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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 misrepresented facts, violated domestic and international law, and partnered with government forces to promote and profit from political and military predation worldwide.

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

The Problem

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

A convergence of influence explains the inexplicably uniform global policy during 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 missile placement up to the Russian border that produces a likely launch-on-warning response 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 corruption made possible in part by approving and publicly funding their products. The seemingly benign

[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 form of organization undermines natural safeguards against dangerous shareholder complicity in anti-social behavior. The relevant issue lies in corporate chartering agreements that go beyond merely recognizing a collective form of business ownership, specifically by granting limited liability. Corporate owners should be especially subject to checks on injurious or fraudulent activities, including collusion in government misconduct and violations of law.

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

Whether acting individually or collectively within a corporation, those who breach others' rights should be accountable, and not be exempted by the misapplication of corporate personhood.

However, corporate personhood, often cited as the root cause of corporate abuse of power, need not be condemned altogether. Instead, in the right context, personhood can simplify how organizations operate in the economy.

Investors need not be denied individual rights that should be protected simply because they act jointly with others, provided they respect others' rights. The issue 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 are more than 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. For several generations, corporate malefactions dismissed as unavoidable have escaped redress. Victims have been denied due process and compensation for damages incurred. Peaceful foreign citizens have been subject to illicit military and CIA interventions. Acts of war have been committed without constitutionally required congressional approval.

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

This challenges the convention of corporate limited liability. As owners, individual shareholders should be responsible for their role in corporate behavior; they should be civilly liable for harm caused by corporations they voluntarily participate in.

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]

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

Background

Apprehension of the economic impact of trusts or large financial conglomerates is not new. For example, in 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 long been used. Such methods, however, fail to reveal what more directly impacts society: the legal infrastructure specifically crafted to protect the errant corporation. That is, government granting shareholder liability exemptions, including corporate bankruptcy provisions.

Such protection ostensibly encourages capital formation. However, this is mistaken. A mere change in investment disposition need not reduce available funds, nor change the culture of endorsed personal achievement through financial gain. Investors can reduce risk through insurance, lending, or buying bonds. Participation bonds that include a share of earnings are an option. They need not blindly buy corporate shares based solely on profitability, as is common under liability protection.

Undoing limited liability shifts investor ownership away from shares and into bonds or credit. Reduced investor shareholding and greater use of credit instruments put these owners at greater risk of personal loss from misconduct.

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

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 public health and the 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. The corporate-sponsored WHO, in concert with the CDC, FDA, and numerous NGOs, elevated a limited, modestly symptomatic novel flu-like illness into a false pandemic.[4] It explains the concerted overreaction that began in 2020 and led to unfounded, disruptive emergency measures worldwide.

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[3]For 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.

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

In 2021, unwarranted lockdowns and vaccine mandates followed.[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 exempt from fair adjudication for the harm they inflicted. This distortion of justice included financial subsidies as incentives (expensed to taxpayers).

We are witnessing control by the corporate elite, enabled by unprincipled taxation policies and monetary infusions. Much of this responsibility stems from acquiescence to an illicit (Federal Reserve) counterfeit (fiat) money scheme, built on the 20th-century co-optation of our market-evolved dollar medium of exchange, and reinforced by 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 ideological damage to Capitalism. 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 without liability protections. In short, the climate in which corporations operate is distorted by rejecting time-tested, powerful legal precepts necessary to civil order. Civil suits

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[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

proffer an essential means of protection against organized maleficence. The high degree of indemnification for private firms under recent special legislation confirms this descent into societal adversity.

Less visible is 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 and 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 provides a standard for evaluating 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 organized societies would evolve from first principles. 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 shows 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]

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[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

Iconoclast Murray Rothbard detailed this anti-competitive outcome in his posthumously published work, The Progressive Era.[9]

Throughout the 20th Century, business sectors suffered compromised performance because of unnecessary cronyism in the name of regulation. We now have a corporate-government symbiosis, or what Mussolini termed Corporatism, resulting in a license to avoid responsibility through liability limitations that exacerbate poor performance.

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 use contractual means to organize collective action. They marshal shareholder capital to coordinate disparate wealth ownership toward a common business goal. Individuals' right to freely associate and employ managers for such ends is merely an extension of their right to undertake necessary business activities privately.

Ludwig von Mises used the term methodological individualism to describe how the meaning of "collective action" derives wholly from individual actions.[10] This applies to business firms, whether or not of the corporate form. Seen this way, businesses merit protection from legislative and judicial overreach. Collectives made of individuals should also have rights.

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, lockdowns and mandates 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.

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[9]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=books&sprefix=The+Progressiv+Era%2Cstripbooks%2C206&sr=1-1

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

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

Courts have granted corporations legal personhood in various 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 gives the corporation the unique attribute of continuity, allowing it to outlast any of its owners. However, such personhood cannot absolve individual shareholders of moral culpability for actions that occur or occurred under their watch, even if 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 may advocate policies that breach the peace and violate constitutional strictures. Hence, addressing some evident adverse political outcomes requires changes in a general social consciousness hostile to free markets.

