

1985

The Birth of a Public Corporation

Jon C. Teaford
Purdue University

Follow this and additional works at: <https://repository.law.umich.edu/mlr>

Part of the [Business Organizations Law Commons](#), [Legal History Commons](#), and the [State and Local Government Law Commons](#)

Recommended Citation

Jon C. Teaford, *The Birth of a Public Corporation*, 83 MICH. L. REV. 690 (1985).
Available at: <https://repository.law.umich.edu/mlr/vol83/iss4/5>

This Review is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

THE BIRTH OF A PUBLIC CORPORATION

*Jon C. Teaford**

PUBLIC PROPERTY AND PRIVATE POWER: THE CORPORATION OF THE CITY OF NEW YORK IN AMERICAN LAW, 1730-1870. By *Hendrik Hartog*. Chapel Hill: University of North Carolina Press. 1983. Pp. xiv, 274. \$27.50.

One of the principal tenets of local government law, repeated in one treatise after another, is that a municipal corporation is a creature of the state, and barring any constitutional provisions to the contrary, state legislatures can adopt, amend, or repeal municipal charters at will. Unlike the business corporation, then, the municipal corporation is a public agent and a subordinate unit within the governing structure. By the late nineteenth century, virtually all lawyers, legislators, and judges accepted this as an unquestionable axiom of American law, a precept hallowed by frequent repetition in appellate court decisions. Yet the corporations governing Philadelphia and New York City were not always deemed public instrumentalities or pliant servants of state power. Instead, during the colonial era of American history, lawyers and judges regarded borough charters as inviolate grants of privilege and property not subject to the whim of legislative or royal authority. No distinction existed between public and private corporations; all corporations, whether boroughs or trading companies, enjoyed privileges beyond the reach of the king, the Parliament, or the colonial assemblies.

Thus, between the mid-1700's and mid-1800's the legal understanding of the municipal charter changed radically as corporations that had once enjoyed inviolate privileges became governing units of the state. In *Public Property and Private Power: The Corporation of the City of New York in American Law, 1730-1870*, Hendrik Hartog describes this transformation, focusing specifically on the nation's largest city. How did the concept of the modern municipal corporation develop? This is the question Hartog attempts to answer, and his volume is an excellent account of New York City's role in the birth of the public corporation.

Hartog begins his history with New York City's Montgomerie Charter of 1730. Granted by Governor Montgomerie as representative of the Crown, this charter bestowed ample property on the corporation of the city of New York. It confirmed the corporation's

* Professor of History, Purdue University. B.A. 1969, Oberlin College; M.A. 1970, Ph.D. 1973, University of Wisconsin. — Ed.

valuable East River ferry monopoly and its ownership of all the common and waste lands on Manhattan Island, both of these privileges originally having been granted in earlier charters. In addition, it bestowed on the corporation ownership of all submerged lands around the southern part of Manhattan Island up to four hundred feet beyond the low water mark. In other words, the city's corporation would control the construction of wharves, slips, and piers and could collect rents from anyone developing water lots for anchorage. This was a valuable concession, and it provided the city with a handsome income. Like other borough charters, however, the Montgomerie Charter did not grant the city council the right to levy direct taxes. The corporation was expected to rely instead on revenues from its extensive property holdings.

Hartog asserts that the corporation's chief day-to-day concern was the management of these properties (pp. 40-42). In making that claim, he explicitly challenges (pp. 37-40) the interpretation of colonial cities and boroughs that I presented in *The Municipal Revolution in America: Origins of Modern Urban Government*.¹ I concluded that prior to the mid-eighteenth century the principal business of borough corporations was the regulation and promotion of trade. But on the basis of his examination of the minutes of the New York City Common Council, Hartog believes otherwise. One entry after another in the council minutes deals with the disposition of the corporation's large estate. Consequently, Hartog concludes that the management of property, and not the regulation of trade and commerce, was viewed as the proper business of the corporation (p. 40).

