

From the Public Charter to Private Power:

Corporations, Slavery, and the Cotton
Industry in the 19th Century

Author

Tala Doumani

Acknowledgements

To Professor Hanson and my peer-reviewers

About the Critical Corporate Theory Collection

The Critical Corporate Theory Collection is part of the *Systemic Justice Journal*, published by the Systemic Justice Project at Harvard Law School. The Collection is comprised of papers that analyze the role of corporate law in systemic injustices. The authors are Harvard Law students who were enrolled in Professor Jon Hanson's Corporations course in the spring of 2021.

The Collection addresses the premise that corporate law is a core underlying cause of most systemic injustices and social problems we face today. Each article explores how corporate law facilitates the creation and maintenance of institutions with tremendous wealth and power and provides those institutions a shared, single interest in capturing institutions, policies, lawmakers, and norms, which in turn further enhance that power and legitimates its unjust effects in producing systems of oppression and exploitation.

For more information about the *Systemic Justice Journal* or to read other articles in the Critical Corporate Theory Collection, please visit the website at www.systemicjustice.org.

This paper was first published in July 2021. © 2021. The contents and opinions expressed in this paper are those of the author only.

Contents

INTRODUCTION	1
PART I. THE CORPORATION AND COTTON BOOMS ..	2
PART II. THE BLAME-FRAME: JUSTIFYING SEPARATE AND UNEQUAL	4
PART III. CORPORATE POWER & SLAVERY	6
A. The Doctrine of “Public and Private” Corporations	6
B. The Rise of the American Business Corporation	9
C. Corporate Ties to Slavery and the Cotton Industry	10
PART IV. REMOVING THE VEIL	12
CONCLUSION	12
ENDNOTES	14

ABSTRACT

This paper seeks to contextualize the history of corporations by revealing its ties to slavery and the cotton industry in the early nineteenth century. Shifts in corporate law enabled the proliferation of “private” corporations that subsequently facilitated and profited from the slave economy. By revealing the ways corporations legitimized racial hierarchies, we better equip ourselves to addressing modern-day instances of corporate injustice.

From the Public Charter to Private Power

Corporations, Slavery, and the Cotton Industry
in the 19th Century

INTRODUCTION

By the time a typical law student completes her Corporations course, she knows that a corporation is a special legal entity endowed with certain benefits to facilitate capital accumulation and exploit economies of scale. She may have also learned that while wealth distribution and other aspects of “fairness” are important in society, corporate law is premised on the idea that wealth creation is wise public policy and that wealth maximization through the “facilitation of voluntary, ongoing collective action” is the goal of corporate law.¹ The student is taught to conceptualize the corporation in a-historical terms as an “artificial being, invisible, intangible, and existing only in contemplation of law.”² This elides how historical trends in corporate law have shifted hegemonic power away from the institutions responsible for governing the corporation to the corporation itself. As a result, important conversations regarding the significant role corporations have played in perpetuating injustices remain largely ignored.

This paper seeks to contextualize the history of corporations by revealing its ties to slavery and the cotton industry in the early nineteenth century. While significant work has been produced regarding the integral role capitalism has played in proliferating slavery,³ surprisingly little has been written about the important role corporations played in the slave economy. While capitalist profit motives certainly drove the systematic commoditization of enslaved people, the

evolution of the corporate form *itself* enabled and perpetuated this injustice. Failure to identify corporate involvement in slavery handicaps our understanding of how corporate law has aided racial oppression and subjugation. By making visible what is largely invisible, we are better positioned to address modern-day instances of corporate injustice.

