THE MORALITY OF MATERIALISTIC SELF-INTEREST, THE CORPORATION AND THE STATE

A culminating thesis submitted to the faculty of Dominican University
in partial fulfillment of the requirements for the
Master of Arts in Humanities

by

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5 May 2006

Culminating Thesis Certification

THESIS: THE MORALITY OF MATERIALISTIC SELF-INTEREST, THE CORPORATION AND THE STATE

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ABSTRACT

Scottish moral philosopher Adam Smith (1723-1790) wrote *The Theory of Moral Sentiments* in 1759 and *The Wealth of Nations* in 1776. In these treatises he juxtaposed the conflicting morality of benevolence experienced in a community of familiar individuals, with the morality of self-interest when unfamiliar individuals engage in economic transactions under capitalism. When Smith wrote, corporations were legally required by the state to serve the public interest and control was not separate from ownership. There was balance between benevolence and self-interest.

Today corporations are not required to serve the public interest and corporate control is separate from ownership. Global corporations and management are removed from communities and have become excessively materialistically self-interested, which has led to selfishness and autonomous behavior, leading the corporation to seek dominance over the state. This thesis proposes that to protect public interest and restore the balance between benevolence and self-interest, the state must reassert its authority over the corporation.

CONTENTS

ACKNOWLEDGMENTS

I am very thankful for all the support and encouragement from the faculty and staff of the Humanities Department at Dominican University throughout my graduate program. I am also very grateful to Dr. Leslie Ross whose optimism and encouragement throughout the Culminating Project Workshop inspired me to complete my work on time.

My extreme gratitude and thanks goes to Dr. Christian Dean who has educated me in philosophy and political theory throughout my program and whose patience and guidance as my primary reader aided me in focusing on my thesis argument.

My sincere thanks also goes to retiring Professor of Politics, Dr. James Boitano, my secondary reader, who has not only educated me in the field of political theory, but introduced me to humanist philosophy. Both Dr. Dean and Dr. Boitano should get a special round of applause for their editing job.

INTRODUCTION

This paper will discuss the morality of materialistic self-interest and how it has evolved to become the dominant secular philosophy of corporate leadership and that of the corporation itself. The philosophy of self-interest is important to evaluate because it has become excessive, leading to selfishness, indifference and autonomous behavior on the part of the corporation to the detriment of the community and civil society. Originally conceived in the seventeenth century, the corporation was provided special rights and privileges by the state, in order to serve the economic interests of the owners, who controlled the corporation, as long as such interests also served civil society and the state. The sole purpose of the corporation, however, in the twenty-first century, is to enrich its mangers and owners while exerting political control over the state.

The original philosophy of classical liberal democratic individualism and capitalism has been radically distorted, leading to the inevitable conflict between the corporation and the state. Corporations have become so powerful as to threaten, if not control, sovereign government. In fact, this paper will argue that because corporate materialistic self-interest has become so excessive and dominant, the state has consented to the abdication of its sovereignty to the corporation.

In addition, the corporate ownership and control structure have radically evolved from the eighteenth century when corporate ownership and control were comprised of wealthy merchants and/or shareholding families, to the diverse and dispersed individual and institutional ownership in the twenty-first century. With this ownership change has also come the separation of ownership from control. This paper will argue that for liberal capitalism to survive, the state must re-assert its sovereignty; the control of the corporation, which is a creation of the state, must ultimately rest with government; and the corporate purpose to serve civil society must be re-established.

The first chapter will discuss the two seminal treatises by Adam Smith, in which he juxtaposed the personal morality of benevolence, compassion and sympathy with the impersonal morality of self-interest under capitalism. Materialistic self-interest will be discussed in the context of its compatibility with the development of liberal constitutional government and individualism in the United States.

Chapter Two will trace the evolution of the corporation in civil society, beginning in the seventeenth century, through the American industrial revolution. It will include the U.S. government's attempt to restrain and control the materialistic self-interest of corporations in the nineteenth and early twentieth centuries, as well as major state legislative changes to incorporation statutes and significant court decisions that granted corporations protection under the Fourteenth Amendment of the U.S. Constitution. Chapter Two will also describe the transformation of corporate ownership in the U.S. from a few wealthy families to a large diffused group of individual and institutional shareholders. Chapter Two will conclude by discussing the separation of ownership from control of the corporation, which has led a small group of materialistically self-interested corporate managers, unrestrained and independent of shareholders, to not only control the corporation in order to pursue their own self-interest, but to threaten state sovereignty in order to advance corporate self-interest.

Chapter Three will continue the discussion of the evolution of corporate control and power, arguing that large corporate enterprises are challenging government's ability to exercise economic and political sovereignty. Chapter Three will make the claim that the morality of individual materialistic self-interest is clearly the dominant secular philosophy of corporate managers, as well as the policy of the corporation itself, which is often in conflict with the morality of obligation, the community and the public interest. Chapter Three will maintain that the state has been complicit in allowing the corporation to gain almost unlimited power and autonomy, becoming self-perpetuating and authoritarian, beyond control of the state and no longer serving civil society.

This paper will conclude that a balance must be found between the materialistic self-interest of the corporation and the morality of obligation and duty to serve civil society and the public. The state must re-assert its sovereignty to correct this imbalance to preserve capitalism and the state.

CHAPTER 1

THE MORALITY OF MATERIALISTIC SELF-INTEREST

This chapter will discuss two divergent theories of morality; one of familiar individuals interacting with one another based upon cooperation and interdependence; and one relating to unfamiliar individuals interacting in an economic relationship that is based on self-interest and independence. The morality of self-interest that evolved under capitalism will be discussed in the context of its compatibility with the development of liberal constitutional government and individualism in the United States.

Human beings as they evolved in nature and interacted with each other within society, developed two often conflicting concepts of individual morality: one that is personal, interdependent and benevolent and one that is impersonal, independent and self-interested. Personal morality is most often benevolent, compassionate, and sympathetic; usually consisting of relationships between familiar individuals in a community setting where mutual benefits prevail and there is a sharing of similar values and ideals. Normally this kind of morality reinforces a sense of community, shared responsibilities, duties and obligations, where frequently there is emotional bonding between family and community members, as well as between colleagues sharing similar goals and objectives based upon trust.

The impersonal morality of self-interest, on the other hand, is based on independence and individualism, and if excessive, can lead to egoism, selfishness, and self-love. Extreme self-interest has been identified with man's passion for being concerned excessively with oneself, primarily at the expense or sacrifice of someone else. Self-interest is inherent in human nature, often being considered virtuous,[1] and should not be presumed selfish unless it leads to harm or neglect of others.[2] There is a natural tension, however, between individualistic self-interest, which can easily become excessive, or selfish, and a morality based upon benevolence, compassion for others and a concern for the common good. While it will be argued that self-interested action may serve others when there is no intent to do so, it is also possible that self-interested actions may unintentionally harm others in society.

Self-interest is often identified with materialistic self-interest, related to unfamiliar individuals or organizations involved in economic transactions or business relationships. Materialistic self-interest on many occasions may be in conflict with the individual morality of benevolence, duty and obligation since one may have to choose between a financial gain (self-interest) or a benevolent act (altruism). Many Enlightenment philosophers in the eighteenth century identified individual self-interest as inherent in human nature,[3] but it was Scottish moral philosopher Adam Smith (1723-1790) who uniquely juxtaposed the often conflicting personal morality of benevolence

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[1] Dutch physician Bernard de Mandeville (1670-1733) claimed that self-interest was virtuous and that all of man's actions are motivated by self-interest which is an attempt to flatter man's vanity.

