

Updated June 4, 2026

J. Alexander Webb

Liability Exemptions-A Wrong Turn

...it is precisely Big Business that is largely responsible for the twentieth-century march into aggressive statism... Murray N. Rothbard

Corporations have operated outside of common-law norms, spurred by government-granted limited liability. For instance, corporations have engaged in misrepresentations and violations of domestic and international law, and have partnered with governmental forces to promote and profit from political and military predations worldwide.

This can be addressed; historical and economic analysis disputes the practicality of limited liability. Where damages occur from fraudulent or willful misconduct, the personal wealth of shareholders, as well as their equity, should be at stake. Such exposure could shift much of corporate financing from common stock share offerings, for those gaming for protected inordinate profits, to more above-board bonds and the loan market, without diminishing the total pool of funding. Then, with the likelihood of oversight under increased insurance use and greater exposure to the far fewer legal owners, new accountability would curb current corporate moral-hazard-sullied behavior, while improving the ideological defense of capitalism.

The Problem

Recent unprecedented accumulations of economic power wielded by a few corporate giants should alert us to an insidious structural defect affecting the operation of our capitalist system.

A confluence of influence accounts for the recent seemingly inexplicably uniform global policy regarding the COVID-19 episode. Non-government organizations (NGO's) played a part.

The military-industrial complex's capture of foreign policy is well known. The escalation of a military threat against Russia continues regardless of changes in the heads of state. The NATO nuclear threat up to the Russian border corresponds with financial inducements that incentivize corporate manipulation of public policy. An example of corporate complicity in and enablement of actions that violate all measures of moral restraint was recently reported by Finian Cunningham in an article entitled "Do Palantir's bosses have blood on their hands over the Starobelsk massacre?"¹

Corporate capture of medical regulatory authorities, such as the FDA, CDC, and the WHO, demonstrates the corruption made possible in part by the approval and public funding of their products. The seemingly benign corporate form of organization undermines natural safeguards against dangerous shareholder complicity in anti-social behavior. The relevant issue lies in the chartering agreements for corporations that transcend the mere recognition of a collective form of business ownership, specifically in the granting of limited liability. Corporate (owners) should be especially subject to a check on injurious or fraudulent activities, including collaboration in government misdeeds and transgressions.

Granted, a robust capitalist system requires a wide range of freedom of private action. But it also requires common-law restraints. Unfortunately, the current corporate model that undergirds the global economy is constructed and protected by a flawed jurisprudence.

Whether acting individually or collectively within a corporation, those who breach others' rights should face consequences. The misapplication of corporate personhood now absolves shareholders from personal legal accountability.

¹ Strategic Culture Foundation, reposted on June 3, 2026, lewrockwell.com

https://www.lewrockwell.com/2026/06/no_author/do-palantirs-bosses-have-blood-on-their-hands-over-the-starobelsk-massacre/

Corporate personhood, often cited as the root cause of corporate abuse of power, need not be condemned altogether. Instead, personhood, in the proper context, can be a practical simplification for organizations operating in the economy.

There is no need to deny investors individual rights that should be protected simply because they act jointly with others, provided others' rights are respected. The matter at hand is that beneath the capitalist paradigm lies a legal landscape that nurtures errant corporate entities incompatible with genuine, bona fide Capitalism.

These corporate legal immunities transcend a mere license to act. They are a legal shield against necessary, historically evolved common-law customs. Such a shield has overturned an underpinning of civil society. Corporate malefactions dismissed as unavoidable have, for several generations, escaped redress. The parties have been denied due process and compensation for damages incurred. Peaceful foreign citizens have been victims of illicit military and CIA interventions.

The ramifications are serious: such outcomes have emboldened top-heavy domestic and transnational financial firms to move beyond the capture of legislative and regulatory agendas to global felonious influence at the highest echelons of politics worldwide.

This is a challenge to the convention of corporate limited-liability. As owners, individual shareholders should be held responsible for their participation in corporate behavior; they should be civilly liable for harm caused by the manifest actions of any corporation in which they participate voluntarily.

Peter Breggin lays it out: “Within these all-powerful, predatory, worldwide institutions, there is zero respect or concern for personal freedom or political liberty. There is no empathy for those they harm.”²

Background

Apprehension of the economic impact of trusts or large financial conglomerates is not new. For example, in the study of Industrial Organization, metrics such as market share and concentration ratios (e.g., the share of total shipments controlled by the four largest firms in an industry) have traditionally been employed. Such methods, however, fail to reveal what more directly impacts society—the legal infrastructure specially crafted to protect the errant corporation. And that is the State granting shareholder liability exemptions, including corporate bankruptcy provisions.

Such protection ostensibly encourages capital formation. However, this is wrong. No net reduction of available funds need result from a mere change in the disposition of investments, nor need there be a change in the culture of endorsed personal achievement through financial gain. Investors can reduce risk through insurance, lending, or buying bonds. Participation bonds that include the privilege of a share in the earnings would be an option. They need not blindly buy corporate shares based solely on profitability, as is common under a shield of liability protection.