This paper's argument unfolds in four Parts. Part I provides background on the emergence of corporations in the early nineteenth century and the subsequent expansion of slavery and the cotton industry. By examining the common rationalizations of slavery during this time, Part II illustrates the dominant narratives that enabled slave exploitation, primarily a set of dispositional frameworks that perpetuated narratives of Black inferiority. Part III demonstrates how shifts in corporate law enabled the proliferation of "private" corporations that subsequently facilitated and profited from the slave economy. While American corporations had traditionally been chartered for public welfare purposes, a series of early corporate law cases redefined the corporation as a private entity, above political scrutiny (Section A). This placed corporations squarely under private control, greatly increasing the number of chartered corporations as well as their wealth and influence (Section B). As the number of for-profit corporations increased, so did investments in the cotton industry. This, in turn, generated large amounts of credit lent to southern plantation owners and slaveholders, thereby expanding the slave economy (Section C). Finally, Part IV argues that by revealing the ways corporations legitimized racial hierarchies, we better equip ourselves to critiquing underlying assumptions of corporate law and uncovering modern forms of corporate capture and injustice.

PART I. THE CORPORATION AND COTTON BOOMS

Charles Ball stood by, with feelings of despondence and terror, whilst the other people were getting their cotton weighed. But when the overseer walked over to where Ball stood, he simply examined Ball's hands and then said, "You have a pair of good hands—you will make a good picker." This was both reassurance and threat. Your hands, he was telling Ball, will allow you to become a hand...In South Carolina, [Ball] was never comfortable with the way cotton-picking required him to subordinate his inventive mind, and his muscles that were the product of ten thousand

*hours of hard labor, to the endless repetition of his hands.
And it brought him nothing but an unwhipped back for one
more day.*

- Account of Charles Ball, an enslaved African-American man (1805)⁴

During the antebellum period, between 1815 and 1861, cotton's production greatly increased. The expansion of land westward – through violent colonialization of Indigenous lands as well as territorial acquisitions such as the Louisiana Purchase of 1803 – provided fertile ground for cotton plantations. In 1790, there were approximately 650,000 enslaved people forcibly cultivating rice, tobacco, and indigo. By 1850, however, the population of enslaved people had increased to 3.2 million, 2.2 million of whom worked in cotton fields, just like Charles Ball.⁵ During this time, southern states provided two-thirds of the world's cotton supply. This expansion was made possible by the growing number of chartered corporations.ⁱ

The first three decades of the nineteenth century saw an unprecedented growth of corporations. As discussed in Part III below, a series of important Supreme Court decisions – which enabled the creation of “private” corporations (independent of political oversight) – and the desperate need for capital to support the growing economy, spurred state legislatures to create corporate charters “as if there was no tomorrow.”⁶ By 1860, state governments had granted charters to over 22,000 corporations through special legislative acts and another 4,000 under general incorporation laws.⁷ These totals “far exceed[ed]” the number of corporations created in any other country during that time.⁸ While banks were the predominant chartered corporation, states also chartered insurance and manufacturing companies as well as large public works companies like canals and water utilities.

As a result of the growing number of corporations, a “flood of credit poured into the cotton frontier.”⁹ In 1830 alone, the United States

ⁱ As Baptist notes, “between 1790 and 1860, there was no mechanical innovation of any kind that speed up the harvesting of cotton.” Instead, expansion of cotton output grew through an increase of brutal slave labor practices (such as the implementation of quota systems) and the expansion of credit to plantation owners. EDWARD BAPTIST, *THE HALF HAS NEVER BEEN TOLD* 128 (2014).

government, southern states, corporate banks, private citizens, and foreign entities had collectively invested \$400 million into expanding slavery.¹⁰ Corporate banks would lend notes to borrowers who would in turn make new investments, buying land, supplies, and slaves. In exchange for those loans, slaveowners would collateralize their slaves and repay their accumulated debts by enslaving more people to “clear more fields, plant more cotton, and make the money to repay the loan with interest.”¹¹ As a result, enslaved persons served not only as field hands on plantations, but as mortgageable goods to help expand the plantation economy. Through this cycle, corporations accumulated wealth by exploiting both Black bodies and their labor. The physical brutalization of enslaved people was, therefore, partly a product of corporate evolution.