[2] Ian Maitland, "The Human Face of Self-interest," *Journal of Business Ethics* 38 (2002): 4.

[3] English philosophers Thomas Hobbes (1588-1679) and John Locke (1632-1704) and Scottish philosophers David Hume (1711-1776) and Francis Hutcheson (1694-1746) as well as Bernard de Mandeville, among others, all wrote extensively about man's natural self-interest, but unlike Smith they never focused specifically on political economy. Only Smith wrote a treatise on the personal morality of benevolence, compassion and sympathy, followed later by a comprehensive and unique treatise on capitalism.

with the impersonal morality of materialistic self-interest in his seminal works, *The Theory of Moral Sentiments* written in 1759 and *The Wealth of Nations* written in 1776. While he was nationally recognized, admired and frequently publicly quoted for his treatise on moral sentiments, it was only after his death that he was widely recognized as the father of laissez-faire capitalism based on his economic theory revealed in *The Wealth of Nations.*

Smith's Treatises

When Smith wrote *The Theory of Moral Sentiments*, the world was brutal and dangerous, with over three-quarters of all people on earth in bondage of various kinds,[4] and in England, the wealthy congregated in the elegant drawing rooms of London or lived on rich estates in the country, while the agricultural poor roamed the countryside looking for work. Children as young as seven years of age worked in tin and coal mines and in industrial sweatshops for a pittance, often working twelve or fourteen hours a day under inhuman working conditions.[5] England and France had engaged in war, colonial America was preparing to rebel against British rule, and George III was about to be crowned King of England.

The Theory of Moral Sentiments, for which Smith gained national praise and attention, described man's sympathy for others as similar to that of the compassion of a spectator which arose "from the consideration of what he himself would feel if he was

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[4] Adam Hochschild, *Bury The Chains* (Boston: Houghton Mifflin, 2005), 2.

[5] Robert L. Heilbroner, *The Worldly Philosophers* (New York: Touchstone, 1953), 44.

reduced to the same unhappy situation."[6] Smith argued that concern for others was a basic feature of human nature, recognizing, "However selfish soever man may be syposed, [sic] there are evidently some principles in his nature, which interest him in the fortune of others, and render their happiness necessary to him, though he derives nothing from it, except the pleasure of seeing it."[7] Smith maintained that the happiness of others is "necessary" to human beings; meaning that man is naturally compelled to consider others' happiness when deciding how to act and that we act out of consideration of others regardless of what utilitarian benefits we may derive from such action.[8] He argued that man was inherently or naturally sympathetic to other men and believed that the community of men required reciprocal assistance "afforded from love, from gratitude, from friendship, and esteem . . . ," all necessary for society to flourish and be happy.[9]

Smith's view was certainly communitarian in that his conception of human nature required man living in a society to be dependent upon others in the community, based upon frequent "intercourse with others and mutual sympathy."[10] Smith in *The Theory of Moral Sentiments* recognized the necessity of self-interest for the preservation of man's life and the protection of his community, but only self-interest tempered with benevolence, compassion, pity and sympathy. Smith's view of morality in *The Theory of*

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[6] Adam Smith, *The Theory of Moral Sentiments* (Amherst: Prometheus, 2000), 8.

[7] Ibid., 3.

[8] James R. Otteson, *Adam Smith's Marketplace of Life* (Cambridge: Cambridge University Press, 2002), 16-17.

[9] Adam Smith, *The Theory of Moral Sentiments* (Amherst: Prometheus, 2000), 124.

[10] James R. Otteson, *Adam Smith's Marketplace of Life* (Cambridge: Cambridge University Press, 2002), 91-92.

Moral Sentiments is consistent with communitarian beliefs that the nature of man is shaped by the values and culture of the community[11] and a recognition "that communal bonds are inseparable from moral character and obligation, [and that] . . . one's moral identity and one's obligations are inextricable.[12] Dr. Christian Dean specifically identifies moral obligation as a function of social norms that constitute one's identity, and "the more one comes to identify with the norms of one's community through the process of self-discovery and self-identification, the more one comes to recognize the ways in which one is bound by moral obligations toward those others that with whom one shares membership in a particular community."[13]

Smith's view of morality in *The Wealth of Nations*, published seventeen years after *The Theory of Moral Sentiments*, relates to economic transactions, however, completely ignoring his communitarian and anti-utilitarian view described in *The Theory of Moral Sentiments*, and focused instead on man's actions motivated solely by self-interest. Smith explained:

> Give me that which I want, and you shall have this which you want, is the meaning of every such offer; and it is in this manner that we obtain from one another the far greater part of those good offices which we stand in need of. It is not from the benevolence of the butcher, the brewer, or the baker, that we expect our dinner, but from their regard to their own interest. We address ourselves, not to their humanity, but to their self-love, and never talk to them of our necessities but of their advantage.[14]

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[11] www.crossroad.to/glossary/communitarianism.htm.

[12] Robert B. Thigpen and Lyle A. Downing, *Liberalism and the Communitarian Critique* (New Orleans: University of New Orleans), 640.

[13] Christian Dean, "A Heideggerian Regrounding of Liberal, Communitarian, and Feminist Approaches to Autonomy and Moral Responsibility" (PhD diss., University of California, Santa Barbara, CA), 1999.

[14] Adam Smith, *The Wealth of Nations* (New York: Bantam Dell, 1776), 23-24.

In *The Wealth of Nations,* Smith speaks of “all the necessaries of life,” falling under the governance of self-interest[15], making no mention of man’s benevolence, compassion or natural sympathy. Smith seems to differentiate personal relationships from impersonal economic relationships. In economic relationships, when one is dealing with “anonymous others,”[16] and there is little or no familiarity, people may feel little or no benevolence, or as James R. Otteson claims:

> The people with whom one deals in the marketplace, the people with whom one barters, trucks, and trades, are for the most part strangers; frequently one does not know them at all, less frequently, they are but distant acquaintances, and only rarely are they family members or close friends.[17]

Therefore benevolence diminishes as one moves outward from familiar social relationships surrounding each individual within the community, and as Samuel Fleischacker explains:

> Thus, we feel the strongest sentiments of love and concern for our immediate families, a somewhat weaker level of those feeling for the friends and neighbors we see on a regular basis, a considerably weaker level yet for our nation as a whole, and a very weak benevolence, . . . for the immensity of the universe.[18]

In *The Wealth of Nations*, Smith not only argues that when man is engaged in economic transactions within a society of unfamiliar individuals, materialistic self-

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[15] James R. Otteson, *Adam Smith's Marketplace of Life* (Cambridge: Cambridge University Press, 2002), 154.

[16] Ibid., 185.

[17] Ibid., 154.

