitalism, but instead is the result of the rise of corporatization. It is characterized by semi-monopolistic organizations and banks, big employer confederations, often acting with complicit state institutions in ways that discourage or block the natural workings of a free economy. The primary effects of corporatization are the consolidation of economic power and wealth, with end results being the attrition of entrepreneurial and free market dynamism. His follow-up book, Mass Flourishing, further defines corporatization by the following attributes: In the United States, several of the characteristics described by Phelps are apparent. With regard to income inequality, the income analysis of University of California, Berkeley economist Emmanuel Saez confirms that relative growth of income and wealth is not occurring among small and mid-sized entrepreneurs and business owners who generally populate the lower half of top one per-centers in income , [15] but instead only among the top. The government lent money to financial institutions at close to zero percent interest and provided generous bailouts on favorable terms when all else failed. Regulators turned a blind eye to a lack of transparency and to conflicts of interest. This indicates a shift in income from labor persons who derive income from hourly wages and salaries to capital persons who derive income via ownership of businesses, land and assets. Further, since lower income families tend to spend relatively more of their income than higher income families, shifting more of the income to wealthier families may slow economic growth. As another indication of U. Corporate tax payments have not kept pace with profit growth. About 46 companies have reincorporated in low-tax countries since , including 15 since Six more also planned to do so in Writing in the Harvard Business Review in September , William Lazonick blamed record corporate stock buybacks for reduced investment in the economy and a corresponding impact on prosperity and income inequality. This left little for investment in productive capabilities or higher income for employees, shifting more income to capital rather than labor. He blamed executive compensation arrangements, which are heavily based on stock options, stock awards and bonuses for meeting earnings per share EPS targets. EPS increases as the number of outstanding shares decreases. Legal restrictions on buybacks were greatly eased in the early s. He advocates changing these incentives to limit buybacks. Too big to fail and Concentration of media ownership Percentage of banking assets held by largest five U. Brid Brennan of the Transnational Institute explained how concentration of corporations increases their influence over government: It is such decision making power as well as the power to impose deregulation over the past 30 years, resulting in changes to national constitutions, and to national and international legislation which has created the environment for corporate crime and impunity. The top 5 U. Bankers are being paid more, too. In America the compensation of workers in financial services was similar to average compensation until Now it is twice that average. Regulatory capture Corporations have significant influence on the regulations and regulators that monitor them. For example, Senator Elizabeth Warren explained in December how an omnibus spending bill required to fund the government was modified late in the process to weaken banking regulations. The modification made it easier to allow taxpayer-funded bailouts of banking "swaps entities", which the Dodd-Frank banking regulations prohibited. She singled out Citigroup , one of the largest banks, which had a role in modifying the legislation. She also explained how both Wall Street bankers and members of the government that formerly had worked on Wall Street stopped bi-partisan legislation that would have broken up the largest banks. Several companies that typify corporatocracy power structures are listed below by incorporation date:

Chapter 4 : The United States is a Corporation - Fact or Myth?

Corporate governance is the mechanisms, processes and relations by which corporations are controlled and directed. Governance structures and principles identify the distribution of rights and responsibilities among different participants in the corporation (such as the board of directors, managers, shareholders, creditors, auditors, regulators, and other stakeholders) and includes the rules.