PART II. THE BLAME-FRAME: JUSTIFYING SEPARATE AND UNEQUAL

Slavery...was a matter of economics, a question of income and labor, rather than a problem of right and wrong, or of the physical difference in men. Once slavery began to be the source of vast income for men and nations, there followed a frantic search for moral and racial justifications.

– W.E.B. Du Bois¹²

When men oppress their fellow-men, the oppressor ever finds, in the character of the oppressed, a full justification for his oppression.

– Frederick Douglass¹³

In order to maintain the economic and social structures of power and wealth during the cotton boom, an account of Black inferiority to whiteness was required to justify the systematic dehumanization and exploitation of enslaved peoples. This dissonance reflects a truth of human psychology: the tendency to attribute dispositions onto another in order to justify certain actions. The more heinous the harm inflicted, the greater the motivation to find a legitimizing account. By defining a set of fixed attributions that supported the narrative of Black inferiority, white oppressors shifted responsibility to a greater outside force, allowing their own responsibility to fade away. In the early nineteenth century, God, nature, and “choice” provided those accounts.¹⁴ Several books can and have been written on a number of these rationalizing

accounts briefly described here, but the key point for our purposes is that corporations greatly benefited from these narratives. If Black inferiority could be legitimized, Black people's bodies and labor could be easily commoditized.

Some proponents of slavery looked to the authority of God as the basis for their justification of racial hierarchy. Despite the acknowledgement that all were people were children of God, the narrative that God created different types of "man" – one superior to all other races and the other a "degeneration" from the original white archetype – was largely popularized in the eighteenth and nineteenth century.¹⁵ Different explanations were provided for why this was. One biblical theory claimed that God created an inferior race as punishment, turning Cain black for killing his brother Abel.¹⁶ Another account held that Africans were descendants of the biblical figure Ham, son of Noah and were thus "cursed by God for all time to atone by servitude for Ham's sin of dishonoring his father."¹⁷ As a result of these dispositions, Africans "deserved" enslavement, and those who promoted slavery were held to be "advancing civilization and God's plan."¹⁸

As scientific thought gained traction however, racial hierarchy was rationalized in the name of science and nature. By the middle of the nineteenth century, a complex narrative around human races emerged from scientific schools of thought with both implicit and explicitly racist motives. Unlike the religious narrative, scientific racism purported to *objectively* measure differences in race and race characteristics. "Language, concepts, methods, and authority of science were used to support the belief that certain human groups," such as Black people, were "intrinsically inferior" to others.¹⁹ Entire academic fields were devoted to race-based science, many of which sprung out of Harvard University. As race-based scientific literature grew in popularity, so did the dissonance between white people and "others." Influential accounts, such as Samuel George Morton's 1839 book, *Crania Americana; or, A Comparative View of the Skulls of Various Aboriginal Nations of North and South America*, which ranked the different races from light to dark based on the shapes and sizes of their skulls, were widely distributed and gained popularity.²⁰ As long as the races were found to be anatomically and physiologically different, nature became the arbitrator of morality. While scientific racism did not reach its "crescendo" until the late nineteenth century when it latched on to Darwinism, to many, it provided more convincing argument of racial inferiority than religion.²¹

Black people were even "imagined to at least have impliedly consented

to enslavement.”²² Through slavery, it was argued, white masters conferred the “benefits of Christianity, civilization, and freedom from the dangers of savagism.”²³ Slavery was often glorified in popular culture, portraying Black people in a “chronic state of childlike dependence” with the slaveowner as a parent or guardian.²⁴ For example, plantation literature and caricature stereotypes of Black slaves propagated the idea that plantation life was preferable than the alternatives. Even after the Civil War, the paternalist idea that Black people had “benefited” more from enslavement than emancipation was popularized.ⁱⁱ In this way, slavery was framed as not as an injustice but, rather, a condition consented to.

PART III. CORPORATE POWER & SLAVERY

As the following three sections illustrate, doctrinal shifts in corporate law during the early nineteenth century facilitated the creation of private corporate entities with tremendous wealth and power, resulting in devastating realities for enslaved people.