[18] Samuel Fleischacker, *On Adam Smith's Wealth of Nations* (Princeton: Princeton University Press, 2005), 67.

interest is the primary motivating morality, but he also maintains that in pursuing self-interest, economic transactions may unintentionally benefit society. For example:

> By preferring the support of domestic to that of foreign industry, he intends only his own security; and by directing that industry in such a manner as its produce may be of the greatest value, he intends only his own gain, and he is in this, as in many other cases, led by an invisible hand to promote an end which was no part of his intention. Nor is it always the worse for the society that it was no part of it. By pursuing his own interest he frequently promotes that of the society more effectually than when he really intends to promote it. I have never known much good done by those who affected to trade for the public good. It is an affectation, indeed, not very few words need be employed in dissuading them from it.[19]

Smith's claim that there may be unintended public benefits resulting from impersonal economic transactions, coupled with diminishing benevolence among individuals as they become more unfamiliar the further relationships are removed from the local community, would tend to inflate the importance of impersonal economic transactions and reduce the importance of communal relationships based on compassion, sympathy, duty and obligations. Unintended public benefits of increased economic activity, no doubt, include the creation of employment, additional business opportunities, the creation of personal wealth and increased tax revenue for the larger community. Individual materialistic self-interest advocated by Smith created advantages and opportunities for community economic growth and private wealth creation. Smith also, however, maintained that businesses, while having more knowledge about their own self-interest, would often engage in activities to advance their own materialistic self-interest,

[19] Adam Smith, *The Wealth of Nations* (New York: Bantam Dell, 1776), 572.

while ignoring, overriding or harming the public interest,[20] knowing that, "men, whose interest is never exactly the same with that of the public, who have generally an interest to deceive and even to oppress the public, and who accordingly have, upon many occasions, both deceived and oppressed it."[21] In other words, according to Smith, the pursuit of materialistic self-interest by those engaged in economic transactions may unintentionally benefit the public or may intentionally or unintentionally harm the public, or possibly do both. For Smith this caused no moral dilemma; it was simply a fact of life and the result of man's natural materialistic self-interest when engaged in impersonal economic transactions.

Ironically, nowhere in *The Wealth of Nations* did Smith reference his earlier *The Theory of Moral Sentiments*, nor make reference to his four principal virtues: justice, benevolence, prudence, and self-command;[22] nor did he discuss an individual's feelings for his fellow man, expressing sympathy, compassion, or pity. It was as if Smith accepted a kind of moral dualism, where one's personal morality, which he had previously discussed in *The Theory of Moral Sentiments,* was checked at the marketplace door.[23]

British Professor John Hendry believes that Adam Smith's dual moralities have evolved into a "bimoral society," arguing that, "So long as the morality of self-interest was confined to impersonal economic relationships, leaving personal relationships to be

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[20] Adam Smith, *The Wealth of Nations* (New York: Bantam Dell, 1776), 338.

[21] Ibid., 339.

[22] James R. Otteson, *Adam Smith's Marketplace of Life* (Cambridge: Cambridge University Press, 2002), 157.

[23] Ibid., 170.

guided by traditional morality, the two realms could be kept psychologically apart."[24] Hendry questions whether or not the two rival moralities can presently actually coexist, when psychologically conflict becomes inevitable, and whether or not the morality of self-interest inevitably undermines the morality of obligation. He postulates that business often abandons "the dictates of traditional morality."[25]

Albert Z. Carr agrees with Hendry that when unfamiliar individuals are engaged in economic transactions, personal morality is often ignored, claiming that "business operates with a special code of ethics,"[26] "a business strategist's decisions must be impersonal, . . . subordinating personal feelings,"[27] and more importantly:

> Most executives from time to time are almost compelled, in the interests of their companies or themselves, to practice some form of deception when negotiating with customers, dealers, labor unions, government officials, or even other departments of their companies. By conscious misstatements, concealment of pertinent facts, or exaggeration – in short, by bluffing – they seek to persuade others to agree with them.[28]

James R. Otteson argues that Smith's description of economic exchanges between unfamiliar individuals pursuing their own interests produces an unintended system of order in large-scale human institutions which include individual standards of morality expressed in Smith's *Theory of Moral Sentiments*, based upon people's natural feeling of

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[24] John Hendry, *Between Enterprise and Ethics* (Oxford: Oxford University Press, 2004), 3.

[25] Hendry claims that when relationships between familiar individuals in business become subject to different rules, or when the same people have to be treated as friends as well as impersonal economic actors in a transaction, psychological conflict becomes inevitable, and business resolves this conflict by treating everyone impersonally, abandoning the morality of benevolence, compassion and sympathy or what Hendry considers "traditional morality." Ibid.

[26] Albert Z. Carr, "Is Business Bluffing Ethical?" *Harvard Business Review* (1968): 152.

[27] Ibid., 149.

[28] Ibid., 144.

benevolence which varies directly with familiarity.[29] Otteson believes that the "familiarity principle" explains why different motivations in different areas of life are proper, and "in particular why self-interest is properly the motive people feel in economic activities."[30]

Hendry's "bimoral society," and Otteson's "familiarity principle," both seek to explain and/or reconcile Smith's dual moralities of personal, familiar, and interdependent relationships that he penned in *The Theory of Moral Sentiments*, with impersonal, unfamiliar and autonomous relationships between individuals interacting under materialistic capitalism which he later described in *The Wealth of Nations*. In essence, Smith recognized that individuals could easily maintain a personal morality based upon compassion, sympathy and benevolence within a smaller close knit community in which everyone was a family member or familiar, balanced with necessary and natural self-interest when engaged in economic transactions with these known individuals. As economic transactions moved further away from the community of familiar individuals, benevolent or personal morality becomes less important, and materialistic impersonal self-interest becomes more important. The more individuals deal with unfamiliar others, or impersonal organizations engaged in economic transactions, the less likely each is to recognize personal morality expressed as compassion, sympathy and benevolence, and the more likely morality is expressed as individualistic, impersonal and materialistically

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[29] James R. Otteson, *Adam Smith's Marketplace of Life* (Cambridge: Cambridge University Press, 2002), 171.

[30] Ibid., 198.

self-interested. If such materialistic self-interest becomes excessive, it can lead to selfishness, indifference and autonomous or individualistic behavior.

Smith also recognized that individual, impersonal materialistic self-interest could unintentionally benefit the community by providing economic growth, employment and the creation of private wealth. He also understood that those engaged in self-interested economic transactions may intentionally or unintentionally harm the public interest because individual self-interest is "never exactly the same with that of the public."

American Individualism and Capitalism

The philosophy of Adam Smith was especially compatible with liberal democratic theory as it was evolving in the United States in the late eighteenth and early nineteenth centuries. Liberal democracy in the United States established a sovereign constitutional government with limited republican powers to control narrow "natural" individual self-interests, primarily related to protecting property and contractual rights. Enlightened self-interest coupled with a minimal state provided economic advancement amidst a liberal democratic system based upon equality and liberty, which was conducive to the American concept of individualism.

French historian Alexis de Tocqueville (1805-1859) believed that Americans explained almost all of their actions "by the principle of self-interest *rightly under-stood*. . ., " which "produces no acts of self-sacrifice,"[31] believing that American self-

[31] "De Tocqueville, Book II, Chapter 8," http://xroads.virginia.edu/~HYPER/DETOC1ch2_08.htm,2. (accessed December 21, 2005).

interest was not a “sublime doctrine” or something considered a virtue, but an established “unconscious habit,” similar to the concept articulated by one of the framers of the United States Constitution, Ben Franklin (1706-1790), who believed Americans were “orderly, temperate, moderate, careful and self-controlled citizens, dedicated to the pursuit of wealth in the interest of the public good.”[32] Tocqueville believed that in America, self-interest, especially commercial or economic self-interest, “rightly understood,” should to be allowed to flourish, and not be suppressed or transcended, pointing out how Americans believed it was enlightened self-interest that led them to help one another, allowing them to freely share their time and wealth for the good of the state.[33]

Tocqueville separated individualism from selfishness or self-love by specifically claiming that American individualism was, “a mature and calm feeling, which disposes each member of the community to sever himself from the mass of his fellows and to draw apart with his family and his friends, so that after he has thus formed a little circle of his own, he willingly leaves society at large to itself.[34] For Americans, government became a “necessary evil,” or perhaps something akin to Aristotle’s “lesser of the evils,”[35] to protect the sanctity of property, contractual obligations, and individual liberty consistent with self-interest “rightly understood.”