Internal stakeholders are the board of directors , executives , and other employees. Much of the contemporary interest in corporate governance is concerned with mitigation of the conflicts of interests between stakeholders. The danger arises that, rather than overseeing management on behalf of shareholders, the board of directors may become insulated from shareholders and beholden to management. However, retained earnings will then not be used to purchase the latest equipment or to hire quality people. Over the thirty or forty years that the model has been in place, the diversion of retained earnings to stock price manipulation has gradually eroded the competitiveness of the US industrial base. While the public blames low wages in China for eliminating US jobs, the reality is that many US firms compete with high wage nations such as Canada, Germany, or Japan. It is failure of large publicly-held corporations to invest in new equipment and people that holds the US back and erodes the middle class fewer engineers, chemists, CNC machinists, accountants are needed as plants are left to age out. Governing agents do not have personal control over, and are not part of the object that they govern. They are personally accountable for the strategy and management of the function. At the same time, there may be a number of policies, authorized by the board, that the CIO follows. Without these policies, procedures and indicators, the board has no way of governing, let alone affecting the IT function in any way. One source defines corporate governance as "the set of conditions that shapes the ex post bargaining over the quasi-rents generated by a firm. The Cadbury and Organisation for Economic Co-operation and Development OECD reports present general principles around which businesses are expected to operate to assure proper governance. Rights and equitable treatment of shareholders: They can help shareholders exercise their rights by openly and effectively communicating information and by encouraging shareholders to participate in general meetings. Interests of other stakeholders: Role and responsibilities of the board: It also needs adequate size and appropriate levels of independence and commitment. Integrity and ethical behavior: Organizations should develop a code of conduct for their directors and executives that promotes ethical and responsible decision making. Disclosure of material matters concerning the organization should be timely and balanced to ensure that all investors have access to clear, factual information. Models[edit] Different models of corporate governance differ according to the variety of capitalism in which they are embedded. The Anglo-American "model" tends to emphasize the interests of shareholders. The coordinated or multistakeholder model associated with Continental Europe and Japan also recognizes the interests of workers, managers, suppliers, customers, and the community. A related distinction is between market-oriented and network-oriented models of corporate governance. Aktiengesellschaft Some continental European countries, including Germany, Austria, and the Netherlands, require a two-tiered board of directors as a means of improving corporate governance. This is the reason that corporate governance in India has taken the centre stage. It relies on a single-tiered board of directors that is normally dominated by non-executive directors elected by shareholders. Because of this, it is also known as "the unitary system". Non-executive directors are expected to outnumber executive directors and hold key posts, including audit and compensation committees. In the United Kingdom, the CEO generally does not also serve as Chairman of the Board, whereas in the US having the dual role has been the norm, despite major misgivings regarding the effect on corporate governance. Many US states have adopted the Model Business Corporation Act , but the dominant state law for publicly traded corporations is Delaware General Corporation Law , which continues to be the place of incorporation for the majority of publicly traded corporations. In traditionally structured firms, high performing executives gain deference, become highly influential, and take on the qualities of concentrated equity owners. To the extent these leaders embrace founder centrism, their companies will experience efficiency advantages relative to competitors operating within traditional parameters.

Chapter 5 : The Disadvantages of Corporate Governance | blog.quintoapp.com

Corporate Governance: Legal Definitions. Generally, corporate governance refers to the host of legal and non-legal principles and practices affecting control of publicly held business corporations.

What is impact of Sarbanes-Oxley Act? By Andriy Blokhin Updated January 4, â€” 4: The act had a profound effect on corporate governance in the U. The Sarbanes-Oxley Act requires public companies to strengthen audit committees, perform internal controls tests, make directors and officers personally liable for accuracy of financial statements, and strengthen disclosure. The Sarbanes-Oxley Act also establishes stricter criminal penalties for securities fraud and changes how public accounting firms operate. The act requires that top managers personally certify the accuracy of financial reports. If a top manager knowingly or willfully makes a false certification, he can face 10 to 20 years in prison. If the director or officer is convicted of a securities law violation, he can be prohibited from serving in the same role at the public company. The Sarbanes-Oxley Act significantly strengthens the disclosure requirement. Public companies are required to disclose any material off-balance sheet arrangements, such as operating leases and special purposes entities. The company is also required to disclose any pro forma statements and how they would look under the generally accepted accounting principles GAAP. Insiders must report their stock transactions to the Securities and Exchange Commission SEC within two business days as well. The Sarbanes-Oxley Act imposes harsher punishment for obstructing justice and securities fraud, mail fraud and wire fraud. The maximum sentence term for securities fraud has increased to 25 years, and the maximum prison time for obstruction of justice to 20 years. The act increased the maximum penalties for mail and wire fraud from five to 20 years of prison time. Also, the Sarbanes-Oxley Act significantly increases fines for public companies committing the same offense. The costliest part of the Sarbanes-Oxley Act is Section , which requires public companies to perform extensive internal control tests and include an internal control report with their annual audits. Testing and documenting manual and automated controls in financial reporting requires enormous effort and involvement of not only external accountants, but also experienced IT personnel. The compliance cost is especially burdensome for companies that heavily rely on manual controls. The Sarbanes-Oxley Act has encouraged companies to make their financial reporting more efficient, centralized and automated. Finally, the Sarbanes-Oxley Act established the Public Company Accounting Oversight Board , which promulgates standards for public accountants, limits their conflicts of interest and requires lead audit partner rotation every five years for the same public company.