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

But without collective action, how can organized opposition to government intervention exist? The 2010 Supreme Court decision in Citizens United v. **FEC** recognized this by holding that groups may engage in political activity. However, corporate liability protections shield owners (shareholders) from culpability for a corporation's injurious conduct. The decision opened up an avenue for excessive control over public policy. Should only those organizational forms that do not embrace this privilege be permitted to engage in political influence or lobbying? This would, to some degree, reverse the decision.

Courts, rather than rigid statutes, should address corporate liability for the small enterprise, which varies across government legal venues. For instance, joint liability (sometimes for the cost of the entire award) is currently assigned to corporations involved in unproductive or even negative outcomes, even when they are only marginally responsible or merely connected by circumstance. This needs reexamination. [11]

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[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.

Hence, smaller enterprises should be subject to a more nuanced approach to liability. Close corporations and sole and general partnerships have been essential sources of innovation and entrepreneurship. Owners are often officers who, while not personally liable for financial obligations, still face exposure for malfeasance, even under incorporation.

Demonstrably unconstitutional legislation has unnecessarily led to partnerships between corporations and government. Without limited liability, increased use of insurance and reforms such as pre-arranged arbitration agreements, tort-centered justice rather than criminal law, and even private provision of judicial services would be possible solutions.[12]

Instead of focusing on corporate personhood, seeing firms or businesses as owned by identifiable individuals comports with methodological individualism. An appropriate liability landscape would reduce losses to creditors or injured parties arising from corporate bankruptcy or dissolution. Protections afforded to individuals who fall into bankruptcy understandably stem from reforms to earlier, overly stringent corrective measures such as debtors' prisons. Nevertheless, 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.

First Amendment rights should logically extend to groups of individuals. In this way, opposition to the 2010 Citizens United Supreme Court decision may have merit for limited liability organizations. It would be a moot issue in a world without limited liability. Rather than limiting corporate financial support for political or government policy, removing shareholder protections for malfeasance offers a more straightforward approach while avoiding constitutional questions.

Absent fraud or malfeasance, we can envision 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 to exempt the shareholder (owner) from civil or even criminal liability. Owners would not be protected by a corporation 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 this appears to be in the context of a world where damages would seldom exceed corporate assets: "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]

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

[13]Rothbard, Murray N. 1970, Power and Market, Institute for Humane Studies, Inc. Menlo Park, Ca. p. 205

We can foresee changes in which a corporation would be a convenient reference for a group of individuals. Such individuals would have no grounds to defer responsibility for transgressions to a corporate "person"; no corporation would have standing of its own, as it is merely the convenient 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. In the words of an early Libertarian movement luminary, Roy Childs: "...we can justify a *limited* limited liability but not an *unlimited* limited liability."[14]

Additional concerns

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 spur the insurance industry to expand coverage 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 forgo expectations of high returns and instead buy bonds with 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 engagement with political coadjutors and journalists have penetrated social media, the economy, academia, and medicine. Global policy consolidation has foreclosed grassroots 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 reticent 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 at the state level. Ultimately, corporations gained limited liability as States competed for reciprocal economic benefits by granting this privilege.

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

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. Early corporate law 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 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 motivated or attentive minority wields control

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

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

[17]Ibid. 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

over corporate decisions. Hence, a minority of shareholders can easily control large corporations, hedge funds, and similar entities.

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 ownership[21].

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 without seeking special privilege from the government. 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.

Under current law, waiving corporate shareholder risk (beyond their investment), including in the event of corporate bankruptcy, relieves large-scale corporations of an essential measure of responsibility.

Criminal, reckless, malfeasant, or tortious behavior should put more than just the corporation's balance sheet at stake. Appropriate shareholder financial exposure to civil liability would increase investors' insurance needs and should reduce the gross undercompensation of injured parties. Shareholders would no longer be able to avoid due process liability through corporate dissolution, bankruptcy, or layering of corporate ownership.

Malfeasance could extend financial liability beyond corporate assets and shareholder equity to shareholders' other assets, especially if loss of life were at issue. Even if only to a set percentage, pro rata to shareholdings, this reduced liability protection would affect behavior. Investors would be more cautious about funding enterprises engaged in activities that risk

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

[21] [19]. Ibid. p.161

moral turpitude. Bondholders could lose value, but shareholders, as owners, should also face personal asset exposure.

For instance, a medical procedure or medication may generate $10 million or more in U.S. damages per wrongful death. A hypothetical case of 25,000 fatalities and many more injuries from a vaccine could easily exceed several hundred billion dollars 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.