Hartog finds that the corporation's contracts granting the water lots conferred by the Montgomerie Charter were especially important to the city fathers. Previous historians have criticized New York's water-lot grants as corrupt deals serving the interests of a favored few, often the aldermen themselves.² Hartog, however, believes that the corporation wisely exploited its submerged property, using the restrictive covenants in grant contracts to ensure the development of needed commercial facilities. The Common Council required grantees of water lots to build streets providing access to the waterfront and to construct wharves and slips according to certain specifications (pp. 50-51). Thus, acting indirectly through grantees, the corporation provided for the commercial future of the growing seaport.³

The American Revolution disrupted this pattern of rule through

1. J. TEAFORD, *THE MUNICIPAL REVOLUTION IN AMERICA: ORIGINS OF MODERN URBAN GOVERNMENT 1650-1825* (1975).

2. See, e.g., 2 G. EDWARDS, *NEW YORK AS AN EIGHTEENTH CENTURY MUNICIPALITY, 1731-1776*, at 150-51 (1917); Klein, *Introduction*, in *THE INDEPENDENT REFLECTOR* 30 (M. Klein ed. 1963).

3. See generally pp. 62-68.

property grants. In 1776 the British army occupied New York City, holding it until 1783. When the patriots resumed control at the close of the war, they found one quarter of the city gutted by fire and many of the docks and slips decaying after seven years of neglect. The corporation needed money to restore these commercial facilities and bring renewed prosperity to the city. Yet in the minds of many lawmakers, the New York corporation and its royal charter were incompatible with the new republican order and not worthy objects of sympathy or support. In 1784 and 1785 the New York Council of Revision, a body that reviewed all state legislation, vetoed six bills put forward by the government of New York City and passed by the state legislature. According to this council, the legislature should not have approved new taxing powers for a corporation with a substantial estate that was not subject to the governing authority of state lawmakers but was instead derived from a royal grant (pp. 87-89).⁴ Moreover, post-revolutionary leaders questioned the structure of the corporation's government, for it did not accord with the republican doctrine of separation of powers (pp. 89-90). Altogether the city corporation was a relic of the past, a reminder of a discredited age when crown officials bestowed special privileges and lucrative properties on favored groups or localities. As such it was out of step with republican ideology, an alien presence within the new nation.

As the notion of inviolate, privileged corporations fell into disfavor, the city fathers gradually came to view their corporation as a unit of local government subordinate to the state legislature. Rather than emphasize the corporation's privileged status or demand additions to its vested estate, aldermen of the late eighteenth and early nineteenth centuries recognized New York City's dependency and sent an increasing number of petitions to the state legislature seeking permission to pave streets, levy taxes, or impose new regulations. Even when it seemed clear that the corporation already enjoyed the power to act, the Common Council often petitioned for state legislation confirming its authority.⁵ According to Hartog, these petitions testified to the aldermen's belief that the state legislature was now a more reliable source of authority than the royal charter (pp. 126-27). The royal charter was still valid,⁶ but by the beginning of the nineteenth century

4. The texts of all of the veto messages can be found in A. STREET, *THE COUNCIL OF REVISION OF THE STATE OF NEW YORK* 251-52, 257-58, 261-64, 266-67, 273-74, 274-75 (1859).

5. In the year 1802, for example, the Common Council asked its lawyer whether it had authority to pass an ordinance regulating the lighting of fires in livery stables and on vessels lying in the harbor. The Council's lawyer, Richard Harison, opined that the Council did indeed possess the necessary power under the Charter, but nevertheless advised the members that they should obtain authorization from the state legislature as a precautionary measure. Pp. 127-28.

6. The New York Constitution of 1777 continued the city's charter in force and explicitly protected it from direct legislative alteration. N.Y. CONST. OF 1777, art. xxxvi. The state constitution of 1821 reaffirmed this protection. N.Y. CONST. OF 1821, art. 7, § xiv.

the corporation of New York City actually depended on the state legislature for its authority to govern.

This new reliance on state legislation, however, did not produce frequent conflicts between the city and the state. Instead, Hartog finds that state solons readily answered city prayers, giving the aldermen most anything they wanted (p. 132). The new wave of state legislation regarding the city was not a sign of growing state intervention in local government. Bills affecting New York City were usually framed by the Common Council and rubber stamped by state lawmakers. The state legislature did not enact scores of city measures because it lacked confidence in the corporation aldermen. Rather, the city aldermen lacked confidence in their own authority and asked lawmakers in the state capitol for a vote of approval.