Undoing limited liability shifts investor ownership away from shares and into bonds or credit. A reduction in investor shareholding and greater use of credit instruments place these owners at higher risk of personal loss from adverse conduct.

In Colonial America, the mercantilist economic model included exclusive rights to engage in commerce granted to favored companies. The 18th Century saw the British East India Company's control through a chartered monopoly. That company threatened to take over commercial activities around the port of Boston, prompting the Boston Tea Party's ardent reaction against it in 1773.

² Breggin, Peter R. and Ginger Ross Breggin. 2021, *Covid-19 and the Global Predators*, Ithaca N.Y., Lake Edge Press. p. 335-6.

Now in the 21st Century, corporate interlocks among Big Tech and Big Pharma have, in an environment of special privilege, come to dominate not only the public health and military sectors but also social media, broadcast media, academia, even medical journals, and licensure.³

More recently, we have had unprecedented capture of the Public Sector itself. The corporate-sponsored WHO, in concert with the CDC, FDA, and numerous NGO's, elevated a limited, modestly symptomatic novel flu-like illness into a false pandemic.⁴ It accounts for the concerted overreaction beginning in 2020 that instituted unfounded, disruptive emergency measures worldwide.

2021 saw unwarranted lockdowns and vaccine mandates.⁵ Not unlike the military-industrial interests' stranglehold over policymakers that has fueled decades of profligate war-making, the medical-pharmaceutical corporate profiteers, albeit in league with elements of the Deep State, harnessed the world into financing an unproven injectable medication to treat a phony pandemic foisted on a misinformed public.

Providers were legally exempted from fair adjudication for harm inflicted. Such a distortion of justice included financial subsidies as incentives (expensed to the taxpayer).

We are witnessing control by the corporate elite, enabled by unprincipled taxation policies and monetary infusions. Much of this responsibility results from acquiescence to an illicit (Federal Reserve) counterfeit (fiat) money scheme, resting on the 20th-century co-optation of our market-evolved dollar medium of exchange, replete with corporate bailouts.⁶

The consequent global acceleration of the loss of fundamental liberties threatens to exceed that experienced under Nazism and Bolshevism between the World Wars. Moreover, a looming financial crisis will ensure attempts to institute central bank digital currency personal accounts. Such implementation supplies a means of absolutist control over individual freedom.

On top of this is the damage to Capitalism ideologically. The palpable excessive corporate overreach into social and political spheres supplies ammunition to Nihilist and Marxist condemnations of Capitalism.

Genuine Capitalism holds sway wherein capital, as a means of production, is employed productively in a market system devoid of politically derived economic privilege. Instead, since the early 19th Century, what has passed for a free-market capitalist system has been but an attenuated form of capitalism.

Functional Capitalism need not require, nor does it benefit from, State-imposed interference with traditionally viable dispute resolution under common law. The framers trusted in a jurisprudence apart from the government-instituted officialdom. Amendment VII. U.S. Constitution illustrates this: "In Suits at common law...the right of trial by jury shall be preserved..." The jury was considered an extra-governmental check against the well-recognized tendency to abuse power. Market-based arbitration resolves disputes through contractual agreements and also applies to liability issues that would arise in the absence of liability protections. In short, the climate under which corporations operate is distorted by a negation of time-tested, powerful juridical precepts necessary to civil order. Civil suits proffer an essential means of

³For example, Blackrock, Vanguard, and State Street. BlackRock Corporation became the world's largest asset manager, with \$9.5 trillion in assets under management by October 2021. Vanguard, with about \$7 trillion in global assets under management, by January 13, 2021, had become the largest provider of mutual funds and the second-largest provider of exchange-traded funds in the world after BlackRock's iShares. State Street had custody of, or administers, over \$40 trillion in investments.

⁴Pandemic: "occurring over a wide geographic area and affecting an exceptionally high proportion of the population"...Webster's Seventh New Collegiate Dictionary

⁵<https://nebula.wsimg.com/5ffacd7a0d04cfec10cdadc5ad9147d3?AccessKeyId=B83CC4B46F98D16AC824&disposition=0&alloworigin=>

⁶ See Rothbard, *What Has Government Done To Our Money*. Online at Mises.org

protection against organized maleficence. The high degree of indemnification of private firms through recent special legislation affirms this descent into societal adversity.

Less visible than these favors has been the fallout from the long-practiced public offering of corporate stock as a source of finance, which, with limited liability, reduces incentives for prudent investor scrutiny.

Caution typically limits participation in a group activity that might include egregious behavior. So why should owners (shareholders) get a pass? State requirements on articles of incorporation and the Securities Exchange Commission's oversight of stock offerings indicate recognition of the challenges inherent in the current corporate model.

A free-market capitalist template rules out disruptive interference from political forces in markets or market activities. It allows for a standard to evaluate both the corporate form of business and its market setting. The corporation, as constituted, is an artificial rather than market-sourced business organization.