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[32] John P. Diggins, *The Lost Soul of American Politics* (Chicago: University of Chicago Press, 1984), 244.

[33] Martin Diamond, "Ethics and Politics: The American Way," in *The Moral Foundations of the American Republic*, ed. Horwitz, Robert H. (University Press of Virginia, 1979), 65-66.

[34] Alexis de Tocqueville, *Democracy in America* (New York: Alfred A. Knopf, 1945), 98.

[35] Aristotle, *Nicomachean Ethics* (Indianapolis: Hackett Publishing, 1999).

In the United States, the morality of self-interest is consistent with limited government, private property, and individualism. The Constitution that emerged from the Philadelphia Convention in 1787 was meant to safeguard the republic, reflecting a belief that self-interest was a force to be controlled or transcended. Certainly, the passions in man, thought to be part and parcel of the weakness of human nature, were based on self-interest, and suspect. James Madison in discussing the dangers of factions in early America in *Federalist Paper No. 10* argued that: "As long as the connection subsists between his reason and his self-love, his opinions and his passions will have reciprocal influence on each other; and the former will be objects to which the latter will attach themselves . . .,[36] echoing Alexander Hamilton's description of man in *Federalist Paper No.* 70 as "despicable frailty, or rather detestable vice, in the human character. . . where . . . the interests of society are sacrificed to the vanity, to the conceit, and to the obstinacy of individuals."[37] No doubt man's self-interest was seen by the framers of the U.S. Constitution as a passion of self-love in need of control,[38] while James Madison specifically believed that no individual could ever act disinterestedly. Self-interest was natural, but it must be controlled by the individual or by government.[39] Government was

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[36] Alexander Hamilton, James Madison, and John Jay, *The Federalist Papers* (New York: Penguin Putnam, 2003), 73.

[37] Ibid., 425.

[38] Repeatedly, James Madison echoed Hamilton's warnings about the frailties of human nature by stressing the need to run government "strengthened by motives of a more selfish nature" (*Federalist Paper No. 57*) and by framing a constitution to utilize ambition to counteract ambition, because "if men were angels, no government would be necessary"(*Federalist Paper No. 51*). Madison strongly believed that human nature was weak and government should be structured to protect itself from man's human frailties, or to "enable the government to control the governed; and in the next place oblige it to control itself."

[39] Adam Smith's view of government's need to control individual materialistic self-interest as articulated in *The Wealth of Nations* was somewhat inconsistent. On the one hand, he worried about the encroachment of government on economic activity, but on the other hand feared that merchants and manufacturers in pursuit

necessary to check or limit excessive self-interest or selfishness if the individual himself was unable to do so.

The early framers of the U.S. Constitution and creators of republican government, not unlike Smith, recognized man's natural self-interest, but felt that government had to be structured to control man's self-interest which might become excessive and turn into selfishness, indifference and autonomous behavior. American constitutional government was divided into three branches to balance powerful disparate interests and factions. American government was also decentralized into the federal and state governments to protect all of the community interests so that no one faction or interest could control another, and to make it difficult for one faction to unite to control the federal government. When the American republic was realized, and disparate interests were identified, Smith's concept of materialistic self-interest was evident in business, which was mostly small and/or family-owned and controlled, and located within diverse local communities, while legal responsibility over the chartering of corporations devolved to individual state governments.

It is natural for man to express both a personal morality of compassion, sympathy and benevolence toward other men, as well as an impersonal morality of self-interest of independence and individualism when engaged in economic transactions with unfamiliar individuals. As one distances himself further away from the community while engaged in economic transactions, the more impersonal such relationships become, and the more the relationship evolves into materialistic self-interest. If such self-interest becomes

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of their own self-interest would manipulate government regulation and patronage to their own advantage. He was an ardent supporter of government intervention to protect workers wages and reduce poverty, as well as a supporter of government chartering of corporations.

excessive, it can degenerate into selfishness, indifference and autonomous behavior. The results of materialistic self-interest, however, can unintentionally benefit the public and/or unintentionally or intentionally harm the public, or possibly both.

In the United States, Adam Smith's morality of self-interest was compatible with the development of liberal democracy and individualism rightly understood. The framers of the Constitution and the founders of the American republic believed that the nature of man was weak, and that government must control the governed and put limits on itself. The republican form of government balanced government between three branches and decentralized political power between the federal and state governments to balance factional interests and protect local communities and the state, while at the same time allowing individuals to pursue their own private ends or self-interests.

In the chapter that follows, the evolution of materialistic self-interest, represented by the creation of the corporation, will be traced; it will include a discussion of unsuccessful attempts by the state to limit its power, as well as legislative and judicial decisions which eventually strengthened corporate self-interest and power. Chapter Two will also describe the transformation of the structure of the corporation, including the separation of ownership from control, which has led a small group of managers driven by self-interest, to not only control the corporation, but, through the corporation, to eventually threaten the state.

CHAPTER 2

THE CORPORATION

In the first chapter this paper discussed two moralities; that of familiar individuals cooperatively interacting and one of unfamiliar individuals interacting when engaged in an economic relationship. It was shown that the morality of materialistic self-interest, or individuals engaged in impersonal relationships, is compatible with the development of liberal constitutional government and individualism in the United States.

This chapter will discuss the creation and evolution of the business entity that has become the modern twenty-first century corporation, from its beginnings in the seventeenth century when it was a creature of the sovereign state to its present form: independent, autonomous, unrestrained by its owners or the state, whose sole purpose is to materialistically enrich its owners and managers.

The Genesis

Materialistic self-interest served both public and private interests. As early as the fifteenth century British merchants and traders were controlled, monitored and taxed by the government, while international trading companies were allowed much more freedom because their trading profits were shared between the government and traders. The English East India Company, founded in the late sixteenth century, was in many ways a precursor of the modern global corporation. It was based or domiciled in Britain but carried out trade in numerous other geographical locations, investing in property and hiring employees domestically as well as internationally. It had economic and political relationships with the British government as well as other governments which had control over territories where the company conducted trade.

In Britain, Queen Elizabeth I granted a charter to the Old English East India Company in 1600,[40] including the bestowing of shares in the company to 218 London merchants, as well as granting legal freedom from liability "in order to raise large amounts of capital while protecting investors."[41] Much of the original capital came from rich London merchants, but some foreign money was invested, primarily by Dutch merchants who were excluded from the rival Dutch East India Company.[42] By 1612 the British company was united into a joint stock company, with an exclusive charter, "and though not confirmed by act of parliament, was in those days supposed to convey a real exclusive privilege."[43]

The British Crown later officially extended monopoly international trading rights to the East India Company, "granting it a monopoly for the import of oriental goods and gave it the right to export bullion to pay for them."[44] According to John Hendry, the East India Company "secured a charter that gave it not only a monopoly of English trade

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[40] Adam Smith, *The Wealth of Nations* (New York: Bantam Dell, 1776), 947.