A. The Doctrine of “Public and Private” Corporations

Traditionally, corporations were chartered to serve a public function. During the early republic, corporations were organizations created by the state to encourage economic development in their localities. For example, the Manhattan Company was originally chartered by state legislature of New York to sanitize the water source following an outbreak of yellow fever in 1798.ⁱⁱⁱ Such corporate charters were “quite restrictive” pieces of legislation that would vest property rights in the corporation and provide limited liability for personal shareholders. These charters could not be altered unless the rights to do so were expressly written into the charter.²⁵ The state not only had the ability, but an obligation to oversee the corporate entity to ensure that they

ⁱⁱ For example, in 1896, Rudolph Matas, a professor of surgery at Tulane University, popularized the idea that “the general morbidity and mortality of the colored race was less than that of the white population under slavery.” HENRY LOUIS GATES, JR., *STONY THE ROAD: RECONSTRUCTION, WHITE SUPREMACY, AND THE RISE OF JIM CROW* 72 (2019).

ⁱⁱⁱ Incidentally, the Manhattan Company eventually became part of what is today known as J.P. Morgan Chase.

fulfilled their charter's function. After all, these charters brought distinct privileges to the incorporated entity in exchange for benefits to society. This was facilitated through a process called *quo warranto*, a prerogative writ that allowed political officials to inquire whether the corporation was fulfilling the reasons for its incorporation.

Until the early nineteenth century, corporate law had yet to fully define the corporate entity, its powers, and its relationship to the state and federal governments. As states began to expand and the corporation became an increasingly important tool in society, the subject of corporate political oversight quickly became the primary question facing the judiciary. This dilemma came to the fore in *Trustees of Dartmouth College v. Woodward*, which laid the foundation of corporate law on the relationship between corporations and state regulation. When president of Dartmouth College, John Wheelock, was fired in 1816 by the board of trustees, the New Hampshire legislature amended the College's original charter, turning it into a public institution (creating Dartmouth University) and appointing a new board of trustees that supported Wheelock as president. The original trustees sued, arguing the legislature had violated its vested rights, the state constitution, and the U.S. Constitution. Writing for the Court, Justice Marshall held the charter was a "contract" between private parties with which the legislature could not interfere. The fact that the government commissioned the charter did not automatically make it a public institution Marshall concluded. Concurring, Justice Story framed the case as a distinction between public and private corporations. According to Story, public corporations existed for political purposes only (for example, a bank created by the government for its own uses). Anything less constituted a private corporation, even if erected by the government for the purpose of public function. In this framing, "private" corporations gained dramatically new protections against state regulation.

This constituted a radical break in corporate law doctrine. Previously, the traditional view maintained that while corporations could be owned by private persons, they were chartered by the state to fulfill a public purpose and, therefore, beholden to the state. By making the corporation private, however, the law now endowed person-like rights onto the corporation, such as the rights against breach of contract (of which a charter was now one) or the taking of property. Moreover, by stripping states of their control over corporate charters, corporations gained immense autonomy. Corporate profits and liabilities could now be "protected" from political influence and creditors could now invest money in the corporation without the worry of state interference.

Dartmouth College was just the beginning. Over a series of cases throughout the following decades, the Supreme Court “moved away from an understanding of...corporations as creatures of the public designed to promote the public welfare, toward a conception of business corporations as entities the primary purpose of which was private gain.”²⁶ Five years after the *Dartmouth College* decision was handed down, Justice Marshall in *Bank of U.S. v. Planters’ Bank of Georgia*²⁷ re-affirmed the private nature of the corporation by holding that the state assumed the role of a “private citizen” when member to a corporation. In other words, when a state invested in a corporation (thereby becoming a stockholder) the state imparted none of its sovereign attributes, thereby maintaining the corporation’s private characteristic.