In particular, customary belief incorrectly pictures the corporate form as a necessary and proper element of modern Capitalism. Genuine capitalist-oriented societies need not countenance limited liability for participants in wrongdoing. Academic Political Theorist Robert Nozick explored how, from first principles, organized societies would evolve. In conjecturing the legitimacy of the State as a social institution, he conceded that, regarding delimiting corporations:

...it may not *diminish* [his emphasis] their liability as compared to other persons....Those voluntarily dealing with a corporation....will do so by contracts explicitly limiting the corporation's liability.... A corporation's liability to those involuntarily intertwined with it will be unlimited, and it presumably will choose to cover this liability with insurance policies.⁷

Corporate behavior manifests a propensity to gain market share. Research reveals that unscrupulous corporations block competitors by supporting rather than opposing new regulatory and antitrust policies. Gabriel Kolko writes:

The theory of the national government as a neutral intermediary in its intervention into the economic process is a convenient ideological myth, but such a contention will not survive a serious inquiry into the origins and consequences of such intervention. The rhetoric of reform is invariably different than its structural results. Such mythology is based on the assumption that those who control the state will not use it for their own welfare.⁸

Such an anti-competitive result was assiduously detailed by iconoclast Murray Rothbard in his posthumous work, *The Progressive Era*.⁹

Throughout the 20th Century, business sectors experienced compromised performance due to unnecessary cronyism in the name of regulation. We now have a corporate-government symbiosis, or what Mussolini termed Corporatism, with the result that license to avoid responsibility through liability limitations exacerbates performance.

⁷ Nozick, Robert. *Anarchy, State, and Utopia*, New York, Basic Books, Inc., pp.133-4

⁸ Kolko, Gabriel. 1963. *The Triumph of Conservatism*, Chicago, Quadrangle Books, p.302

⁹[https://www.amazon.com/Progressive-Era-Murray-N-](https://www.amazon.com/Progressive-Era-Murray-N-Rothbard/dp/1610166744/ref=sr_1_1?crid=359GTQ6JGB7EB&dchild=1&keywords=the+progressive+era&qid=1615232532&s=b)

[Rothbard/dp/1610166744/ref=sr_1_1?crid=359GTQ6JGB7EB&dchild=1&keywords=the+progressive+era&qid=1615232532&s=b](https://www.amazon.com/Progressive-Era-Murray-N-Rothbard/dp/1610166744/ref=sr_1_1?crid=359GTQ6JGB7EB&dchild=1&keywords=the+progressive+era&qid=1615232532&s=b)
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Personhood

Some critiques of the corporation focus on the legal status of personhood. However, not all attributes of personhood conflict with an appropriate corporate template. Businesses employ contractual means of organizing collective action. They coordinate disparate ownership of wealth to a common business goal by marshaling shareholder capital. The right of individuals to freely associate and employ managers for such ends is merely an extension of individual rights to undertake necessary business activities privately.

Ludwig von Mises used the term methodological individualism in describing how the meaning of "collective action" derives wholly from that of individual actions.¹⁰ This applies to business firms, whether or not of the corporate form. When seen in this light, businesses merit protection from legislated and judicial overreach. Collectives, made of individuals, should also have rights in turn.

Examples of breaches of these rights include disruptive regulatory reporting requirements and IRS intrusions that violate Fourth and Fifth Amendment protections, even more onerous than those imposed on individuals; discriminatory subsidies to competitors; antitrust laws that defy simple logic, such as laws against restraint of trade that arbitrarily penalize raising, lowering, or maintaining a product's price profile; and insider-trading laws that are a perfect example of confusing the necessary coordination of informed valuations with game-table cheating.

Recently, we have had lockdowns and mandates that disproportionately affected small businesses while often exempting the giants (who have more clout with authorities). Such a climate of legal pitfalls creates opportunities for the most unscrupulous corporate interests to gain a competitive advantage.

Modern civilization has seamlessly accommodated scale disparities: Freight trains cannot be stopped at each intersection, as could donkey carts. Both are transport vehicles, but instituting common-sense exceptions gives trains the right-of-way.

Corporations have been granted personhood in legal standing for a variety of situations. Of course, personhood is a fiction, but for practical legal purposes, it has some valid applications. As a rule, litigating every matter involving a corporation by creating a separate case for each shareholder or employee would be impracticable. Personhood also allows for the unique attribute of continuity, whereby the corporation can have an indefinite life that outlasts any of its owners. However, to be clear, such personhood cannot absolve individual shareholders from moral culpability for actions occurring under their watch, even though litigated later under new ownership.

We will see that removing particular limited liability privileges may provide a means of redress that answers some objections to corporate personhood.

Political movements or campaigns too often advocate policies that breach the peace beyond even constitutional strictures. Hence, addressing some evident adverse political outcomes requires changes in the general social consciousness that is hostile to free markets.