As the corporation gradually became a subordinate unit of government, its property holdings diminished in importance. According to Hartog, a declining proportion of the entries in the Common Council minutes dealt with the sale, management, or supervision of the corporate estate (pp. 103-04), and New York's aldermen deviated from the pre-revolutionary practice of using the city's property to encourage lessees and grantees to construct needed public works and commercial facilities.⁷ In the 1780's the corporation, still reeling from the damage and decay caused by the British occupation, agreed to sell a portion of its estate solely for the purpose of raising revenue. The corporation inserted no covenants or restrictions in the sale contracts, thus relinquishing its control over the development and use of the properties. Likewise, in 1796 the Council agreed to sell half of the city's common lands and lease the other half. Again no provisions governed the future of the property that had once belonged to the corporation. The city simply disposed of the real estate and demanded of the purchaser nothing but the sale price. The Common Council did continue its long-standing practices with regard to water-lot grants, requiring grantees to construct wharves and slips in accord with corporation specifications. But Hartog finds that by the end of the eighteenth century the corporation's property was "no longer viewed . . . as a repository of government power" (p. 109).⁸

In fact, Hartog contends that by the second decade of the nineteenth century New York City had become a public entity approxi-

7. See pp. 103-10.

8. Even with regard to the water-lot grants, Hartog observes that the appearance of continuity masks some important changes. For example, while water-lot grantees were still compelled to undertake public works for the city, it became routine for the deeds to require only *prospective* street or wharf construction pending a later Common Council decision. Thus, the private act of granting a water lot would serve the private interests of the corporation and its grantees, and the public act of developing the property would await expression by the Common Council in its public, governmental capacity. Pp. 113-14.

mating the modern notion of a municipal corporation.⁹ As early as 1806, receipts from corporate property amounted to only one-sixth of the city government's total operating expenditures, with taxes providing the bulk of the city's income (p. 144). Moreover, the city no longer relied so heavily on grant contracts with private parties to realize public improvements. Instead, it assumed direct responsibility for construction schemes, hiring two professional street commissioners "to take charge of the laying out, levelling, paving, and keeping in repair of the streets."¹⁰ Hartog finds that an incipient municipal bureaucracy was developing; the city eschewed its past reliance on public-spirited volunteers, hiring instead an army of scavengers to clean the streets and salaried personnel to manage the almshouse (pp. 130-33). The city government also exhibited a new concern for health and safety regulations and a willingness to shoulder a broader range of functions unrelated to the corporation's property holdings.

Though Hartog believes that the corporation of New York City changed radically between 1775 and 1815, he does not end his study with the second decade of the nineteenth century. Instead, he devotes most of the remaining eighty-five pages of his book to describing the adaptation of legal theory and judicial doctrine to the corporation's new role. The practices and preoccupations of local governing bodies had changed by 1815, but during the following decades judges and commentators had to alter legal dogmas to fit the new reality.¹¹ The principles of Blackstone and other deceased legal luminaries would not suit the city governments of America. Now it was for the American common-law courts to fashion a new law of municipal corporations.

One of the principal foundation stones of this new law was the United States Supreme Court's 1819 decision in *Dartmouth College v. Woodward*.¹² The opinions of both Chief Justice Marshall and Justice Story in *Dartmouth College* clearly recognized two distinct types of corporations, the private and the public. The Court held that state legislatures could not unilaterally tamper with charter privileges bestowed on private corporations. But, according to Justice Joseph Story's concurring opinion, a public corporation such as a city or town was one in which "the government [has] the sole right, as trustees of

9. See p. 142.

10. P. 132 (quoting 3 MINUTES OF THE COMMON COUNCIL OF THE CITY OF NEW YORK, 1784-1831, at 123-24 (Sept. 6, 1802)).

11. In his Introduction, Hartog confesses that when he undertook to write this book, he imagined that a study of New York City's legal history would reveal how the judicially formulated law of municipal corporations came to change the governing assumptions of city government. P. 6. Hartog's research correctly revealed, however, that the situation was quite the reverse: "The law of municipal corporations cannot explain New York City's institutional transformation, because that transformation occurred well before the creation of that law." P. 7.