The decision in *Dartmouth College* was immediately seized upon by business corporations. During the following decades, corporations quickly moved from the public arena to the private, shifting from hospitals, educational institutions, and charities to businesses, banks, and manufacturers. As Kent Newmyer wrote:²⁸

Armed with Story’s concurrence, the *Dartmouth College* decision played a crucial role in the transformation of the corporation from an association...designed to accomplish public service to an association whose corporate status was...to facilitate the pursuit of private goals by private individuals.

In addition, political oversight of corporations changed drastically. No longer could the state legislatures rely on the justification of “general welfare” for regulating corporations.

A cultural shift also occurred. Now divested from their public character, corporate businesses were more readily identifiable as aggregates of individual “entrepreneurs.” These enterprising individuals became part of a new privileged elite, a class that embodied the epitome of American ingenuity and the rise of a radical free-market populism in the 1830s.²⁹ The transformation of the corporate form was also immediately adopted by legal scholars. Story’s argument, including some of his phraseology, were presented as “established law” in James Kent’s *Commentaries on American Law*, the most influential treatise on American law to appear in the nineteenth century.³⁰ Story’s private public distinction also appeared in the *Treatise on the Law of Private Corporations Aggregate*, a standard work on corporate law for the period. While there was some resistance to Story’s thesis “[w]ith such advertisement, the doctrine

quickly found its way into lawyers' briefs, judicial opinions, and legal periodicals.³¹

B. The Rise of the American Business Corporation

It is under the protection of the decision in the Dartmouth College case that the most enormous and threatening powers in our country have been created.

– Justice Cooley³²

There were three immediate consequences of the private public distinction doctrine. First, corporations shifted away from public service towards profit maximization. Because corporate law now granted corporate businesses irrevocable rights by the state, corporations had the power to fix their own compensation and obtain full title and exclusive use of corporate property “without restriction and without legislative control.”³³ For example, despite the fact that the Bank of the United States (B.U.S.) was the exclusive banker for the federal government (it held in deposits “every penny of Washington’s \$17.5 million budget”³⁴), the B.U.S. was a private corporation whose 4,000 stockholders “reaped profits from every financial exchange the bank carried out for Washington.”³⁵ Furthermore, the B.U.S.’s president, Nicholas Biddle, insisted that all the bank’s operations were exempt from the political scrutiny, writing that “no officer of the Government, from the President downwards, has the least right, the least authority,” to interfere “in the concerns of the Bank.”³⁶

Second, states began to relax the incorporation process, making it easier for corporations to secure charters. As previously described, traditionally, individual shareholders of the corporation needed the state’s permission to engage in money creation and obtain limited liability. However, after the Court’s decision in *Dartmouth College* affirmed the right of private corporations to be free from state interference, it became easier to incorporate. Moreover, states wanted to ease the incorporate process to promote the chartering of corporations. Following the demise of the Second Bank of the United States in 1834, state economies were in desperate need of capital. To maintain their developing economies, states were eager to charter corporations, such as banks, to expand available credit to the public and taxable revenue. New York was one of the first states to do so and became a deeply influential model for future incorporation laws. In 1838, New York passed the Free Banking Act, which made incorporation a routine administrative function rather than a legislative one.³⁷ Because the incorporation process allowed *any* person who could meet

the capital requirements to obtain a charter, the number of corporations grew exponentially. By 1860, southern states by themselves chartered more corporations than any other nation, and were only second to the northern states.³⁸

Third, as profit-oriented corporations became more numerous, so did their wealth and influence. While most corporations were small, “a growing number of them became very large and began to operate nationwide and even multinationally.”³⁹ As the corporation grew in size so did their profits. For example, between 1800 and 1835, the amount of total capital held by state chartered corporate banks had gone from \$17.4 million to \$308.4 million.⁴⁰ In the late nineteenth century these developments would lead to the “Gilded Age” of American business and the emergence of tycoons like Carnegie, Rockefeller, and Morgan.