Denying funding to political parties or politicians who jeopardize or threaten others' fundamental rights, whether from political action groups or corporations, has merit. Ideally, government programs that violate individual rights should be curtailed, obviating concern regarding private support for harmful policies.

But without group efforts, how can there be organized opposition to government interventions otherwise? The 2010 Supreme Court decision in *Citizens United v. FEC* recognized this by holding that groups may engage in political activity. However, an argument can be made that as long as corporate liability protections shield owners (shareholders) from culpability for a corporation's injurious behavior,

¹⁰Mises, Ludwig Von. Revised 1963. *Human Action*, Chicago, Yale University Press. pp. 41-43

only those organizational forms that do not embrace this privilege should be permitted to engage in political influence or lobbying. This would, to some degree, result in a de facto reversal of the decision.

Corporate liability for the small enterprise, subject to incongruities across various government legal venues, would be best addressed by courts rather than by rigid statutes. For instance, joint liability (sometimes for the cost of the entire award) currently assigned to those corporations involved in unproductive or even negative outcomes, although only marginally responsible or even merely connected by circumstance, needs reexamination.¹¹

Hence, a more nuanced approach to liability regarding smaller enterprises applies. Close corporations and general partnerships have been a necessary source of innovation and entrepreneurship. Moreover, owners are often officers who, while not personally liable for financial obligations, have exposure for malfeasance as a restraint even under incorporation.

Instances of demonstrably unconstitutional legislation have unnecessarily imposed excessive liability. Indemnities provided by increased use of insurance point to a solution. Ideally, reforms such as pre-arranged arbitration agreements, justice centered on tort rather than criminal law, and even private provision of judicial services have proven to have merit.¹²

Instead of focusing on corporate personhood, seeing firms or businesses as owned by identifiable individuals comports with methodological individualism. Proper liability reduces losses to creditors or injured parties arising from corporate bankruptcy or dissolution. The limitations afforded to individuals in bankruptcy have roots in the reform of earlier, stringent corrective measures such as debtors' prisons. An association of individuals need not be given the bankruptcy protection of a "person" when that is available to each shareholder individually. Incorporation has become a convention to shield shareholders from due process.

However, what applies to the rights of individuals would logically extend to groups of individuals when considering rights enshrined in the First Amendment. In this way, opposition to the 2010 Citizens United Supreme Court decision may have merit for limited liability organizations, but be a moot issue in a world absent current corporate liability exemptions. Rather than seeking to limit corporate financial support for political or government policy, removing shareholder protections for malfeasance offers a more straightforward approach while avoiding constitutional questions.

We can envision a form of liability protection for shareholders enshrined in contractual agreements between private entities through arbitration clauses. But, under principles of methodological individualism, there would be no room for exemption from exposure to civil or even criminal culpability for the shareholder (owner) of a corporation that heretofore had been allowed to be dissolved or bankrupted. Robert Nozick's comment above seems insightful. In 1970, Murray Rothbard acknowledged that liability limitations, without incorporation, would arise naturally in commercial contractual relationships, but may have underestimated their importance applied to all actions: "It is true that limited liability for torts is the illegitimate conferring of a special privilege, but this does not loom large among the total liabilities of any corporation."¹³

In other words, a corporation would be a convenient reference to a grouping of individuals. Such individuals would have no grounds to defer responsibility for transgressions to a corporate "person"; no

¹¹ [10] (See *The Tyranny of Good Intentions* by Paul Craig Roberts and Lawrence M. Stratton). Needed limitations on such policies need not be a justification for retaining imprudent limited liability statutes.

¹²See here, and Rothbard, Murray N. 1973. *For a New Liberty*, New York, Macmillan Co., pp. 228-274

¹³Childs, Roy. 1994, *Liberty Against Power*, San Francisco, Fox and Wilkes. P. 232.

corporation would have standing of its own, as it is merely the convenient unity of association of fully individually responsible individuals. This applies to non-profit corporations as well. The collective actions of a lynch mob do not absolve the individual culpability of participants in misdeeds. As seen by an early Libertarian movement luminary, Roy Childs: "...we can justify a *limited* limited liability but not an *unlimited* limited liability."¹⁴

Additional critiques

A practicable transitional step to a world of stockholder responsibility might limit liability for wrongdoing to, for example, only a fixed multiple of a shareholder's investment. Such exposure would elicit insurance industry expansion to provide indemnity for investors. Inevitably, ratings and appraisal services would expand as scrutiny of corporate activities and behavior would increase.

Of course, many investors, rather than buying assessable shares in corporations they know little about, would forego anticipations of high-profit returns and instead buy bonds at more modest returns. Owners of preferred stock, without voting privileges, would be exempt from liability beyond their investment, unlike common stock owners. Common stock owners, having greater culpability, would certainly be proportionately fewer than they are currently. Nonetheless, such a reform of limited liability would not materially reduce the availability of total financial capital; instead, it would promote more responsible investing.

If a model of equitable corporate and shareholder legal responsibility had prevailed since the beginning of the Industrial Revolution, ammunition for condemning the predominant form of Capitalism would have been reduced.