12. Trustees of Dartmouth College v. Woodward, 17 U.S. (4 Wheat.) 518 (1819).

the public interests, to regulate, control, and direct the corporation, and its funds and its franchises, at its own good will and pleasure."¹³ In eighteenth-century legal treatises the distinction between public and private corporations had not existed. Corporations were lay or ecclesiastical, eleemosynary or civil, and legal theorists classified both trading companies and boroughs under the same "lay, civil" rubric. By 1819, however, the United States Supreme Court had sanctioned a new dichotomy in the American law of corporations, a dichotomy that protected business ventures from legislative interference but characterized municipal corporations as subordinate instruments of the state.

Yet *Dartmouth College* did not answer all legal queries about the status of municipal corporations. The question of whether the municipal corporation acted as a public arm of the state or as a private body achieved new significance in the 1840's and 1850's when courts sought to define the liability of cities in tort actions. If the municipal corporation was a wholly public entity, the doctrine of sovereign immunity freed it from the risk of civil liability. But if it retained some private attributes, then wronged parties might be able to collect damages from the city. In a series of tortured decisions, the courts held that when acting in certain capacities the city was a "private" body and liable, but in other circumstances it was a public agent and immune from suit.¹⁴ When judges held municipal action to be private, however, they were not attempting to restore city corporations to their eighteenth-century status (p. 240). According to Professor Hartog, by the 1850's jurists never denied that the city was subordinate to the state legislature and an arm of state government (pp. 180-81, 206-07).

In 1857 the New York Court of Appeals definitively upheld the idea of state supremacy in *People ex rel. Wood v. Draper*.¹⁵ That year a Republican-controlled legislature restructured the government of New York City without the consent of the Democratic mayor or of the Democratic Common Council.¹⁶ Mayor Fernando Wood challenged the legislature's action in the courts, but the state's highest tribunal rejected his arguments. According to Chief Justice Hiram Denio: "If we were to establish the principle that the legislature can never reduce the administrative authority of counties, cities or towns . . . we should, I think, make an impracticable government."¹⁷ Hartog cor-

13. P. 193 (quoting *Dartmouth College*, 17 U.S. (4 Wheat.) at 671 (Story, J., concurring)).

14. See, e.g., *Sharpless v. Mayor of Philadelphia*, 21 Pa. 147 (1853) (financing of railroad was pursuant to a "public purpose" of the municipality); *Lloyd v. Mayor of New York*, 5 N.Y. 369 (1851) (corporation of New York City has private "ministerial" duty not to leave open excavations in streets); *Bailey v. Mayor of New York*, 3 Hill 531 (N.Y. Sup. Ct. 1842), *aff'd*, 2 Denio 433 (N.Y. 1845) (power to construct waterworks was granted to city as "private" franchise).

15. 15 N.Y. 532 (1857).

16. Among other measures, the administration of police, fire, and health agencies was removed from local control, as was the management of the new Central Park. P. 237.

17. *Wood v. Draper*, 15 N.Y. at 543.

rectly argues that Denio's opinion was not surprising. The Chief Justice was simply reiterating a principle of government that had taken root soon after the American Revolution and was firmly established by the 1850's.

Yet some New York City officials clung to the belief that not all of the corporation's business was subject to state legislative control. According to Hartog, as late as the 1830's and 1840's many still believed that the "private" estate bestowed on the corporation of New York City by the Montgomerie Charter was an inviolate grant beyond the control of state lawmakers. Writing in 1836, the great legal commentator James Kent considered the city-owned ferry monopoly confirmed in the Montgomerie Charter to be "an absolute grant of vested property, or an estate in fee, which could not lawfully be questioned or disturbed, except by due process of law."¹⁸ In Kent's opinion, this franchise was "as much beyond the reach of a gratuitous legislative resumption, as any other franchise or property held by grant or charter."¹⁹ By the 1840's, however, Brooklyn residents who commuted daily to New York City on the corporation-owned ferry were ready to rebel against the inadequate service offered by the government of their sister city. In 1845 Brooklyn representatives successfully sponsored a bill in the New York state legislature that deprived New York City of its ferry monopoly. But five years later a judge of the New York Supreme Court ruled that the city's ferry franchise was indeed vested property beyond the reach of state lawmakers. In language reminiscent of Kent, he asserted that the city did retain some private rights in relation to the legislature.²⁰ Later in the 1850's the Brooklyn Common Council renewed the struggle, initiating an appeal from this anachronistic decision. And in 1860 the Court of Appeals ruled that the city's power to establish and maintain ferries was "a delegation of authority for public purposes, and not for private emolument."²¹ With this decision the courts laid to rest the last vestiges of the propertied pre-revolutionary corporation. According to Hartog, "the corporation of the city of New York had become legally indistinguishable from propertyless institutions of derivative public administration" (p. 260).