The expansion of corporate wealth increased capture of political institutions. During antebellum, corporate banks would frequently lobby against anti-slavery legislation. The passage of such legislation, these corporations argued, would undercut the availability of slave labor and, therefore, reduce corporate profits from the cotton industry. Corporate influence over lawmakers was most pronounced during Reconstruction. A comprehensive review of Congressional voting patterns on Reconstruction legislation reveals significant capture of large segments of the Republican party by corporate capitalists (typically northern bankers and corporate investors).⁴¹ Even after the Civil War, Black labor was still being exploited to produce cotton. As a result, numerous Republican lawmakers, many of whom had a stake in cotton cultivation, consistently opposed Reconstruction efforts in the South.

C. Corporate Ties to Slavery and the Cotton Industry

The rise of corporate power had profoundly harmful consequences. Freed from having to meet a public function, wealth accumulation became the primary purpose of the corporation. And during the early nineteenth century, most private wealth was tied to the tears, blood, and sweat of Black slaves. The accounts of insurance companies, banks, and other corporate businesses showed that they consistently “took slices of the profit out of slavery’s expansion,” buying from and selling to slaveholders and traders.⁴²

Through the theft of human value and commoditization of bodies and labor, corporations turned people into numbers for profit. This process was not only marked by vast suffering but the deaths of hundreds of

thousands of people, many of whom “died early and alone, separated from their loved ones.”⁴³ In this way, corporations perpetuated, reproduced, and expanded an economic system that oppressed Black people.

A system of lending and borrowing can be traced from European and American corporate businesses to the southern plantations. As previously discussed, banks and other business corporations would secure loans to plantation owners on the delivery of collateral, which often consisted of goods and enslaved peoples. As a result, “[s]laves were systematically collateralized in order to raise the operating funds and long-term credit that enabled their masters to have more control of the plantation economy.”⁴⁴ Middle men called “factors” would facilitate this transaction often by procuring cotton or slaves from planters in exchange for notes credited by banks. Armed with repeated infusions of new cash lent by corporate banks, southern enslavers brought “tens of thousands of additional slaves into the cotton states.”⁴⁵ For example, in 1825 the Bank of Louisiana issued \$4 million in bank notes to borrowers who used the money to make new investments in southern property and slaves. Alonzo Walsh was a planter-entrepreneur in Louisiana and a borrower from the Bank of Louisiana. In 1823, a Louisiana “factor” offered him a five-year loan of \$48,000 at 10 percent annual interest. For collateral, Walsh mortgaged what he called “from 90 to a 100 [sic] head of first-rate slaves” although some of those slaves “would be bought with the money he’d borrow.”⁴⁶

If the loans were not repaid, corporate banks often became owners of plantations and slaves when they came to collect on their collateral. For example, following a series of bad investments, two Kentucky business partners, A. Morehead and Robert Latham – who, like many business men at the time, hoped to turn a profit on cotton – found themselves indebted to the Bank of Kentucky in the sum of \$15,914. To repay the debts, they mortgaged to the bank twenty slaves and a tract of land as collateral in October 1817. By the fall of 1819, Morehead and Latham had fallen even more behind in their debt payments. Worried the partners would fail to pay back their debt in time, the bank obtained a court order to take possession of the slaves, and immediately sold eleven of them. The names of those enslaved and to whom they were sold to are unknown.⁴⁷ Many of the debts ended up with Northern corporations, fostering an odd alliance between Northern firms with southern plantations. Brown Brothers, a New York bank, for example, “collected multiple” Louisiana cotton plantation’s in the 1840s.⁴⁸ Even the B.U.S. by 1832 had allocated a third of its capital to merchants and planters in the south and, as a result, ultimately took possession of “hundreds of

Mississippi slaves and thousands of acres of land.”⁴⁹

PART IV. REMOVING THE VEIL

The historical account of the early injustices resulting from the emergence of corporations serves as a powerful counternarrative to the sanitized accounts found in corporate law textbooks. Often, the concept of corporations and corporate law are separated from their social and political histories. The neglected history of the emergence of the autonomous corporate form and the subsequent use of corporate power as a tool of subjugation is just one example. Why this history has been left untold is largely because power is most effective when concealed. By ignoring corporate participation in the brutality of slavery, an illusion is created that represents corporations as neutral or a-political entities. This, subsequently, forecloses opportunities to engage and uncover other ways corporate power generates systems of oppression and exploitation.

