Liability Exemptions–A Wrong Turn

By James Alexander Webb revised November 2, *2023*

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

Introduction

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.

This concrescence of influence accounts for the recent seemingly inexplicably uniform Covid-19 global policy as well as the universality of support for the NATO nuclear threat escalation up to the Russian border. Financial inducements drove such extraordinary manipulation of public policy. The scale was made possible because of an unnatural, extra-market, artificial impetus to the rise of unchecked avaricious corporations. The dominance of corporate funding over public resulted in capture of numerous putative medical authorities, such as the FDA, CDC, and the WHO, made possible in part by approval of, and public funding for, their products. The foreign policy capture by the military industrial complex is well known.

This essay maintains that 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 money now controls policy. Corporation (owners) should be especially subject to a check on injurious or fraudulent activities, including collaboration in government misdeeds and atrocities. Impairment of such strictures can lead to the growth of power that dangerously compounds over time.

Granted, a robust capitalist system requires a wide range of freedom of private action. But it also requires common-law restraints. Unfortunately, the currently adopted corporate model that undergirds the global economy contains a grave oversight based on flawed jurisprudence.

Whether acting individually or collectively in a corporation, those breaching others' rights should face consequences. The separation of the personhood of corporations from shareholder responsibility destabilizes the economic and political landscape.

Corporate personhood status, 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 interacting in the economy.

There is no need to deny individual rights to investors based simply on their acting jointly with others. However, gaining control over government policy can only be more detrimental when the latitude of such policy has breached reasonable constitutional restraints.

The matter at hand contends that beneath the capitalist paradigm resides a legal landscape that nurtures errant corporate entities that have grown incompatible with genuine bona fide Capitalism. These legalities transcend a mere license to act. They are a legal shield against appropriate painstakingly-evolved common law customs. Such a shield has overturned a more balanced underpinning of civil society. Corporate malefactions often dismissed as unavoidable, have for several generations escaped redress. Parties affected have been denied due-process recompense for damages incurred. Foreign citizens have been casualties of illegal interventions.

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

Capitalism and the Corporation

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. [1] – Peter Breggin

Apprehension of the economic impact of trusts or large financial conglomerates is not new. For example, metrics traditionally employed in the study of Industrial Organization include *market share* and *concentration ratios* (e.g., the share of total shipments controlled by the four largest firms in an industry). Employing such tools, however, fails 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, 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 with insurance or even lend money or buy 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 they do now under a shield of liability protection. The outcome of fewer share-holders places these owners at higher risk of personal loss for adverse conduct.

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

Now in the 21st Century, corporate interlocks of Big Tech and Big Pharma have, in such an environment of special privilege, come to exhibit domination of not only the public health sector; but also social media, broadcast media, academia, even medical journals, and licensure.[2]

More recently, we have had unprecedented capture of the Public Sector itself. The corporate-sponsored WHO elevated a limited, modestly symptomatic novel flu-like infirmity into a false pandemic. [3] It accounts for the concerted overreaction beginning in 2020 that instituted unfounded disruptive emergency measures worldwide.

Two thousand twenty-one saw unwarranted lockdowns and vaccine mandates. Reminiscent of the military-industrial interests stranglehold wielded over policymakers that promulgated 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 an uninformed 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 due to unprincipled taxation policy 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 socially-evolved Dollar medium of exchange complete with corporate bailouts. [4]

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 now assures 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 condemnation of Capitalism.

Genuine Capitalism holds sway wherein capital, as 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 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 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 handles dispute resolution based on contractual agreements that would also apply to liability issues that would arise absent liability protections. In short, the climate under which corporations operate is distorted by a negation of time-tested powerful juridical precepts commensurate with civil order. Civil suits proffer an essential means of 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 outfall from the long-practiced public offering of corporate stock as a source of finance that, 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 regarding articles of incorporation and oversight by the Securities Exchange Commission regarding stock offerings indicate a recognition of the challenges implicit 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 natural 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 adopt 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."* [5]

Corporate behavior manifests a propensity to gain market share. Research reveals unscrupulous corporate blocking of competitors through supporting rather than opposing new regulatory and anti-trust policies.