Chapter 6 : Why is Corporate Governance Important? - blog.quintoapp.com

Some state LLC acts provide for board-managed LLCs, which approximate the governance structure of corporations. In a board-managed LLC, the members elect a board of governors (sometimes also called directors or managers), which manages the company like a board of directors would manage a corporation.

Recognise that good governance is not just about compliance Boards need to balance conformance i. As a part of this process, a board needs to elaborate its position and understanding of the major functions it performs as opposed to those performed by management. These specifics will vary from board to board. Knowing the role of the board and who does what in relation to governance goes a long way towards maintaining a good relationship between the board and management. Each board must determine what role is appropriate for it to undertake and clarify this understanding with management. As a board, the directors should establish an agreed format for the reports they monitor to ensure that all matters that should be reported are in fact reported. Understand that the board employs the CEO In most cases, one of the major functions of the board is to appoint, review, work through, and replace when necessary , the CEO. Recognise that the governance of risk is a board responsibility Establishing a sound system of risk oversight and management and internal control is another fundamental role of the board. Effective risk management supports better decision making because it develops a deeper insight into the risk-reward trade-offs that all organisations face. Ensure the directors have the information they need Better information means better decisions. Regular board papers will provide directors with information that the CEO or management team has decided they need. But directors do not all have the same informational requirements, since they differ in their knowledge, skills, and experience. Briefings, presentations, site visits, individual director development programs, and so on can all provide directors with additional information. Above all, directors need to be able to find answers to the questions they have, so an access to independent professional advice policy is recommended. Build and maintain an effective governance infrastructure Since the board is ultimately responsible for all the actions and decisions of an organisation, it will need to have in place specific policies to guide organisational behaviour. To ensure that the line of responsibility between board and management is clearly delineated, it is particularly important for the board to develop policies in relation to delegations. Also, under this topic are processes and procedures. Poor internal processes and procedures can lead to inadequate access to information, poor communication and uninformed decision making, resulting in a high level of dissatisfaction among directors. Appoint a competent chairperson Research has shown that board structure and formal governance regulations are less important in preventing governance breaches and corporate wrongdoing than the culture and trust created by the chairperson. Build a skills-based board What is important for a board is that it has a good understanding of what skills it has and those skills it requires. Where possible, a board should seek to ensure that its members represent an appropriate balance between directors with experience and knowledge of the organisation and directors with specialist expertise or fresh perspective. Evaluate board and director performance and pursue opportunities for improvement Boards must be aware of their own strengths and weaknesses, if they are to govern effectively. Board effectiveness can only be gauged if the board regularly assesses its own performance and that of individual directors. Improvements to come from a board and director evaluation can include areas as diverse as board processes, director skills, competencies and motivation, or even boardroom relationships. It is critical that any agreed actions that come out of an evaluation are implemented and monitored. Boards should consider addressing weaknesses uncovered in board evaluations through director development programs and enhancing their governance processes. Complete our Governance Action Plan questionnaire and receive a customised report with recommendations on how to improve your governance today.

Chapter 7 : Top Ten Steps to Improving Corporate Governance - Effective Governance

This book examines the limited liability business forms that have recently emerged, and seeks to identify the forces that have led to the emergence of new business forms for small and medium-sized businesses.