[41] Kevin Danaher and Jason Mark, *Insurrection* (New York: Routledge, 2003), 23.

[42] James Fulcher, *Capitalism: A Very Short Introduction* (Oxford: Oxford University Press, 2004), 3.

[43] Adam Smith, *The Wealth of Nations* (New York: Bantam Dell, 1776), 948.

[44] James Fulcher, *Capitalism: A Very Short Introduction* (Oxford: Oxford University Press, 2004), 4.

beyond the Cape, but also delegated authority from the Crown to defend that trade by force and to make and administer law in any colonies that might be established."[45]

The Crown and government-chartered monopolies worked hand-in-hand to develop trade, extend government control and jointly share in the riches accorded international trade. To extend government control and to explore and settle North America, the British government chartered several companies, including the Virginia Company (Jamestown) and the Massachusetts Bay Company (Plymouth).

In London, by the late seventeenth century, over 150 companies were listed on a stock exchange that was dominated by the Old and New East India Companies, the Hudson Bay Company and the Bank of England.[46] Parliamentary debates over monopoly chartering were intense, with those favoring chartering arguing that it was in the interest of the country, and those opposed arguing that monopoly chartering only served the self-interest of a minority of wealthy merchants. Adam Smith supported government chartering, when a group of merchants "undertake, at their own risk and expense, to establish a new trade with some remote and barbarous nation, it may not be unreasonable to incorporate them into a joint stock company, and grant them, in case of their success, a monopoly of trade for a certain number of years."[47] He, however, strongly opposed a "perpetual" monopoly, believing that citizens would be "taxed very absurdly in two

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[45] John Hendry, *Between Enterprise and Ethics* (Oxford: Oxford University Press, 2004), 56.

[46] Ibid.

[47] Adam Smith, *The Wealth of Nations* (New York: Bantam Dell, 1776), 957.

different ways"; paying higher prices and by being excluded from "convenient and profitable" business opportunities.[48]

By the mid-nineteenth century, the structure of business began to change in Britain and in the United States. While most businesses were small scale and in private hands, there was a smaller number of large businesses where capital was raised publicly. They were given temporary limited liability and granted a monopoly in exchange for ventures deemed to be in the public interest, including foreign trade; later they were authorized to operate utilities, turnpikes, canals, steamships, railways, banking and insurance, and to serve as "essential manufacturers." As John Hendry claims, "the pursuit of profit was quite clearly a licensed privilege, and the company principals were, in effect, the agents of the state."[49]

By the middle of the 1850's, however, when the British industrial revolution was gaining full steam, Parliament could not keep up with the demand for company charters to finance a growing private industry. The solution: in exchange for the state granting limited liability when a company registered, the company agreed to submit annual audited accounts to the state, which blurred "the line between public and private interests."[50]

Early British international trading companies were originally creatures and servants of the state and required to not only serve private materialistic self-interests, but public interest as well. Sovereign government and private trading companies worked

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[48] Adam Smith, *The Wealth of Nations* (New York: Bantam Dell, 1776), 957.

[49] John Hendry, *Between Enterprise and Ethics* (Oxford: Oxford University Press, 2004), 61.

[50] Ibid., 62.

hand-in-hand to exploit trade and advance their respective interests. As companies grew in number and there was a need to increase public capitalization, the state acceded to companies' requests for an expedited licensing or chartering process. Corporations were no longer required to endure legislative debate and approval of their charters, but needed only to file audited financial statements with the state upon registration in order to be granted special rights and privileges. This was the beginning of the end of the partnership between corporations and the state, resulting in a weakening of state control over its creation, the corporation, which was originally designed to serve civil society and the public interest.

Corporations in America

In the United States, under a republican form of government, state legislatures were responsible for granting charters to corporations. The first incorporation laws were enacted during the 1830's and 1840's. Not unlike business conditions in Britain, there was a growing capitalist demand for expedited registration, along with limited liability to accomplish two goals: to facilitate the aggregation of larger pools of capital and to centralize corporate management.

In the United States, corporations gained special powers through legislation. According to *The Harvard Law Review*:

> By substituting simple registration procedures for the requirement of asking legislatures for special charters, general incorporation laws represented the antebellum period's major contribution to the development of private corporation as a standard form for engaging in business. On the practical level, they made the corporate form more widely available than it had previously been; on the ideological level, they abandoned the

> implication that corporate privileges should only be granted for special, public purposes.[51]

It was claimed that the legislative drive to enact general incorporation statues was both an expression of the universal need to democratize entrepreneurial opportunities as well as playing a causal role in redefining corporate charters as a form of private property immune from public power.[52] There was no doubt that ease of incorporation had "incontestable economic advantages," but more importantly, it "redefined the character of the republic in order to justify the new opportunities that the corporations offered for the accumulation of private wealth,"[53] and "accumulating it [i.e. private wealth] required special inducements of limited liability and centralized control. . . ."[54] Self-interest was no longer closely bound to self-restraint, and "it became acceptable . . . to take risks with other people's (banks' and creditors') money."[55] According to William G. Roy, when the right to incorporate became "generalized," some privileges were discontinued, such as legal monopolization, right of eminent domain, and free land, and other important ones were continued; owners were not liable for the company's debts, companies were given the right to own stock in other companies, and managers could operate corporations

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[51] "Incorporating the Republic: The Corporation in Antebellum Political Culture," *Harvard Law Review* 8 (1989): 1883.

[52] Ibid., 1887-1888.

[53] The Harvard Law Review extensively discusses the debates between Democrats and Whigs over incorporation laws in the context of republican concerns on how new forms of property and wealth would effect political virtue, but also, more importantly, on how republicanism itself would be redefined by the need to legitimate the business corporation. "Incorporating the Republic: The Corporation in Antebellum Political Culture," Ibid., 1887.

[54] Charles Perrow, *Organizing America* (Princeton: Princeton University Press, 2005), 37.

[55] John Hendry, *Between Enterprise and Ethics* (Oxford: Oxford University Press, 2004), 62.

without direct accountability to owners.[56] In the United States, as early as 1837, the state of Connecticut made incorporation available by simple registration, rather than requiring a special charter from the state legislature. By the 1870's, all state corporate chartering restrictions had disappeared.[57] Increasing corporate power, however, gained legal recognition much earlier. In 1819, the United States Supreme Court, in a 6 -1 decision, ruled in *Dartmouth College v. Woodward*[58] that the state of New Hampshire had no right to revoke the charter of Dartmouth Corporation (Dartmouth College) to ensure public accountability.

The Supreme Court ruled that the Dartmouth Corporation should be defined through a contractual agreement among different parties, as opposed to a creation of the state, "and therefore the corporation enjoyed protection under the Constitution's language guaranteeing inviolability of contracts."[59] Since Dartmouth College had been founded in 1769 under a corporate charter from King George III of England, it was chartered to last "forever." When the United States was formed, the charter from the King was transferred to an agreement with the state of New Hampshire.[60]

Daniel Webster, later to become a member of Congress and who also was a graduate of Dartmouth, successfully represented his alma mater before the Supreme Court, arguing that "all chartered corporations, whether they were colleges or textile

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[56] William G. Roy, *Socializing Capital: The Rise of the Large Industrial Corporation in America* (Princeton: Princeton University Press, 1997), 145-146.