Corporate power remains a major cause of racial injustice today. Wealth inequalities between white and Black families, the lack of Black access to capital, private prisons, and police brutality are just some examples. Armed with this historical understanding however, the ways corporate power and capture present themselves today becomes less surprising and easier to perceive. The legitimizing script that wealth maximization is a wise public policy, for example, can be questioned both in terms of its historical accuracy (the purpose of corporations was not always profit) and its practical validity (yes profitability but at what cost?). As this paper demonstrates, larger systemic trends, such as changes in corporate law and the rise of slavery, are ultimately all interconnected. Once these connections are made apparent however, the power structures that enabled these injustices become easier to address.

CONCLUSION

Corporations, and the laws that govern them, underwent a seismic shift in the early nineteenth century. Perceptions of who corporate actors were and to whom they were obligated to changed dramatically. The growing power of corporations allowed for incremental forms of capture and, with each rotation, the power of corporate form itself gained in significance and potency. As this paper has demonstrated, this innovation had massive consequences.

Empowered by the new corporate form, corporate actors were integral to the proliferation of the slave economy. The resulting expansion of the

plantation economy is what allowed America to become an economic powerhouse on the world stage and never lose its position, even following the end of slavery. And while economists and corporate law textbooks emphasize the rise of corporations as a key innovative tool in the growth of Western wealth and power, they omit the undemocratic and deeply racist ways corporations allowed this country to gain ascendancy.

Both the legacy of slavery as well as other forms of hierarchy and oppression can be tied to corporate law. Without acknowledging this history however, we handicap ourselves in truly understanding how early corporate law aided racial oppression and subjugation. Many are blinded to the ways in which narratives like “markets good, regulation bad” are legitimized as “efficient” and “rational” when in actuality, they resulted in profound injustices. We not only do a disservice to the millions of enslaved peoples and their descendants but also to all those fighting injustices at the hands of corporate power today. Only by exposing and interrogating the assumptions embedded in the foundations of corporate law, can these injustices be understood and its authority be questioned.

ENDNOTES

¹ WILLIAM T. ALLEN, REINIER KRAAKMAN, & GUHAN SUBRAMANIAN, *Commentaries and Cases on the Law of Business Organization* 2 (4th ed. 2012).

² *Trustees of Dartmouth College v. Woodward*, 17 U.S. (4 Wheat.) 250 (1819).

³ Sharon Ann Murphy, *Banking on Slavery in the Antebellum South*, YALE UNIVERSITY ECONOMIC HISTORY WORKSHOP 4 (May 1, 2017).

⁴ EDWARD BAPTIST, *THE HALF HAS NEVER BEEN TOLD* 143 (2014).

⁵ *Id.* at 352, 364.

⁶ Edward Baptist, *Toxic Debt, Liar Loans, Collateralized and Securitized Human Beings, and the Panic of 1873*, in *CAPITALISM TAKES COMMAND* 16 (Michael Zakim & Gary J. Kornblith eds., 2012).

⁷ Robert E. Wright & Richard Sylla, *Corporate Governance and Stockholder/Stakeholder Activism in the United States, 1790–1860: New Data and Perspectives*, in *ORIGINS OF SHAREHOLDER ADVOCACY* 231 (J.G.S. Koppell ed., 2011).

⁸ Ralph E. Gomory & Richard Sylla, *The American Corporation*, 142 J. AM. ACAD. ARTS & SCI. 102, 104 (2013).