Leo Sun Corporate governance is the way a corporation polices itself. In short, it is a method of governing the company like a sovereign state, instating its own customs, policies and laws to its employees from the highest to the lowest levels. Corporate governance is intended to increase the accountability of your company and to avoid massive disasters before they occur. Failed energy giant Enron, and its bankrupt employees and shareholders, is a prime argument for the importance of solid corporate governance. A company can also hold meetings with internal members, such as shareholders and debtholders - as well as suppliers, customers and community leaders, to address the request and needs of the affected parties. More often than not, however, small shareholders with little impact on the stock price are brushed aside to make way for the interests of majority shareholders and the executive board. Good corporate governance seeks to make sure that all shareholders get a voice at general meetings and are allowed to participate. Stakeholder interests should also be recognized by corporate governance. In particular, taking the time to address non-shareholder stakeholders can help your company establish a positive relationship with the community and the press. Board responsibilities must be clearly outlined to majority shareholders. All board members must be on the same page and share a similar vision for the future of the company. Ethical behavior violations in favor of higher profits can cause massive civil and legal problems down the road. Underpaying and abusing outsourced employees or skirting around lax environmental regulations can come back and bite the company hard if ignored. A code of conduct regarding ethical decisions should be established for all members of the board. Business transparency is the key to promoting shareholder trust. Financial records, earnings reports and forward guidance should all be clearly stated without exaggeration or "creative" accounting. Falsified financial records can cause your company to become a Ponzi scheme, and will be dealt with accordingly. Corporate Governance as Risk Mitigation Corporate governance is of paramount importance to a company and is almost as important as its primary business plan. When executed effectively, it can prevent corporate scandals, fraud and the civil and criminal liability of the company. It dictates the shared philosophy, practices and culture of an organization and its employees. A corporation without a system of corporate governance is often regarded as a body without a soul or conscience. Corporate governance keeps a company honest and out of trouble. If this shared philosophy breaks down, then corners will be cut, products will be defective and management will grow complacent and corrupt. The end result is a fall that will occur when gravity - in the form of audited financial reports, criminal investigations and federal probes - finally catches up, bankrupting the company overnight. Dishonest and unethical dealings can cause shareholders to flee out of fear, distrust and disgust. You Also Might Like

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Chapter 8 : Reinventing the Government Corporation

Corporations are separate legal entities, wholly distinct from their shareholders. Shareholders elect the board of directors which, in turn, manages the business. Usually the board employs.

The United States is a corporation. Is the United States of America a Corporation? This can be confirmed by its lack of incorporating acts, its sovereign immunity , and past court cases, among other things. Likewise, the Organic Acts organize give governance rights to D. They do not create another United States. The United States of America consists of 50 states, 1 federal district D. March 6, Decided: March 31, The U. Corporation Myth The reason this page exists is that it is addressing a persistent myth. The District of Columbia is an incorporated and organized district under the direct control of Congress since the passage of its Organic Acts. It was purposefully organized this way to avoid state-level power grabs, not to ensure some banking conspiracy, as is sometimes insinuated. You can skip to the next section for the debunking part. A legal part of the U. This usually consists of a territorial legislature, territorial governor, and a basic judicial system. Are Any States Corporations? State Constitutions govern the individual states. Only entities incorporated into the U. This why Puerto Rico and D. Likewise, if the U. Those entities, as well as all executive, legislative, and judicial entities on the federal and state level are beholden to the central federal government. Firstly, every entity is beholden the federal government. Meanwhile, the federal government, state governments, and local governments all enjoy sovereignty regarding governance and sovereign immunity regarding being sued under U. Federal Reserve Bank of St. This is semantics, and that aside, like the incorporation doctrine, this topic is only loosely related. Which, you know, is good for the country. What, would you rather their headquarters be somewhere else? Code Title 28 Myth.

Chapter 9 : What is a Benefit Corporation? | Benefit Corporation

A simple search of "governance documents" on Google will result in various corporations with multitudes of different documents (e.g., "Certification of Incorporation," "Code of Ethics," "Audit Committee Charter").