[57] Charles Perrow, *Organizing America* (Princeton: Princeton University Press, 2005), 36.

[58] *Dartmouth College v. Woodward,* 4 Wheat. 519 (1819).

[59] Kevin Danaher and Jason Mark, *Insurrection* (New York: Routledge, 2003), 34-35.

[60] http://www.tourolaw.edu/patch/casesummary.asp.

mills, should be above state law. . . [and that] . . . private rights in general – must be protected from the 'rise and fall of popular parties and the fluctuations of political opinions'."[61] Thus, in the United States, both a Supreme Court ruling and numerous state legislative acts, weakened state control over corporations and ushered in a period of U.S. history which experienced an explosion of individual materialistic self-interest and the concentration of power that eventually became unstoppable.

Corporate Ruling Families

Following the American Civil War, railroads were shaping the U.S. economy, and by 1900, 193,000 miles of rail united cities, states, and rural communities across the country. Railways ultimately shaped the corporation as the corporation shaped the infrastructure of the American transportation system. While rail transportation was expanding and giant industrial mergers were taking place, the country was going through an economic depression, especially in rural areas. Farmers were plagued by low prices for their products and growing indebtedness, while the railroads gouged them with high transportation costs. To make matters worse, increased mechanization resulted in overproduction, which lowered agricultural prices further.

Railroad company expansion and continually increasing transportation prices charged to farmers led many states to adopt legislation to regulate railroad shipping costs and to limit corporate expansion. Unfortunately, states could only attempt to control companies conducting intrastate business. The Supreme Court struck down many state laws on the grounds that such legislation interfered with Congress's ability to control

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[61] Charles Perrow, *Organizing America* (Princeton: Princeton University Press, 2005), 41.

interstate commerce. The Supreme Court initially upheld state control of railroads in 1877[62] but nine years later reversed itself.[63]

Railroads were among the most powerful corporations in the United States. Lawyers for the railroads carried out an extensive national campaign to make corporations full, unqualified legal "persons" – demonstrated by the Supreme Court making several decisions in which this was an issue in 1877. In four cases that reached the Supreme Court, the railroads argued that they were protected by the Fourteenth Amendment from states regulating the maximum rates they could charge. In each case the Court did *not* render an opinion as to whether corporations were persons covered by the Fourteenth Amendment.[64]

In 1886, in a Supreme Court ruling,[65] the railroads were able to tip the legal balance further in favor of corporate self-interest. The Santa Clara decision created legal precedents that were later built upon by numerous federal court rulings, allowing corporations to be protected under the Fourteenth Amendment of the U.S. Constitution, and thereby forbidding the state to deny any "person" within its jurisdiction equal protection of the laws. *Santa Clara County v. Southern Pacific Railroad Company* was technically a question of whether or not the state of California had the authority to tax fences next to the railroad. The case was controversial because the ruling included what was reportedly a simple statement by its Chief Justice, Morrison Remick Waite (who had

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[62] *Munn v. Illinois*, 94 U.S. 113 (1877).

[63] *St. Louis L&P Ry. Co. v. People of State of Illinois*, 118 U.S. 557 Wabash (1886).

[64] John C. Harrington, *The Challenge To Power: Money, Investing, and Democracy* (White River Junction: Chelsea Green, 2005), 55.

[65] *Santa Clara County v. Southern Pacific Railroad Company*, 118 U.S. 394 (1886).

specialized in defending railroads and large corporations before he was appointed to the court), saying:

> The court does not wish to hear argument on the questions whether the provision in the Fourteenth Amendment to the Constitution, which forbids a state to deny to any person within its jurisdiction the equal protection of the laws, applies to these corporations. We are all of the opinion that it does.[66]

This statement was written as a headnote (a comment with no legal status) written by court recorder, J.C. Bancroft Davis (who was a former president of a railroad). This comment, which was not part of the decision or ruling has become the law of the land, meaning that the corporation, which is an artificial legal creation of the state, has been accorded the same constitutions rights of equal protection under the law as living, breathing human beings.[67]

Numerous Supreme Court Justices have disagreed with the Waite headnote, including Justice Hugo Black who in a 1938 ruling[68] wrote: "I do not believe the word 'person' in the Fourteenth Amendment includes corporations. Neither the history nor the language of the Fourteenth Amendment justifies the belief that corporations are included within its protection," and Supreme Court Justice William O. Douglas wrote, "There was no history, logic, or reason given to support the view [that corporations are legally

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66 Thom Hartmann, *Unequal Protection: The Rise of Corporate Dominance and the Theft of Human Rights* (New York: St. Martin's Press, 2002), 104.

67 For an exhaustive analysis of *Santa Clara County v. Southern Pacific Railroad Company*, consult: Thom Hartmann, *Unequal Protection: The Rise of Corporate Dominance and the Theft of Human Rights* (New York: St. Martin's Press, 2002).

68 *Connecticut General Life Insurance Company v. Johnson*, 303 U.S. 77 (1938).

'persons']."[69] These disagreements with the *Santa Clara County v. Southern Pacific Railroad Company* ruling, however, have never altered or overturned the decision.

The Santa Clara decision created a political backlash, especially as it came amidst the turmoil and anger over exorbitant rail transportation costs and price gouging affecting agriculture, manufacturers and small businesses. This political turmoil led to the enactment of the Interstate Commerce Act of 1887 and the Sherman Anti-Trust Act of 1890. The Interstate Commerce Act created the first federal regulatory agency, the Interstate Commerce Commission, to set publicly disclosed "reasonable and just" interstate shipping rates, and to prohibit secret rebates and price discrimination against small markets, most commonly comprised of farmers.[70] The Sherman Anti-Trust Act prohibited restraint of trade and authorized the federal government to dissolve trusts or monopolies that restrained trade or commerce.

When Theodore Roosevelt became President of the United States in 1901, the Sherman Act had already been weakened by the 1895 E. C. Knight case[71] in which the Supreme court ruled against the U.S. Justice Department when it tried to break up the American Sugar Refining Company's monopoly (the company controlled 98% of the nation's sugar refining business). The court ruled that the federal government had the right to regulate commerce but not manufacturing. This decision opened the door to a

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[69] Thom Hartmann, *Unequal Protection: The Rise of Corporate Dominance and the Theft of Human Rights* (New York: St. Martin's Press, 2002), 105.

[70] Steve Avery, *Travel Insurance By Legend Travelers*, 2002, <http://u-s-history.com/pages/h743.html>/ (accessed November 13, 2004).

[71] *United States v. E.C. Knight Co.*, 156 U.S. 1 (1895).

new wave of mergers, leading up to the U.S. Steel combine in 1901,[72] which consolidated 165 separate companies, and controlled about 60% of the total U.S. steel industry.[73]

Farmers, small businesses, labor groups and consumers were indignant over the power of large corporate enterprises to control prices and the public generally believed that these practices were illegal.[74] The public's perception at that time was that large trusts' objectives were clear: to lower wages, to raise prices and profits, and to run competitors out of business.[75] Between 1898 and 1902, more than 2,600 firms were absorbed into other companies (between a quarter and one-third of all U.S. capital assets) and the 100 largest corporations controlled 40% of the national industrial capital.[76]

Between 1897 and 1904, 4,227 companies were consolidated into 257 giant trusts; Standard Oil controlled 70% of the world's kerosene market and International Harvester sold 85% of all U.S. farm equipment.[77] By the turn of the twentieth century, the U.S. economy witnessed an unprecedented number of large business combinations and a plethora of monopolies created and controlled by a few wealthy individuals and families. Men such as J. P. Morgan sat on the board of 48 companies and John D. Rockefeller, who created the first trust in 1882 as Standard Oil, sat on 37 boards. As Charles Perrow claimed, it was much better to eliminate competition by buying out one's competitors

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[72] H. W. Brands, *Theodore Roosevelt: The Last Romantic* (New York: Basic Books, 1997), 435.