⁹ BAPTIST, *supra* note 4, at 233.

¹⁰ *Id.* at 271.

¹¹ *Id.* at 230.

¹² Statement on the Denial of Human Rights to Minorities in the Case of Citizens of Negro Descent submitted by W.E.B. Du Bois to the U.N. (October 23, 1947).

¹³ *The Claims of the Negro, Ethnologically Considered*, Western Reserve College Commencement (July 12, 1854).

¹⁴ Jon Hanson & Kathleen Hanson, *The Blame Frame: Justifying (Racial) Injustice in America*, 41 HARV. C.R.-C.L. L. REV. 413, 417 (2006).

¹⁵ HENRY LOUIS GATES, JR., *STONY THE ROAD: RECONSTRUCTION, WHITE SUPREMACY, AND THE RISE OF JIM CROW* 57 (2019).

¹⁶ *Id.*

¹⁷ HANSON & HANSON, *supra* note 14, at 432.

¹⁸ *Id.* at 433.

¹⁹ NANCY STEPAN, *IDEA OF RACE IN SCIENCE: GREAT BRITAIN 1800-1960* ix (1982).

²⁰ GATES, JR., *supra* note 15, at 60.

²¹ LAWRENCE LESSIG, *FIDELITY & CONSTRAINT* 339 (2019).

²² HANSON & HANSON, *supra* note 14, at 435 n.95.

²³ *Id.*

- ²⁴ GATES, JR., *supra* note 15, at 91.
- ²⁵ WRIGHT & SYLLA, *supra* note 7, at 238.
- ²⁶ Evelyn Atkinson, *From Public Servant to Private Business*, HISTPHIL (July 18, 2019).
- ²⁷ 22 U.S. 904 (1824).
- ²⁸ R. Kent Newmyer, *Justice Joseph Story's Doctrine of Public and Private Corporations and the Rise of the American Business Corporation*, 25 DEPAUL L. REV. 825, 836 (1976).
- ²⁹ HOWARD BODENHORN, STATE BANKING IN EARLY AMERICA: A NEW ECONOMIC HISTORY 13 (2003).
- ³⁰ NEWMYER, *supra* note 28, at 838.
- ³¹ Opposition to the Supreme Court's pro-corporate views was voiced at the Pennsylvania constitutional convention of 1837. *See* L. HARTZ, ECONOMIC POLICY AND DEMOCRATIC THOUGHT: PENNSYLVANIA, 1776-1860, at 243-53 (1948).
- ³² William P. Wells, *The Dartmouth College Case and Private Corporations*, 9 ANNU. REP. A.B.A. 229 (1886).
- ³³ *Id.* at 234.
- ³⁴ BAPTIST, *supra* note 4, at 232.
- ³⁵ *Id.*
- ³⁶ *Id.*
- ³⁷ BODENHORN, *supra* note 29, at 47.
- ³⁸ WRIGHT & SYLLA, *supra* note 7, at 232.
- ³⁹ GOMORY & SYLLA, *supra* note 8, at 104.
- ⁴⁰ Richard Sylla, *U.S. Securities Markets and the Banking System, 1790-1840*, 80 FED. RES. BANK OF ST. LOUIS REV. 83, 87 (1998).
- ⁴¹ RICHARD F. BENSEL, YANKEE LEVIATHAN: THE ORIGINS OF CENTRAL STATE AUTHORITY 304 (1990).
- ⁴² BAPTIST, *supra* note 4, at xxiv.
- ⁴³ BAPTIST, *supra* note 4, at 416.
- ⁴⁴ BAPTIST, *supra* note 6, at 1.
- ⁴⁵ *Id.* at 13.
- ⁴⁶ BAPTIST, *supra* note 4, at 230.
- ⁴⁷ *Bank of Kentucky v. Vance's Adm'rs*, 4 Litt. 168 (1823).
- ⁴⁸ BAPTIST, *supra* note 6, at 16.
- ⁴⁹ *Id.*