The Rise of Corporate Influence The Rise of the Corporation Corporations, as we tend to think of them, have been around for a few centuries, the earliest of which were chartered around the sixteenth century in places like England, Holland etc. Technically speaking, a corporation is what Robbins describes as a social invention of the state Robbins: That is, a state grants a corporate charter, permitting private financial resources being used for public purposes. As Arrighi points out, this initial creation of private finance and merchants, etc was to aid in the expansion of a state to which it belonged, and as Arrighi and Smith detail, served to expand colonial and imperial interests to start with, as well as help in war efforts between empires. A corporate charter however, was limited in its risks, to just the amount that was invested. A right not accorded to individuals. Even Abraham Lincoln recognized this: I see in the near future a crisis approaching that unnerves me and causes me to tremble for the safety of my country. President Abraham Lincoln, Nov. The Lincoln Encyclopedia , Archer H. Shaw Macmillan, , NY Adam Smith, in his famous book the Wealth of Nations , the bible of capitalism, was also critical of some aspects of corporate activity. He saw corporations as working to evade the laws of the market, trying to interfere with prices and controlling trade etc. Back to top The Rights of the Corporation As corporations did manage to increase their wealth and therefore political power, laws that initially tried to manage them were further relaxed. Yet, it was claiming of a corporation to be an individual in the United States in the s, and claiming the same rights as a person that helped to provide for large expansion of corporate capitalism: Relying on the Fourteenth Amendment, added to the Constitution in to protect the rights of freed slaves, the Court ruled that a private corporation is a natural person under the U. Constitution, and consequently has the same rights and protection extended to persons by the Bill of Rights, including the right to free speech. Thus corporations were given the same rights to influence the government in their own interests as were extended to individual citizens, paving the way for corporations to use their wealth to dominate public thought and discourse. The debates in the United States in the s over campaign finance reform, in which corporate bodies can donate millions of dollars to political candidates stem from this ruling although rarely if ever is that mentioned. Thus, corporations, as persons, were free to lobby legislatures, use the mass media, establish educational institutions such as many business schools founded by corporate leaders in the early twentieth century, found charitable organizations to convince the public of their lofty intent, and in general construct an image that they believed would be in their best interests. All of this in the interest of free speech. This influence also led to cultural and economic ideologies known by numerous names such as neoliberal, libertarian economics, market capitalism, market liberalism etc. Some of the guiding principles of this ideology, as Robbins continues, included: Sustained economic growth as the way to human progress Free markets without government would be the most efficient and socially optimal allocation of resources Economic globalization would be beneficial to everyone Privatization removes inefficiencies of public sector Governments should mainly function to provide the infrastructure to advance the rule of law with respect to property rights and contracts. However, the assumptions behind these principles are questionable as much as the principles themselves. The Rise of Corporate Influence From this right of the corporation, how has it affected the rights of others? Corporations in and of themselves may not be a bad thing. They can be engines of positive change. But, especially when they become excessively large, and concentrated in terms of ownership of an industry and in wealth, they can also be engines for negative change, as seems to have happened. There is of course, the common concern about the drive for profit as the end goal sometimes contradicting the social good, even though it is claimed that the invisible hand ensures the drive for profit is also good for society. Sometimes this has surely been the case. But other times, it has not. There is much recognized and unrecognized corporate influence in our lives. Indeed, much of western culture and increasingly, around the world, consumerism is expanding. Influence on general populations via advertising and control and influence in the mainstream media. Influence on public policy and over governments, as hinted to above. This can range from financing large parts of elections, to creating corporate-funded think tanks and citizen groups, to support from very influential political bodies such as the Trilateral Commission, the Council on Foreign Relations and the Bilderberg group, etc. Influence on international institutions, such as the World Trade Organization, as well as international economic and political agreements. Thom Hartmann, a writer and reporter, describes at length how corporations co-opted the use of human rights, in his book Unequal Protection: It details the ruling also mentioned above on this page. With kind permission, a table contrasting implications before and after that ruling is reproduced here, from a summary page on the web site for the book: After the Corporate Theft of Human Rights Rights and Privileges Only humans were endowed by their creator with certain inalienable rights and