

Corporations and Errant Capitalism June 2, 2021

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Capitalism and the corporation

Pure capitalism holds sway wherein capital, as means of production, is employed productively in a system of politically non-privileged free-markets.

This template rules-out disruptive interference from political forces in markets or market activities and allows us a standard to evaluate both the corporate form of business and its market setting.

Customary belief incorrectly pictures the corporate form to be a necessary and proper element of modern capitalism, consequently weakening defense of capitalism as a system. This essay will highlight entitlements granted to corporations that constitute privileges producing socially disparate outcomes and corporate overreach. The granting of limited liability will be found to be not only unnecessary but inimical to pure capitalism. Surprising to some, big business has itself been enticed into supporting regulatory and anti-trust policy to capture market share as assiduously detailed by Murray Rothbard in his posthumous work: [The Progressive Era](#). We now have a corporate-government symbiosis. One result is that in general business entities perform sub-optimally due to unnecessary government overreach in the name of regulation.

Unobjectionable aspects of the corporation

Some critiques of the corporate form go too far. 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 to employ managers to such ends is merely an extrapolation of individual rights to privately undertake such business activities. Ludwig von Mises uses the term *methodological individualism* in describing how the meaning of collective action derives wholly from that of individual actions. This applies to business firms whether or not of corporate form.

Hence, constitutional rights retained to individual members of such groups apply appropriately to corporations. In this respect businesses might be better protected from legislated and judicial overreach when seen in this light. As with individuals they should retain all the rights retained by citizens— viz., rights not constitutionally surrendered to their governments by the citizens. Examples of breach of these rights, among many, include disruptive regulatory reporting requirements and IRS intrusions constituting Fifth Amendment violations beyond that imposed on individuals, and uneconomic subsidies and 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, and insider-trading laws.

Modern civilization has seamlessly accommodated large entities: Freight trains cannot be stopped at each intersection as could be donkey carts. Yet, both are merely vehicles of transport, but exceptions have been instituted for giving trains the right-of-way. Corporations have been granted personhood in legal standing for a variety of situations. Of course personhood is a fiction, but for practical reasons, in law it would be impracticable to litigate every matter

involving a corporation by creating separate cases for each shareholder and/or employee. In the same vein, a unique attribute of continuity, where the corporation tends to have indefinite life, exceeding any of its owners, may not present more difficulties than conveniences. Incorporation has been useful to the small enterprise subject to incongruities in various government legal venues. Given that courts have assigned liability jointly, to those not at fault, with a lack of judicious handling of lawsuits in sole proprietorships and partnerships, close corporations and corporate general partnerships allow for protections having merit that would not apply to more substantive joint stock companies.

Lack of full corporate form in history

For the most part the Nineteenth Century saw the rise of the general partnership—the U.S. constitution notably avoided any mechanism to charter corporations. The founders had good reason to be wary of chartered companies after experiencing the monopolistic intrusions of the British East Indian Company, the real reason for the Boston Tea Party. States ultimately granted corporations their present standing in a process of competition for certain economic benefits. However, these favors granted corporations were not necessary and have become problematic. The unprecedented growth rates of the economy in the last half of the Nineteenth Century occurred with business organized under the general partnership model. “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.* “Limited liability... wasn’t a widespread feature of the corporation until about 1875...”** Hence, lack of the corporate model appears to not have stymied economic performance in the Nineteenth Century.

Limited liability not needed

This supports our 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](#)). Alternatives to stock offerings such as bond issues and loan market funds exist. The market has mechanisms to indemnify participants from liability called insurance, an appropriate expense to those participating in activities that involve risk.

The waiver of risk for the corporate shareholder through law unnecessarily relieves substantive corporations of an important measure of responsibility. Exempting shareholders removes a strong disincentive for engaging in predictable risk to harm. Risky behavior should jeopardize more than just the balance sheet of the corporation. With investors readjusting to insurance needs, dissolving a corporation by bankruptcy or otherwise risky behavior need not leave customers and lenders grossly uncompensated.

Corporate power overreach

Employees or management, unless as deliberate participants in wrongdoing, are not the ultimate responsible party. What in fact, is the difference between individuals conspiring to violate others rights and owners in an enterprise in expectation of complicity in wrongdoing? Consider contractors engaged in violation of international law and human rights shielded by directives from the defense department. Culpability in a conspiracy is individual. Under the law of agency (the doctrine *respondet superior*-“let the master answer”) vicarious liability rests with the

employer. Should not each shareholder face personal culpability that might exceed loss of such shareholder's investment, at least monetarily? When governments escape consequences of wrongful acts, would not refusal by corporations act to inhibit them?

Further concerns involve unwarranted legal advantages allowed to accrete to corporate players. These include acquisition of various property rights through excessive patent law protections; property titles including acquisition of broadcast spectrum rights; natural resource and mining claims, and even valuable property site ownership that can be perpetuated through duplicated accelerated tax depreciation allowances on buildings that far exceed long-term costs and allow avoidance of otherwise tax expenses on site value, all under the legal protections at public expense. More than this, international treaties such as NAFTA, MAI (Multilateral Agreements on Investments), and policies of the World Bank and IMF slant recovery for damages from often legitimate claims by sovereign nations in favor of offending trans-national corporations.

When it comes to corporate political influence, given that governmental policies or agency interactions by their nature lie outside of our free-market model, certain concerns such as campaign finance, for instance, merit close examination.

Added to these concerns, the granting of immunities to corporations through concerted government policy contravenes proper jurisprudence. It intervenes in the free market. Especially onerous is the practice of exempting certain industries from liability altogether through legislation such as the Price Anderson Act for the nuclear power industry, the various vaccine damage [acts](#) that [exempt](#) Big Pharma, and the various bailout and bankruptcy protections for banks and financial institutions. Even more economically insidious are quasi-government entities such as the Federal Reserve with privileges such as legal tender laws and other monopolistic protections. Acceleration of wealth disparity of the 1% over the 99% can be easily attributed to the influence of the financially dominant corporations virtually controlling the flow of funds from the quantitative easing of the Fed. [See here](#).

Conclusion

Our economic system no longer can be distinguished as capitalism. Unnecessary privileges bestowed to corporations have produced an errant capitalism which has no place in a free economy. Arrogant censorship by Big Tech and Big Media, and inordinate intrusions into our politics and lives by Big Pharma and Wall Street, have become starkly evident. Addressing the current destructiveness to our society should begin by instituting shareholder culpability for corporate breach of conduct.

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

**Ibid. p.52.

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