Recent corporate prescriptive privileges and corporate interface with political coadjutors and journalists have penetrated social media, economic, academic, and medical sectors. Global policy consolidation has foreclosed grass-roots means of remediation and instead encouraged organized crime syndicates.

The current corporate form is relatively new. The U.S. Constitution notably excluded the Federal chartering of corporations. The founders had good reason to be wary after experiencing the monopolistic hold on commerce by the Hudson's Bay Company and, especially, the British East India Company. As a result, chartering evolved exclusively in individual States. Ultimately, corporations gained limited liability standing as States competed for reciprocal economic benefits in granting corporations this privilege.

The Nineteenth Century saw the use of the general partnership, the rise of the corporate model, and the eventual adoption of limited liability granted by States. The early legal status of corporations did not include limited liability. Initially, businesses were organized as sole proprietorships and partnerships mainly for permanence and continuity.

Stockholders of the English joint-stock companies had finally come to assume 'double liability'—i.e., the stockholder was liable to the extent of his investment plus a like amount—and some states experimented with charters specifying either double liability or unlimited liability. After 1830, however, statutes were passed in the various states providing for limited liability, and by 1860 this principle was generally accepted."¹⁵

Was Limited liability needed? Were these State concessions necessary? The unprecedented growth rate of the economy in the Nineteenth Century occurred with businesses organized under the general partnership model (generally absent limited liability) until the latter part of the century. Ted Nace noted: "The volume of manufactured goods grew by an average of 59% per decade from 1809 to 1839, then by

¹⁴Childs, Roy. 1994, *Liberty Against Power*, San Francisco, Fox and Wilkes. P. 232.

¹⁵Robertson, Ross M. 1964. *History of the American Economy*, New York, Harcourt, Brace and World, Inc., p.245

53% in the 1840's and 60% in the 1850's."¹⁶ And ... "Limited liability... wasn't a widespread feature of the corporation until about 1875..."¹⁷ Hence, the lack of the limited liability corporate model appears not to have stymied economic performance in the American experience. This impressive growth supports the thesis that shareholders in joint stock companies need not be granted the privilege of limited liability under tort law (see commentary by Jonathan S. Miller).¹⁸ In 1916, economist John Maurice Clark had his doubts as well:

Has the principle of limited liability been carried too far?...one of the worst features of the internal organization of corporations is its wonderful aptitude for dividing responsibility, concealing it from outside observers...to an economics of responsibility it is one of the very roots of evil.¹⁹

Shareholders primarily concerned with bottom-line results and share prices may opt out of participation in corporate affairs.

Fewer, but more responsible and more involved shareholders, would improve corporate behavior. Under the current system, with large numbers of shareholders, a minority of motivated or attentive shareholders wields control over corporate decisions. Hence, large corporations, hedge funds, and similar entities can be easily controlled by a minority of shareholders.

Commenting on the current possibility of control by detached interests, Paul Sweezy observed:

For it must be remembered that one corporation can own the shares of one or more other corporations. Thus a capitalist may control corporation A by owning, say, one-third of its shares. Part of the capital of A may be used to gain control over corporation B, C and D, and the capital of these in turn to bring into the fold still further corporations.²⁰

And,

The general consequences of the spread of the corporate form can be summarized as follows: intensification of the centralization process along with an acceleration of accumulation in general, on the one hand; on the other, formation of a relatively small upper layer of big capitalists whose control extends beyond the limits of their ownership²¹.

Corporate responsibility seems a secondary concern. Owners who bear personal risk can take measures to reduce it. The market has mechanisms to indemnify participants from liability. Professionals routinely procure malpractice or errors and omissions insurance, an appropriate expense for those participating in risk-related activities. In addition, arbitration provisions can clarify and expedite possible litigation.

The waiver of corporate shareholder risk (beyond their investment) granted by present law, including in the event of corporate bankruptcy, relieves large-scale corporations of an essential measure of responsibility.

¹⁶Nace, Ted. 2005. *Gangs of America*, San Francisco, BK Publishers, Inc., pp.54-5

¹⁷Ibid. p.52

¹⁸ https://dbknews.com/2016/08/12/article_8425f7ee-fd9f-5f3b-b594-21208556d1c8-html/

¹⁹ [18] Clark, John Maurice., 1936, *Preface to Social Economics*, New York, Farrar & Rinehart. pp. 89-90

²⁰ [18] Sweezy, Paul M. 1942. *The Theory of Capitalist Development*, New York, Monthly Review Press, p.160

²¹ [19]. Ibid. p.161

Given this, for criminal, reckless, malfeasant, or tortious behavior, more than just the corporation's balance sheet should be at stake. Exempting profit shareholders from exposure removes incentives to invest carefully and to avoid risky or potentially harmful undertakings.

Appropriate shareholder financial exposure to civil liability would increase investor insurance needs and should lessen gross under-compensation of injured parties. No longer would shareholders avoid exposure to full liability through corporate dissolution, bankruptcy, or layering of corporate ownership.