In his famous treatise on municipal corporations,²² published in 1872, John F. Dillon bestowed his authoritative imprimatur on this new body of law that had developed since the Revolution. Generations of lawyers would repeat "Dillon's Rule," asserting that municipi-

18. P. 240 (quoting J. KENT, *THE CHARTER OF THE CITY OF NEW YORK, WITH NOTES THEREON. ALSO, A TREATISE ON THE POWERS AND DUTIES OF THE MAYOR, ALDERMEN, AND ASSISTANT ALDERMEN, AND THE JOURNAL OF THE CITY CONVENTION* 140 (1836)).

19. P. 240 (quoting J. KENT, *supra* note 18, at 141).

20. *Benson v. Mayor of New York*, 10 Barb. 223, 245 (N.Y. Sup. Ct. 1850) (Barculo, J.).

21. P. 257 (quoting *People v. Mayor of New York*, 32 Barb. 102, 120 (N.Y. Sup. Ct. 1860)).

22. J. DILLON, *TREATISE ON THE LAW OF MUNICIPAL CORPORATIONS* (1872).

palties possessed only those powers clearly and specifically granted by their respective state legislatures. City governments had no inherent powers; indeed, they could not exist without legislative authorization. The municipality was not a corporation with vested rights, but a public entity whose every legitimate action was founded on revocable state legislation. Dillon recorded this as established truth,²³ and thereafter Dillon's word was law.

Professor Hartog admirably recounts this long progression from Governor Montgomerie's charter to Dillon's Rule. It is a significant subject worthy of the 264 pages that Hartog devotes to it, and each of those pages testifies to the author's dogged research and perceptive intelligence. Hartog ably unearths the nuances of change buried beneath the convoluted verbiage of judicial opinions, and he likewise mines rich ore from the seemingly barren pages of common council minutes. He has diligently examined the pertinent sources and has constructed a well-reasoned argument on the firm foundation of his research. Moreover, his work is readable, a distinction that an increasing number of scholarly studies do not share. A lay reader may slog through the fine points of water-lot grants and tort liability with some difficulty, but given his topic, Professor Hartog does a fine job of presenting his findings and expounding his arguments. Overall, *Public Property and Private Power* ranks among the better works published in the field of legal history during the past decade.

Yet the reader should be warned of a few problems with Professor Hartog's admirable volume. For example, I would question Hartog's failure to recognize the pre-revolutionary symptoms of change in the legal status and function of New York City's corporation. The significance of the corporation's estate was already declining as early as the 1760's, as the Common Council turned with increasing frequency to the colonial assembly for authority to levy property taxes in support of public services. Between 1757 and 1775, the colonial legislature enacted twenty-three measures empowering the corporation to tax property holders, and also periodically granted the city's aldermen the authority to expand or reorganize such local services as fire protection. In virtually every year after 1760 the corporation successfully applied to the legislature for permission to raise substantial sums through taxation. For example, in 1770 New York's assembly authorized the Common Council to raise £1,600 through property levies for street lamps and payment of the city watch;²⁴ that same year the city's water lots earned only £460, and even the lucrative ferries produced only

23. See *id.* at 101-05.

24. 5 COLONIAL LAWS OF NEW YORK, 1664-1775, at 53 (ch. 1425) (1894) (An Act to empower the Mayor Recorder and Aldermen of the City of New York, or the major Part of them to order the raising a Sum not exceeding sixteen Hundred pounds for the uses therein mentioned, passed, 1770).