those human rights included the right to free speech, the right to privacy, the right to silence in the face of accusation, and the right to live free of discrimination or slavery. While to this day unions, churches, governments, and small unincorporated businesses do not have human rights but only privileges humans give them , corporations alone have moved into the category with humans as claiming rights instead of just privileges. Politics In many states, it was a felony for corporations to give money to politicians, political parties, or try to influence elections: Corporations claimed the human right of free speech, expanded that to mean the unlimited right to put corporate money into politics, and have thus taken control of our major political parties and politicians Business States and local communities had laws to protect and nurture entrepreneurs and local businesses, and to keep out companies that had been convicted of crimes. Multi-state corporations claimed such laws were discrimination under the 14th Amendment passed to free the slaves and got such laws struck down; local communities can no longer stop a predatory corporation. War Government, elected by and for We, The People, made decisions about how armies would be equipped and, based on the will of the general populace, if and when we would go to war. Prior to WWII there were no permanent military manufacturing companies of significant size. It now lobbies government to buy its products and use them in wars around the world. Regulation Corporations had to submit to the scrutiny of the representatives of We, The People, our elected government. Corporations lobbied states to change corporate charter laws to eliminate public good provisions from charters, to allow multiple purposes, and to exist forever. Corporations claim the human right to economic activity free of regulatory restraint, and the still-banned-for-humans right to own others of their own kind. Hartmann actually goes further saying that the ruling never happened: He simply wrote the words into the headnote of the decision. The words contradict what the court actually said. There is, in fact, in the US National Archives a note by the Supreme Court Chief Justice of the time explicitly informing the reporter that the court had not ruled on corporate personhood in the Santa Clara case. Of course, the influence of various groups and entities is nothing new. But today, the increasing size and wealth of corporations point to more concentration of wealth and of political and economic power and influence than before. Indeed, today as mentioned above, of the largest economies in the world, 51 are corporations; only 49 are countries based on a comparison of corporate sales and country GDPs. Adam Smith, often regarded as the father of modern capitalism, wrote the influential famous book, The Wealth of Nations in This book exposed the mercantile and monopoly capitalism of the preceeding centuries as unjust and unfair, and proposed a free market system. Smith is worth quoting at length: Our merchants and master-manufacturers complain much of the bad effects of high wages in raising the price, and thereby lessening the sale of their good both at home and abroad. They say nothing concerning the bad effects of high profits. They are silent with regard to the pernicious effects of their own gains. They complain only of those of other people. Merchants and master manufacturers are As during their whole lives they are engaged in plans and projects, they have frequently more acuteness of understanding than the greater part of country gentlemen. As their thoughts, however, are commonly exercised rather about the interest of their own particular branch of business, than about that of the society, their judgment, even when given with the greatest candour which it has not been upon every occasion is much more to be depended upon with regard to the former of those two objects than with regard to the latter. Their superiority over the country gentleman is not so much in their knowledge of the public interest, as in their having a better knowledge of their own interest than he has of his. It is by this superior knowledge of their own interest that they have frequently imposed upon his generosity, and persuaded him to give up both his own interest and that of the public, from a very simple but honest conviction that their interest, and not his, was the interest of the public. The interest of the dealers, however, in any particular branch of trade or manufactures, is always in some respects different from, and even opposite to, that of the public. To widen the market and to narrow the competition, is always the interest of the dealers. To widen the market may frequently be agreeable enough to the interest of the public; but to narrow the competition must always be against it, and can serve only to enable the dealers, by raising their profits above what they naturally would be, to levy, for their own benefit, an absurd tax upon the rest of their fellow-citizens. The proposal of any new law or regulation of commerce which comes from this order ought always to be listened to with great precaution, and ought never to be adopted till after having been long and carefully examined, not only with the most scrupulous, but with the most suspicious attention. It comes from an order of men whose interest is never exactly the same with that of the public, who have generally an interest to deceive and even to oppress the public, and who accordingly have, upon many occasions, both deceived and oppressed it. Due to the immense size of this topic, do be sure to check back for updates!