Malfeasance (where the threat of treble damages arises) could extend possible financial liability beyond corporate assets and shareholder equity to the shareholder's other assets, especially if loss of life were at issue. Even if only to a set percentage pro rata to shareholdings, such reduced liability protection would impact behavior. Investors would be more cautious about funding enterprises engaged in activities that risk moral turpitude. Bondholders could lose the value of their holdings, but shareholders, as owners, should face personal asset exposure.

For instance, a medical procedure or medication may generate damages in the U.S. of \$10 million or more per wrongful death. A hypothetical case of 25,000 fatalities and many more injuries from a vaccine could easily exceed several hundred billion dollars and perhaps three times that for deliberate malfeasance (treble damages) without the necessity for punitive damages (which have less justification on natural rights grounds). Currently, a balanced evaluation of VAERS (Vaccine Adverse Event Reporting System) data indicates a far higher number for mRNA vaccines. Such exposure would promise significant changes in corporate behavior. Appropriately, without all-inclusive liability exemptions, shareholders could lose more than their investment, unlike bondholders.

We have had corporate power overreach: In the words of William Appleman Williams, "...the existing corporate system has carried us well onto the threshold of a gentle totalitarianism."

Employees or management (unless they are deliberate participants in fraud or wrongdoing) are not the ultimate responsible parties. Owners are.

There is little difference between individuals conspiring to violate others' rights and owners of an enterprise complicit in wrongdoing.

Consider contractors or NGOs (Non-Government Organizations) engaged in operations violating domestic or international law and human rights, now shielded by directives from the Defense Department or other agencies. Culpability in a conspiracy is individual. We need not apply the law of agency (the doctrine of respondent superior-"let the master answer"), where vicarious liability rests with the employer. Because shareholders are the employers, should not each shareholder face personal culpability that might exceed the loss of such shareholder's investment, at least financially? Even more of concern is that corporate officers avoid responsibility for injurious behavior precisely because that is conferred on owners from whom they take orders, but in the corporate world, these owners, of course, escape responsibility other than in lost share values, as we have seen, leaving the corporate form unaccountable for liability that individual (unincorporated) persons cannot waive.

The Founders included a Commerce clause in the Constitution: "The Congress shall have Power...To regulate Commerce with foreign Nations and among the several States...To establish uniform laws on the subject of Bankruptcies throughout the United States;"— Art. 1 Sec. 8.

Congress could legislate on corporate bankruptcy protections. Why should there be corporate personhood in bankruptcy that insulates the stockholders who, under simple methodological individualism logic, jointly caused damages to other parties? Common stock of certain corporations would be avoided, with financing provided through other means. This ensures that the stockholders, much fewer in number, would have even greater exposure than they do now and therefore have every reason to direct the corporation away from questionable activities.

Again, corporations' hesitancy to participate in questionable joint undertakings with governments, such as the contract provision of personnel and equipment for dubious military ventures, might be expected if corporations were held liable for complicity.

The lax environment of investor caution contributes to growth in corporate influence due to scale alone. Moreover, the corporate sector has pressed for privileges and unwarranted legal advantages. These have included the acquisition of various property rights through excessive patent law protections; property titles, including the acquisition of broadcast spectrum rights; subsidies; local property tax forgiveness incentives; natural resource and mining claims; and even exploitation of valuable property site ownership perpetuated through duplicated accelerated tax depreciation allowances on buildings that far exceed long-term costs.

The latter allows avoidance of otherwise normal tax liabilities on site value, all under publicly expensed law-enforcement and infrastructure provisions. Public or community revenue derived exclusively from site value and natural resources, reducing taxes on income, buildings, and improvements, would shift these costs primarily to corporate urban real estate holdings, improve urban infilling, and remove disincentives to assigning the best use and enhancing physical structures and improvements.

International treaties such as NAFTA, MAI (Multilateral Agreement on Investment), and the World Bank and IMF often slant the recovery of damages and legitimate claims by sovereign nations in favor of offending multinational and transnational corporations.

Other policies inadvertently favor more prominent firms. Critics of corporate power highlight tax policies that contribute to increases in scale. R.H. Coase apprised us that, unavoidably, firms already often become more vertically integrated due to tax policies:

Another factor that should be noted is that exchange transactions on a market and the same transactions organized within a firm are often treated differently by Governments or other bodies with regulatory powers...to the extent that firms already exist, such a measure as a sales tax would merely tend to make them larger than they would otherwise be.²²

All too often, government courts treat the limits set by law as sanctioning pollution or other environmentally negligent activities that remain within regulatory bounds. In other words, more stringent limits result from tort action without statutes or rules setting boundaries of action. This is particularly true in environmental protection legislation, which has been a primary reason for inadequate corporate efforts to abate water and air pollution.