[73] John Bellamy Foster, "Monopoly Capital and the New Globalization," (January 2002): 5.

[74] George E. Mowry, *The Era of Theodore Roosevelt* (New York: Harper Brothers, 1958), 83.

[75] Ibid., 6.

[76] Lewis L. Gould, *The Presidency of Theodore Roosevelt* (Lawrence: University Press, 1991), 28; John Bellamy Foster, "Monopoly Capital and the New Globalization," (January 2002): 5.

[77] Kevin Danaher and Jason Mark, *Insurrection* (New York: Routledge, 2003), 44.

than competing in the marketplace; or, as J.P. Morgan claimed, combination was better than competition.[78]

While serving as governor of New York, and later as President of the United States, Roosevelt had a Hamiltonian belief in strong government and a Jeffersonian philosophy of the ultimate power of government resting with the people. In his autobiography, he described his feeling that when he took office as President, the United States was experiencing “a riot of individualistic materialism,”[79] primarily driven by a small group of men that had consolidated economic power by merging their corporations and creating a monopoly, thus leading to untold wealth for themselves. He realized that “government must now interfere to protect labor, to subordinate the big corporation to the public welfare, and to shackle cunning and fraud exactly as centuries before it had interfered to shackle the physical force which does wrong by violence.”[80]

In his first message to Congress on December 3, 1901, Roosevelt called for federal government supervision and regulation of corporations because state control was inadequate, since states’ power had been limited by the federal judiciary. He believed that corporations were empowered by government and that, as such, corporations “exist only because they are created and safeguarded by our institutions; and it is therefore our right and our duty to see that they work in harmony with these institutions.”[81]

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[78] Kevin Danaher and Jason Mark, *Insurrection* (New York: Routledge, 2003), 44; Charles Perrow, *Organizing America* (Princeton: Princeton University Press, 2005), 209.

[79] Theodore Roosevelt, *Theodore Roosevelt: An Autobiography* (New York: Charles Scriber's Sons, 1920), 423.

[80] Ibid., 425.

[81] Francine Sanders Romero, *Presidents From Theodore Roosevelt Through Coolidge, 1901-1929* (Westport: Greenwood Press, 2002), 9.

Less than a month prior to Roosevelt's speech to Congress, James J. Hill, E.H. Harriman and J.P. Morgan had hammered out a secret agreement that merged Hill's Great Northern and Harriman's Union Pacific railroads with Morgan's Northern Pacific to control access to his Chicago, Burlington, and Quincy railroads. They called their new trust "The Northern Securities Company Limited," and later formed a holding company to control all rail transportation in the northwest.[82]

Roosevelt believed that the Northern Securities merger violated the Sherman Anti-Trust Act and had his Attorney General file suit in the U.S. Supreme Court to dissolve the trust. In his autobiography Roosevelt wrote that "a small group of financiers desiring to profit by the government impotence . . . had arranged to take control of practically the entire railway system of the country."[83] In 1904 President Roosevelt, as with most of his anti-trust legislation, succeeded in breaking the Northern Securities Trust by receiving a favorable 5 to 4 decision by the United States Supreme Court.[84]

President Roosevelt's successful "trust busting" did not halt the increasing business concentration and industrial consolidation; at best, it simply slowed it down. Utilizing his "bully pulpit" Roosevelt demonstrated his distaste for corporate monopolies and the wealthy, but his political ranting did little to break up their power and influence over the U.S. economy. Until 1920, the U.S. economy was still dominated by a small group of financiers and major industrialists, often working in groups, through investment and commercial banks and insurance companies. As Mark S. Mizruchi claims, these

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[82] Edmund Morris, *Theodore Rex* (New York: Random House, 2001), 60.

[83] Theodore Roosevelt, *Theodore Roosevelt: An Autobiography* (New York: Charles Scriber's Sons, 1920), 428.

[84] *Northern Securities Co. v. United States*, 193 U.S. 197 (1904).

individuals "were viewed as dominating the business world and forging the making of a 'ruling class,' ascendant both economically and politically."[85]

In the late nineteenth and early twentieth century, materialistic self-interest was able to motivate individuals to not only dominate ownership and control of large corporations, but propel them to consolidate and concentrate an enormous amount of economic power. President Roosevelt warned of the growing "riot of individualistic materialism" and the increasing power of a small group of industrialists owning and controlling large corporations in America, fearing that such economic power would eventually be exercised as political power and threaten government. He was not the only one who feared concentrated economic power and its threat to the state. The threat, however, would not come from unified corporate ownership and control, personified by wealthy families; it would come from independent and materialistically self-interested professional managers, removed from the power of the owners of corporate wealth.

Ownership Separated From Control

In 1926, British economist John Maynard Keynes (1883-1946), in an essay entitled "End of Laissez-Faire," questioned the sovereignty of government, individualism and the unquestioned faith of laissez-faire capitalism. Keynes claimed international individualistic capitalism was "decadent" and "rooted in erroneous assumptions and as a policy led to disastrous and avoidable political-social consequences."[86] Perhaps more

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[85] "Berle and Means Revisited," *Theory and Society* (2004): 3.

[86] Conrad P. Waligorski, *Liberal Economics and Democracy* (Lawrence: University Press of Kansas, 1997), 40.

important, he questioned the growth and power of “separate autonomies,” including “Joint Stock Institutions” or public corporations, and their tendency to “socialize themselves,” or widely disperse ownership. He also questioned the consequences of the evolving separation of ownership from control.[87]

Likewise, in 1932, two corporate attorneys, Adolf A. Berle and Gardiner C. Means, wrote *The Modern Corporation and Private Property*, expressing their concern that by 1920, economic power had become concentrated in the hands of a small class of professional managers, inspired by the rise of large corporations. These corporate executives were insulated not only from legal owners but from civil society, and, if unchecked, could have very negative consequences for democratic institutions and the economy. They feared that these individuals had “the power to build and destroy communities, to generate great productivity and wealth, but also to control the distribution of that wealth, without regard for those who elected them (the stockholders) or those who depended on them (the larger public).”[88]

Berle and Means suggested that the negative effects of such a small group of self-perpetuating, non-owning individuals controlling large corporate enterprises, amounted to a revolutionary change in property relations, which “split the property atom,” or where “management is more or less permanent, directing the physical property which remains intact while the participation privileges of ownership are split into innumerable parts –

[87] John Maynard Keynes, *Essays in Persuasion* (New York: Harcourt, Brace and Company, 1932), 314-315.

[88] "Berle and Means Revisited," *Theory and Society* (2004): 3.