"*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."*[6]

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

Throughout the 20th Century, business sectors performed sub-optimally due to unnecessary crony protection in the name of regulation. As a result, we now have a corporate-government symbiosis, or what Mussolini termed *Corporatism*. The case we

present here emphasizes that license to avoid responsibility through liability limitations exacerbates performance.

Unobjectionable aspects of the corporation

Some critiques of the corporation center on the legal status of personhood. Not all of the attributes of the corporate form of business conflict with our free-market template. Businesses employ contractual means of organizing collective action. They coordinate disparate ownership of wealth to a common business goal by marshalling shareholder capital. The right of individuals to freely associate and employ managers to such ends is merely an extrapolation of individual rights to undertake needed business activities privately.

Ludwig von Mises uses the term *methodological individualism* in describing how the meaning of "collective action" derives wholly from that of individual actions. [7] 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. As with individuals, they should have all the rights retained by citizens.

Examples of breaches of these rights, among many, include disruptive regulatory reporting requirements. IRS intrusions violating Fourth and Fifth Amendment protections are even more onerous than those imposed on individuals. There are discriminatory subsidies. There are anti-trust laws in defiance of simple logic, such as laws against restraint of trade that arbitrarily apply penalties for either raising, lowering, or maintaining a product price profile. There are 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 impacted mostly small businesses while often exempting the giants (who have more clout with authorities). Such a climate of legal pitfalls contributes to 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 give trains the right-of-way.

Corporations have been granted personhood in legal standing for a variety of situations. Of course, personhood is fictional, but for practical reasons in law, 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 where the corporation can have an indefinite life, exceeding any of its owners. However, to be clear, such personhood cannot absolve individual shareholders from culpability for actions occurring under their watch, even though litigated later under new ownership.

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

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

Denying the funding or support of those engaging in or threatening the fundamental rights of others, such as politicians, has merit. Ideally, government programs violating individual rights should be curtailed–obviating concern regarding private support for harmful policies.

Unfortunately, too little of this curtailment occurs, yet restricting all organized support of political activities is unwarranted. How can there be organized opposition to government interventions otherwise? The 2010 Supreme Court decision in Citizens United vs. FEC recognized this in not restricting group involvement in political activity. However, an argument can be made that for as long as corporate liability protections shield owners (shareholders) from culpability for a corporations' injurious behavior, then only those organizational forms not embracing this privilege should be permitted to engage in political influence, lobbying etc. This would, for the most part, result in de-facto reversal of the decision.

Reconsideration of corporate liability for the small enterprise subject to incongruities in various government legal venues would be best addressed by courts, not rigid statutes. For instance, joint liability (sometimes for the cost of the entire award) assigned to those corporations involved in unproductive or even negative outcomes, although only marginally responsible or even merely connected by circumstance, needs reexamination. [8]

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

Sometimes demonstrably unconstitutional legislation has overly assigned 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 merit. [9]

Instead of focusing on *corporate personhood*, seeing firms or businesses as owned by identifiable individuals comports with methodological individualism. Reducing limited liability diminishes losses to creditors or injured parties due to corporate bankruptcy or dissolution. The limitation afforded by bankruptcy applied to individuals has roots in the reform of earlier stringent corrective measures such as debtor's prison. An association of individuals need not be given the bankruptcy protection of a "person" when that is available to each shareholder individually. However, incorporation appears to be a convention that developed for this purpose, and being well understood by those interacting with corporations, grounds for objection lack substance.

However, what applies to the rights of individuals logically would carry over to a group of individuals when considering such rights as 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 certain liability exemptions. Rather than looking to limit

corporate financial support of political or government policy, removing shareholder protections for malfeasance provides a more straightforward approach and avoids 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.

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 corporation would have standing of its own due to its being 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.

A practicable transition to a world of stockholder responsibility might limit liability for wrongdoing to only, for example, 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 with increased scrutiny of corporate activities and behavior.