£970.²⁵ Thus, even before the Revolution the corporation had acquired the habit of applying to the legislature for privileges and powers, and even before the Revolution the corporation could not fulfill its responsibilities independently of the colonial assembly, simply by recourse to its corporate property. The amount of legislation concerning the corporation remained small compared to the flood of measures that would be passed during the nineteenth century, but already in the 1760's and early 1770's the umbilical cord between the legislature and Common Council was firmly in place, and the corporation was being nourished by the public authority of the colony's lawmakers as well as by the private estate granted in the Montgomerie Charter.

Hartog avoids dealing with this early evidence of the changing status of New York City because it does not fit his emphasis on republican ideology as the motive force in the corporation's transformation. According to Hartog, post-revolutionary ideology destroyed the privileged, "private" position of the corporation.²⁶ But if there are signs of change before the Revolution — and there are — this explanation will not suffice. Hartog needs to confront this problem and recognize that the American Revolution did not produce such an abrupt shift in the history of the corporation as he implies.

I also disagree with Hartog's contention that his interpretation of the colonial corporation sharply contradicts the views I presented in *The Municipal Revolution in America*.²⁷ I argued that the regulation and promotion of trade were the chief concerns of most borough corporations prior to the mid-eighteenth century; Hartog contends that the management of New York's property holdings preoccupied the corporation aldermen. Yet as Hartog himself so ably documents, the corporation used its property holdings, most notably its water lots, to promote and regulate the construction of wharves, docks, slips, and other facilities vital to the city's seagoing commerce. The corporation did not use its property holdings to encourage the creation of parks, hospitals, or water-supply systems. Instead, in the early eighteenth century the development of trade was of preeminent concern. Thus, the gap between Hartog's findings and my own work is not as great as he seems to contend. The difference is that Hartog offers an excellent account of the *means* employed to develop commerce, a matter that I glossed over quickly. When Hartog writes that the "property rights of the Montgomerie Charter were granted in pursuit of the goal of creating a major seaport in New York City" (p. 34), he in fact accords closely with my position.²⁸

25. G. EDWARDS, *supra* note 2, at 197.

26. "Corporate property was . . . identified both with the much-contested and much-detested rights of the great land magnates of the state and with a special privilege that was anathema in a republican revolutionary culture." P. 85.

27. See text at note 1 *supra*.

28. See J. TEAFORD, *supra* note 1, at 17.

Finally, readers of *Public Property and Private Power* need to be warned and reminded that this is a study of but a single corporation, and one can generalize from Hartog's findings only at one's own peril. Hartog correctly observes that before the nineteenth century there was no general law of municipal corporations. Each corporation operated under a unique charter and there was no standard set of borough officers or borough privileges (pp. 22-23). The uniqueness of the New York City corporation limits the significance of Hartog's work, in that while real property in the form of water lots and common lands may have played an important role in the history of New York City's colonial corporation, this was not the case in other colonial boroughs. Of the other borough corporations in the thirteen British colonies, only Albany enjoyed extensive real property holdings like those of New York City. Other charters vested corporations with money-making privileges, but they were rarely as lucrative as the New York properties. And since other boroughs enjoyed fewer privileges, they could not act as effectively as New York City in planning the commercial development of the community. Among the most common privileges granted borough corporations was the right to rent market stalls and collect fees from those participating in borough fairs. Like New York City's water lots, these were vested charter privileges that allowed the corporations to reap revenues without resorting to direct taxes. But with its ferry franchise, water lots, and common lands, in addition to market stalls, New York City was much richer than virtually all of the other colonial boroughs.

Not only was New York City's corporation unusual during the colonial period, it was virtually unique following the Revolution. Unlike most other borough charters in the thirteen colonies, the charters of New York City and Albany survived the Revolution unimpaired. In fact, New York's charters were specifically confirmed by the state constitutions of 1777 and 1821.²⁹ Since New York City clung to its colonial charter long after other cities had discarded their antique instruments of rule, the corporate development of New York City in the nineteenth century is atypical and somewhat anachronistic. For example, New York City's stand in the battle over the ferry monopoly in the 1850's was more representative of the legal doctrines of the eighteenth century than those of the nineteenth. Nowhere other than in New York would judges seriously entertain claims that certain municipal charter privileges were vested rights beyond state control. While Professor Hartog surely recognizes the anachronistic nature of this dispute,³⁰ the reader needs to be reminded of the peculiarity of

29. See note 6 *supra*.

30. Hartog readily concedes that "[t]he separation of government from corporation that characterized eighteenth-century Philadelphia occurred much later in New York City," and thus he seeks to reformulate his broader goal as follows:

New York City's corporate development. It should be emphasized that New York City's ferry claims represented the last gasp of the old order. Gotham may have been in the vanguard of the nation's commercial development, but it was in the rearguard of its legal evolution.