Additionally, under the influence of growing industrial interests over the last two centuries, tort law remedies have been replaced, preventing victims from suing polluters for damages: an individual could no longer sue for damages unless the harm was distinct or significantly greater than that suffered by others in society. A "Public" nuisance (affecting the general public) could only be enjoined through a public authority.²³

The Iron Law of Oligarchy

One easily overlooked attribute of progress is the principle of spontaneous self-organization. Under orderly market environments, economic institutions arise spontaneously. Such emergent order occurs where planning is decentralized yet results in coordinated, productive economies.

²²Coase, R.H. "The Nature of the Firm", *Economica*, Nov. 1937, (p.492).

²³Amador, Jorge (1987). Take Back the Environment, *The Freeman*, Foundation for Economic Education, (pp.19, 22), Fee.org

By the same token, under environments lacking customary respect for free choices in markets, retrogressive or anti-social attributes of tyranny emerge spontaneously and inexorably, with no master plan needed. Hence, the Iron Law of Oligarchy. When we add to this the fact of regulatory capture by private factions and perverse incentives enabled by legislation, the resulting constant tendency toward unsavory, politicized outcomes should be no surprise. Of this, the founders were clearly aware when erecting checks and balances on power.

A bona fide free market would not grant immunity to corporations. In this respect, the evolution of concerted government policy contravenes sound jurisprudence. It interrupts common-law remedies requisite to functioning market economies.

Especially onerous is the practice of exempting specific industries from liability altogether through legislation such as the Price-Anderson Act for the nuclear power industry; the various vaccine damage acts,²⁴ including the 2005 PREP Act²⁵ (Public Readiness and Emergency Preparedness Act) that exempts medical industry and medical profession participants; and the various bailout and bankruptcy protections for banks and financial institutions.

Even more economically insidious are legislated quasi-government entities, such as the Federal Reserve System (FED), with monopoly privileges, including those granted by legal-tender laws. Where was the Constitutional authority to charter the FED? The acceleration of wealth disparity between the 1% and the 99% can be easily attributed to the influence of financially dominant corporations, virtually in league with the Fed, controlling the Fed's flow of funds from quantitative easing.²⁶

Of immediate urgency is the evident malversation, most notable in the FDA's, CDC's, and WHO's deceptive handling of the Covid "pandemic" in collaboration with Big Pharma (especially Pfizer, Moderna, and Johnson and Johnson). Corporate arrogance regarding deliberate media disinformation, widespread shadow-banning, and corporate social media censorship was associated with the recent contrived global pandemic. Instead of shareholder inhibition, we witnessed a culture of shareholder proprietorship in ill-gained profiteering. Robert F. Kennedy Jr. writes:

COVID-19 is not the problem; it is a problem, one largely solvable with early treatments that are safe, effective, and inexpensive...The problem is endemic corruption in the medical-industrial complex, currently supported at every turn by mass-media companies. This cartel's coup d'état has already siphoned billions from taxpayers, already vacuumed up trillions from the global middle class, and created the excuse for massive propaganda, censorship, and control worldwide. Along with its captured regulators, this cartel has ushered in the global war on freedom and democracy.²⁷

In sum, by the 1930's, the power of corporations had evolved to such an extent that a new characterization of political nationalism, known as fascism, was termed corporatism.

The question arises as to how the universally adopted form of private enterprise and business became detached from responsible service in its economic role and married into the orb of government affairs as a partner in a new statist authoritarianism.

²⁴https://en.wikipedia.org/wiki/National_Childhood_Vaccine_Injury_Act

²⁵ <https://aspr.hhs.gov/legal/PREPAct/Pages/default.aspx>

²⁶ <https://www.lewrockwell.com/2014/03/david-stockman/qe-was-designed-to-enrich-the-1/>

²⁷Kennedy, Robert F. Jr. 2021. *The Real Anthony Fauci*, New York, Skyhorse Publishing, Inc., p.446

The error in conceptualizing the capitalist free-enterprise system is in overlooking a crucial element in its place in a free society. Common law precepts had progressively protected individuals from social misbehavior, from unwarranted infliction of harm, or the practice of fraud, underpinned by several centuries of social progress. But beginning with isolated cases of monopoly grants by, for instance, the British Crown to the British East-Indian Company, there gradually arose in capitalist economies an institution of a partial merger of the corporation with the state. What went wrong in the business sphere, unlike in interactions among individuals, was the granting of a privilege to engage in profit-seeking activities, immune from the responsibility imposed on individuals in non-corporate disputes and interactions. It was a distortion of common law jurisprudence.

To see the significance of this misstep, we must visualize how radically different the operation of a business firm or enterprise would now be without the government granting limited liability.

First, we must dispel the notion that marshaling the needed capital for large projects required a mechanism to entice investors to participate in risk-taking enterprises. It is claimed that without artificial protections, investors would not provide the necessary capital for innovative enterprises. The prospect of inordinate profits would not be enough to persuade investors to risk exposing their personal wealth to potentially large damage awards against an enterprise. But precisely this hesitancy is not enough to reduce the availability of funds for investment purposes. What would be limited would be the degree of casino-like investing that hoped for a share in high-profit endeavors. Instead, many investors would have to settle for safer but less potentially lucrative investments, such as bonds.