Of course, many investors, instead of buying assessable shares in corporations they knew 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 more culpability, would likely be proportionately less numerous than currently is the case. Nonetheless, such a reform of limited liability would not necessarily reduce total financial capital availability; instead, it would introduce more responsible investing.

Had our model of equitable corporate and shareholder legal responsibility prevailed since the beginning of the industrial

revolution, ammunition for condemnation of the predominant form of Capitalism would have been lessened.

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

Lack of complete corporate form in history

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 Bay Company and especially the British East Indian Company. As a result, chartering evolved exclusively in the 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 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." [10]

Limited liability not 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 153% in the 1840's and 60% in the 1850's*." [11]

And

… "*Limited liability… wasn't a widespread feature of the corporation until about 1875…*" [12]

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 J.S. Miller).

In 1916 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."* [13]

Shareholders aiming primarily at bottom-line results may bypass involvement 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 can wield control over corporate decisions when most of the shareholders care only about profits, uninterested in the details of corporate governance due to lack of a need to examine corporate conduct. Hence, large corporations, hedge funds etc. can easily be controlled by a minority of shareholders.

Paul Sweezy stated:

"…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." [14]

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."[15]

Responsibility

The market has mechanisms to indemnify participants from liability, such as insurance. Professionals routinely procure malpractice or errors and omissions insurance, an appropriate expense to those participating in risk-related activities. In addition, arbitration provisions can clarify and expedite litigation.

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

Given this, for criminal, reckless, negligent, or tortious behavior, more than just the corporation's balance sheet should be at stake. Exempting shareholder exposure removes incentives for careful investing and avoiding 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 in helping fund

enterprises engaged in activities risking moral turpitude. Bondholders could lose the value of the bonds, but shareholders as owners have more responsibility.

For instance, a medical procedure or medication may generate damages in the U.S. at $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) or punitive damages far exceeding this. Currently, a balanced evaluation of the data from the VAERS (vaccine adverse event reporting system) indicates a far higher number for the mRNA vaccines. Such exposure would promise significant corporate behavior modification. Appropriately, without all-inclusive liability exemptions bond holders could lose their investment but shareholders even more.

Corporate power overreach

"...the existing corporate system has carried us well onto the threshold of a gentle totalitarianism." William Appleman Williams

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

What is the 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. Under the law of agency (the doctrine *respondeat superior*-"let the master answer"), vicarious liability rests with the employer. 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, hence, leaving the corporate form unaccountable for liability that individual 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?

Again, hesitancy in corporate participation in questionable undertakings by governments, such as contract provision of personnel and equipment for dubious military ventures, might be expected if corporations were liable for complicity.

A 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 publically expensed law enforcement and infrastructure provisions. Public or community revenue derived exclusively from site-value and natural resources, eliminating taxes on income, buildings, and improvements would shift these costs to mainly corporate urban real estate holdings, improve urban infilling, and remove disincentives to assigning best use and enhancement of physical structures and upgrading improvements.

International treaties such as NAFTA, MAI (Multilateral Agreements on Investments), and the World Bank and IMF often slant recovery for damages and legitimate claims by sovereign nations in favor of offending multi 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 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*." [16]

All too often, government courts look at the limits set by law as sanctioning pollution or other environmentally negligent activities that stay 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 the lack of adequate corporate water and air pollution abatement.

Additionally, under the influence of growing industrial interests over the last two centuries, tort law remedies have been replaced, preventing victims from enjoining polluters for damages: no longer could an individual sue for individual damages if the damage was not different or significantly more than that suffered by others in society. A "Public" nuisance (affecting the general public) could only be enjoined through public authority. [17]

The Iron Law of Oligarchy

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

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 Oligarch*y. When we add to this the fact of regulatory capture by private factions, and perverse incentives made possible through legislation, the resulting constant tendency toward unsavory politicized outcomes should be no surprise. Of this, the founders were clearly aware in erecting checks and balances to power.

A bona fide free market would not grant immunities 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, including PREP (*Public Readiness and Emergency Preparedness Act*) that exempt medical industry and medical profession participants; and the various bailout and bankruptcy protections for banks and financial institutions.