Because of his narrow focus on New York City, Professor Hartog may, in fact, mislead the reader. Hartog emphasizes that in the 1820's and 1830's New York City was not yet just another standardized unit in a system of public administration imposed by the state (pp. 180-82). It still enjoyed an individuality and distinctiveness conferred upon it by the Montgomerie Charter of 1730. Hartog's views may be correct with regard to New York City, but elsewhere in the nation early nineteenth-century legislators were mass-producing borough or town corporations that did not enjoy any special privileges vis-à-vis the state. Outside of New York the notion of the municipal corporation simply as a unit of government, like the county or township, was well developed. For example, in post-revolutionary Pennsylvania a borough charter was no longer a privilege but a right bestowed on virtually any community desiring one. Moreover, there was a cookie-cutter consistency to the borough charters; lawmakers employed a standard form so that the charter of Chambersburg differed little from that of Greencastle or Connellsville. Pennsylvania's lawmakers sometimes tired of reprinting the same provisions for each borough, and occasionally they specified that the charter of one borough would also apply to another. Thus, in 1806 the abbreviated charter of Bellefonte simply provided that the inhabitants and borough officers would "be in all things governed by similar rules and regulations as are granted to and provided for the inhabitants and borough officers of the borough of Williamsport, . . . by an act of Assembly, passed in the present Session of the Legislature."³¹

The passage of general incorporation acts for boroughs and towns was also indicative of the new status of the municipal corporation. In 1817 the Indiana legislature was overwhelmed by "the number of applications . . . from the inhabitants of different towns in this state, to become incorporated."³² Because "the granting of charters to each would be productive of much loss of time to this General Assembly,"³³ the legislature enacted a standard charter which any locality

The issue is not the marginal differences between Philadelphia and New York City but how to characterize corporate government in eighteenth-century America. Was New York City "a regime of little government" like . . . Philadelphia, or was it a regime whose government can only be understood if we put aside our conventional expectations about the nature of a public sphere?

P. 37.

31. Act to Erect the Town of Bellefonte, in Centre County, into a Borough, ch. 184, § 1, 1806 Pa. Laws 615, 616.

32. Act Providing for the Incorporation of Towns in the State of Indiana, ch. 81, preamble, 1817 Ind. Laws, 2d Sess. 373, 373.

33. 1817 Ind. Laws, 2d Sess. 373, 373.

could adopt if two-thirds of the qualified voters in the community approved. Following the election, the town had only to deposit a certificate of incorporation with the county clerk, and it would be an incorporated body.³⁴ That same year the state of Ohio adopted a similar measure, as did Missouri in 1825.³⁵ Most communities still sought a charter directly from the state legislature, but the general incorporation laws reflected the changing attitudes toward the municipal corporation. As early as 1817 state lawmakers were framing charters that were universally applicable to any borough or town in the state. Borough charters were no longer special grants of sovereign favor; they were statutes describing the responsibilities and framework of a standard unit of state government. Even before *Dartmouth College* the old notion of the corporation had been discarded.

Hartog's study is, then, a fine account of the corporation of New York City. But it is not an account of the origin of the modern municipal corporation in the United States. New York City was an unusual case both before and after the Revolution. Anyone seeking to understand the development of the modern municipal corporation as a governmental unit should recognize the limitations of *Public Property and Private Power*. Yet those interested in the local history of New York City and the evolution of its government will find Hartog's volume richly rewarding.

34. Act Providing for Incorporation, ch. 81, §§ 2-5, 1817 Ind. Laws, 2d Sess. 373, 373-75.

35. Act to Provide for the Incorporation of Towns, ch. xxxiii, 1816 Ohio Laws 74; Act to Provide for the Incorporation of Towns, 1825 Mo. Laws 764.