The point here is that with a much smaller number of shareholders, enterprise owners could still secure financing from a larger pool of lendable funds, but would be all the more cautious about incurring losses and more responsible for the enterprise's operations.

To be clear, there is no reason that liability should be universally extended beyond shareholder equity for only honest financial losses of the enterprise. Any organization should be free to announce, through public registration or incorporation, that its business with the rest of the economy excludes financial liability of its owners for net losses beyond equity ownership. This allows for limited liability for non-fraudulent or non-criminally based debt. However, bankruptcy should be a procedure for the orderly liquidation of assets, not a means of protecting shareholders from corporate malfeasance.

Hence, financial losses would not be a shareholder risk beyond shareholder equity, but financial damages for misdeeds would. Because shareholders may not be directly knowledgeable of illicit activities, as is the case today under limited liability, such a relationship would critically limit investor participation as shareholders in corporations. Such a result would greatly increase responsible behavior and reduce moral hazard.

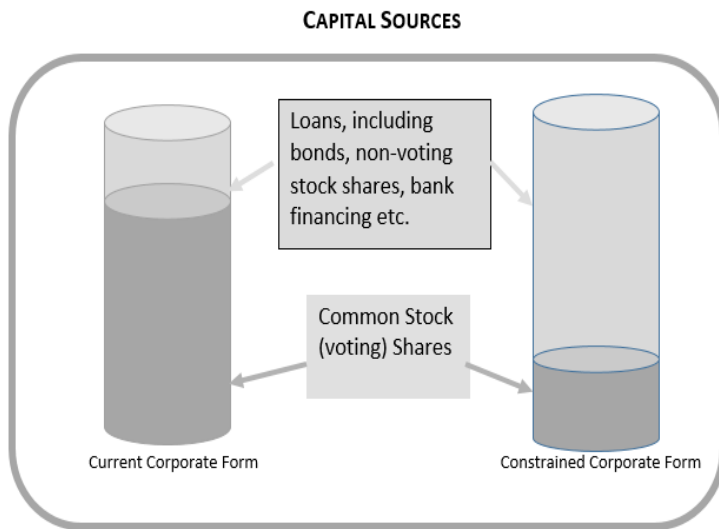
Given this criterion, it would not be unreasonable to restrict funding for political causes or stipends to public persons or entities. As a means of further deemphasizing the role of government, an unincorporated political action committee could similarly be enjoined from such actions, as could private individuals, if specified in law.²⁸

²⁸ See: **Tullock, Gordon**, (1997). *The Case Against Common Law*. Fairfax, Va: The Locke Institute. (2003) Quarterly Journal of Economics.

The Constrained Corporation

The proposal to end the current common-stock shareholder exemption from liability would change the nature of corporate funding. It may be appropriate to surmise that the proportion of funding from initial offerings relative to debt financing should be considerably lower. This portends that the price-earnings ratio would be affected. Given that fewer shares would be issued and that total earnings could be less affected, earnings per share should be higher than otherwise. Today, the market is trading at a PE ratio of about 15. Hence, there should be a lower PE ratio due to higher earnings per share, especially given the greater risk of loss to shareholders. Sources of funding would rely more on debt and less on public stock offerings.

In the words of Investopedia: "...suppose there are two similar companies that differ primarily in the amount of debt they assume. The one with more debt will likely have a lower P/E value than the one with less debt." We show this below with a bar graph:



CONCLUSION

Our economic system has succumbed to the corruption of an irresponsible financial and political plutocracy. This outcome calls for less, not more, government engagement in funding, protections, and bailouts for the private sector.

Emergent Corporatism presents a paradox for Capitalism. However, it need not define mature capitalism. Corporatism constitutes an aberration from bona fide free-market capitalism, an unnecessary distortion of the Founders' conception of a just society. They eschewed chartering corporations in favor of fundamental principles of common law and free markets. Unnecessary privileges bestowed on corporations have produced an aberrant form of capitalism inimical to a prosperous, free economy. Now, under limited liability, Big Tech and Big Media, in concert with Big Pharma, Wall Street, and the Security State, have breached historical limits of power. They are eroding Western individual civil protections in the guise of safety measures against unsubstantiated and manufactured menaces.[27] Aggregated control by just a few investment funds and transnational corporations is so pervasive that laws restricting electioneering communications, such as those enacted in response to the 2010 Citizens United decision, have little impact. Corporatist workarounds through the media and other avenues, already evident in Big Pharma's influence over worldwide political agendas, appear unpreventable. However, there is a good case that current weaknesses in the current economic system apply to attenuated Capitalism, not genuine Capitalism free from legislated corporate liability exemptions.

Bringing the problem to light reveals one source of growing animosity toward inordinate corporate power. It also undercuts the rebuke of the capitalist paradigm by identifying a feasible, more responsible bona fide free-market capitalism.