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

Of immediate urgency is 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.

"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." [18] Robert F. Kennedy Jr.

Summation

By the 1930's the power of corporations had evolved to a degree 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 to its marriage into the orb of government affairs as a partner in a new statist authoritarianism.

When conceptualizing the capitalist free-enterprise system a great error occurred in overlooking a crucial element in the business form–in its place in a free society. Common law precepts had progressively protected individuals from dysfunctional social behavior, from unwarranted infliction of harm or practice of fraud, underpinned by several centuries of social progress. But beginning in isolated cases of monopoly grants by, for instance, the British Crown to the British East-Indian Company, there gradually arose an institution in capitalist economies that has only recently culminated in a practically complete corporate marriage with the state. What went wrong in the business sphere, unlike that of the interactions among individuals, was the granting of a privilege to engage in profit seeking activities immune from the responsibility enforced on individuals in non-corporate disputes and interactions. It was a mistake in jurisprudence.

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

First, we must dispel the notion that marshalling 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 necessary capital for innovative enterprises. The prospect of inordinate profits would not be enough to risk exposing an investors' personal wealth in actionable damage awards against an enterprise. It seems that investors would not partake in the risk. 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 the safer, but less potentially lucrative investments in structured loans such as bonds etc.

The point here is that with a much lessened number of share-holders, enterprise owners could yet find financing from the larger fund of lendable funds, but would be all that much more cautious in risking losses, and more responsible for the operation of the enterprise.

To be clear, there is no reason that liability go beyond share-holder equity for only financial losses of the enterprise. Any organization should be free to announce, through public registration etc. (incorporating), 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 orderly liquidation of assets, and not protection of shareholders for corporate malfeasance.

Hence financial losses would not be a share-holder risk beyond shareholder equity, but financial damages for misdeeds would. Because shareholders may not be directly knowledgeable of such activities, as is the case today under unlimited 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 status it would not be unreasonable to restrict any funding of political causes or stipends of any kind to any public

person or entity. 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 so specified in law.

Conclusion

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

Emergent Corporatism presents a paradox for Capitalism. However, it need not define mature capitalism. Corporatism constitutes an aberration of 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 capitalism inimical to a prospering 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 (see). Aggregated control by just a few investment funds and transnational corporations is so encompassing that laws restricting electioneering communications, such as in reaction to the 2010 Citizens United decision, would have little impact even if reinstituted. Corporatist workarounds through media and other avenues already evident in Big Pharma's influence over worldwide political agendas appear unpreventable.

Hard proof of the policy of limited liability privilege having a dominant role in corporate overreach may not be possible, but there is much to doubt its inappropriateness.

These considerations, whether engendering actual reform or not, nevertheless contribute to an understanding that current failures now attributed to Capitalism can only apply to attenuated

Capitalism, not genuine Capitalism free from legislated corporate liability exemptions.

Ultimately, simply bringing forward the problem at least reveals one source of growing animosity to inordinate corporate power. It also undercuts the rebuke of the capitalist paradigm in signifying a feasible, more responsible bona fide free-market capitalism. Reforming corporate liability, without reforming our State-based judicial system with market-based, competitive arbitration alternatives would rightly face opposition. Hence, such a hypothetical outcome need not be expected. On the other hand, once affirmed by dispassionate deliberation, effecting such changes only requires signatures on paper, needing no costly expenditure of resources.

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

[2] 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.

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

[4] See Rothbard, What Has Government Done To Our Money. Online at Mises.org

[5] Nozick, Robert. Anarchy, State, and Utopia, New York, Basic Books, Inc., pp.133-4

[6] Kolko, Gabriel. 1963. The Triumph of Conservatism, Chicago, Quadrangle Books, p.302

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

[8] (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.

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

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

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

[12] Ibid. p.52

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

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

[15]. Ibid. p.161

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

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

[18] Kennedy, Robert F. Jr. 2021. The Real Anthony Fauci, New York, Skyhorse Publishing, Inc., p.446