Little separates individuals conspiring to violate others' rights from 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 have the law of agency (the doctrine of *respondent superior*-"let the master answer"), where vicarious liability rests with the employer.[22] 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 urgency of reform in the artificial intelligence industry is undeniable. The current specter of AI models running rampant outside their creators' control speaks to the need to apply reasonable constraints on the corporations promoting these new threats to the social order. Lifting the protections for these corporations' shareholders offers a needed solution.

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.

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[22] Dominiak , Lukasz and Fegley, Tate. Vicarious Liability and Rothbardian Libertarianism. *The Independent Review* Vol. 31, no.2, Fall 2026, P283-300.

Congress could legislate on corporate bankruptcy protections. Why should corporate personhood in bankruptcy insulate stockholders who, under simple methodological individualism logic, jointly caused damages to other parties? Public offerings of large numbers of common stock for corporations in critical sectors 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. Such reform avoids the downsides of regulatory solutions that too often suffer from regulatory capture.

Again, corporations' hesitancy to participate in questionable joint undertakings with governments, such as providing 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.[23]

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, tort action produces more stringent limits when statutes or rules do not set 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.[24]

The Iron Law of Oligarchy

One easily overlooked attribute of progress is 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.

By the same token, in environments that lack 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 regulatory capture by private factions and the perverse incentives enabled by legislation, the resulting constant tendency toward unsavory, politicized outcomes should be no surprise. The founders were clearly aware of this when erecting checks and balances on power.

A bona fide free market would not grant corporations immunity. 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,[25] including the 2005 PREP Act[26] (Public Readiness and Emergency Preparedness Act)

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

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

[25]https://en.wikipedia.org/wiki/National_Childhood_Vaccine_Injury_Act

[26] https://aspr.hhs.gov/legal/PREPact/Pages/default.aspx

that exempts the 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.[27] Local banks provide needed liquidity and credit when lending to businesses. This supplies credit to the economy, which is withdrawn when loans are repaid. Central banks allow inordinate government financing that is not conducive to economic productivity.

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-gotten 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.[28]

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

The question arises: how did the universally adopted form of private enterprise and business become detached from responsible service in its economic role and merge into the orbit of government affairs as a partner in a new statist authoritarianism?

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[27] https://www.lewrockwell.com/2014/03/david-stockman/qe-was-designed-to-enrich-the-1/

[27]Kennedy, 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 India Company, capitalist economies gradually developed an institution that partially merged 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 distorted 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 capital needed for large projects required a mechanism to entice investors to take risks. Some claim that without artificial protections, investors would not provide the capital needed 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 this hesitancy alone would not reduce the availability of investment funds. What would be limited is the degree of casino-like investing that hopes for a share in high-profit endeavors. Instead, many investors would have to settle for safer but less potentially lucrative investments, such as corporate bonds or non-voting stock shares.

The point is that with far fewer 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, liability need not extend beyond shareholder equity for an enterprise's honest financial losses. Any organization should be free to announce, through public registration or incorporation, that its business with the rest of the economy excludes owners' financial liability for net losses beyond equity ownership. This allows for limited liability for non-fraudulent or non-criminal debt. 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 aware of illicit activities, as is the case today under limited liability, such a relationship would critically limit shareholders' participation in corporations. This would greatly increase responsible behavior and reduce moral hazard. Reform (removal) of limited liability, if incremental, could begin with only those firms ranked on a composite index above a stated threshold that resembles the Forbes

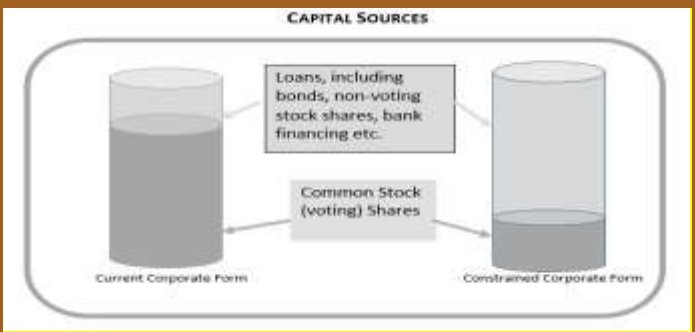
Global 2000 ranking scorecard. Small private corporations would not be included.

Given this criterion, it would not be unreasonable to restrict funding for political causes or stipends to public persons or entities. To further deemphasize the role of government, an unincorporated political action committee could similarly be enjoined from such actions, as could private individuals, if specified in law.[29]

The Constrained Corporation

Ending 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 stock 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. Therefore, the PE ratio should be lower because earnings per share are higher, especially given the greater risk of loss to shareholders. 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:



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

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 is an aberration from bona fide free-market capitalism, an unnecessary distortion of the founders' conception of a just society. The founders eschewed chartering corporations in favor of the 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 civil protections in the guise of safety measures against unsubstantiated and manufactured menaces. Control concentrated in 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 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, especially with the recent emergence of AI bots and agents given free rein by their corporate shareholders. It also undercuts the rebuke of the capitalist paradigm by identifying a feasible, more responsible bona fide free-market capitalism.