'shares of stock' – which glide from hand to hand, irresponsible and impersonal."[89] Thus, owners gave up control for liquidity. Berle and Means discovered that these liquid shares of stock, trading daily in the market, had an independent value that was separate and distinct from any value set by an independent appraisal of the underlying corporate assets (book value); a value which could easily be manipulated by acts of management or speculators for their own financial gain.

William G. Roy agreed with Keynes and Berle and Means that the fundamental structure of business, as property, changed dramatically in the late nineteenth century. Capital had been "socialized," creating widely dispersed ownership, meaning that:

> instead of each firm being owned by one or a few individuals, each firm became owned by many individuals, and individual owners in turn typically owned pieces of many firms. In the process the social nature of property itself was transformed. The consideration of property implies a degree of inequality, that the social processes determining the shape of the economy are explainable by power, not just efficiency. Moreover, the social relations of property and the underlying dynamics of power are set within the inter-organizational framework we know as institutions.[90]

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[89] Adolf A. Berle and Gardiner C. Means, *The Modern Corporation and Private Property* (New York: Macmillan Company, 1939), 285.

[90] In the twenty-first century corporation, according to John C. Bogle, *The Battle for the Soul of Capitalism*, (New-Haven: Yale University Press), 2005, it is difficult to separate owners from the owned, since through defined-benefit corporate pension plans, corporations own 12% of all stocks, and dominate another 11% through defined-contribution savings plans. "What is more, most of our largest money managers themselves are now owned by giant financial conglomerates. Arguably, this circularity of ownership allows corporate America to control itself." (Wall Street Journal, October 3, 2005, A16, "Individual Stockholder, R.I.P.", John C. Bogle). Bogle, in arguing that the "circularity" of ownership allows a corporation to control itself, refers to the large turnover of stock, or "liquidity" that is electronically traded in the hundreds of millions of shares daily, in which corporations are using their own corporate funds to take positions in, or buy other corporations' stock, including buying back their own corporate stock with internally-generated corporate cash. Additionally, large financial corporations and bank holding companies now own money management firms or Registered Investment Advisors, thereby controlling assets of almost the entire financial industry. William G. Roy, *Socializing Capital: The Rise of the Large Industrial Corporation in America* (Princeton: Princeton University Press, 1997), 10.

Not everyone, however, feared the separation of ownership from control; several sociologists believed that separating mangers from ownership would “breakup the ruling class,” “democratize capitalism,” and create “people’s capitalism,” meaning that capital would be “publicly” controlled, and even “transcend” capitalism altogether by transforming corporate executives into “bureaucratic organization men.”[91] These men would only owe allegiance to the corporation and the public, not to a small group of wealthy owners.

With the exception of Keynes, the separation of ownership from control of large corporate enterprises was not recognized by most economists as having an impact on economic theory because whoever controlled a private enterprise was never thought to be relevant to “market processes.” It is now recognized, however, that separation of ownership from control, combined with the corporation’s growth in size, capital and economic and political power *is* having a profound impact on classical economic *and* political theory.

Berle and Means discovered that fundamental concepts accepted by Adam Smith in *The Wealth of Nations* had undergone drastic change: “Private property, private enterprise, individual initiative, the profit motive, wealth, competitors – these are concepts which he employed in describing the economy of his time and by means of which he sought to show that the pecuniary self-interest of each individual, if given free play, would lead to the optimum satisfaction of human wants.”[92] Berle and Means found

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[91] "Berle and Means Revisited," *Theory and Society* (2004): 4.

[92] Adolf A. Berle and Gardiner C. Means, *The Modern Corporation and Private Property* (New York: Macmillan Company, 1939), 345.

that “private property” defined by Smith as “a unity of possession” was now broken, with the possession of “passive” property now being in the form of stock and “active” property, or the physical enterprise itself, being controlled by individuals who have only minor, if any, ownership interests in it.[93] Similarly, “wealth” that Smith thought of in the physical sense, now consisted of a liquid and impersonal “bundle of expectations which have a market value and which, if held, may bring him income and, if sold in the market, may give him power to obtain some other form of wealth.”[94]

Berle and Means claimed that “private enterprise,” originally defined by Smith as individually-owned as well as controlled, had now been replaced by large corporate entities run by impersonal managers eliminating “individual liberty” and “individualism,” instead requiring “consideration and acceptance of authority almost to a point of autocracy.”[95] They also believed that the corporate structure “distorted” the profit motive as an “effective and socially beneficent motivating force,” and if profits were required to be paid out to owners, and not to those that both owned and controlled corporations, “competition” could be “so inactive as to make monopoly or duopoly conditions prevail.”[96]

Berle and Means pinpointed the separation between passive stockholders as owners who had given up control for liquidity, being able to sell their stock at a

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[93] Adolf A. Berle and Gardiner C. Means, *The Modern Corporation and Private Property* (New York: Macmillan Company, 1939), 346-47.

[94] Ibid., 348.

[95] Ibid., 349.

[96] Ibid., 350-51.

moment's notice,[97] and a board of directors, who had absolute control of the corporation, but had little or no ownership. The board of directors was identified at that time as "management." Just as to Berle and Means "management" had taken power from the shareholders, so too had the President and/or Chief Executive Officer (also often acting as the President and Chairman of the Board) in the modern corporation usurped the power of the board of directors.

The board of directors of corporations is self-nominated, comprised of senior management, consisting of the Chief Executive Officer (CEO) and other leading officers, referred to as "inside" directors. "Outside" directors mostly consist of officers of other corporations, including major customers, vendors or suppliers, bankers, lawyers, accountants, and more often than not, close allies, friends and business associates of senior management. These individuals come from "relatively privileged origins,"[98] having similar education experiences, and both family and social connections.[99]

When board members of one company sit on the board of another company, the relationship is called an "interlock" or "interlocking directorate" and has been embedded in the corporate structure for over a century.[100] These interlocks, created primarily by the CEO, allow him to concentrate an enormous amount of power due to the fact that he

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[97] According to John C. Bogle, founder and former CEO of Vanguard Mutual Funds, and author of *The Battle for the Soul of Capitalism*, from 1950 to 1965 equity mutual funds turned over their portfolios at an average rate of 17% per year; in 1990-2005, the turnover rate averaged 91% per year. Not only is ownership separate from control, the owners are short-term-oriented and have little or no connection to the corporation. Shares, representing ownership, are bought and sold electronically within seconds.

[98] G. William Domhoff, *Who Rules America?* (Englewood: Prentice-Hall, 1967), 12.

[99] "Berle and Means Revisited," *Theory and Society* (2004): 24.

[100] Ibid., 12.

controls "inside" directors who are part of his senior staff, and also allows him to nominate numerous business colleagues beholden to him, who pursue their own self-interest, their corporation's interest, or both. These "independent" or "outside" directors are able to pursue both their own materialistic self-interest by being compensated by the corporation in cash and company stock; they also benefit because of their own firm's business relationship with the corporation. The self-interest of directors is consistent with the self-interest of senior management and the corporation, which creates an interdependent relationship, mutually self-serving at the expense of shareholders or owners and civil society.

Roy maintains that interlocks between corporations create another "currency" exchanged between corporations and "helped to control competition among the firms in a market, facilitate raising capital from commercial and investment banks, solidify and reduce transaction costs with suppliers and customers, and coordinate the activities among firms with common ownership. All of these activities were much more difficult among individually owned firms."[101]

Edward S. Herman believes that outside directors have little power and "have some sort of dependency on or reciprocity linked to the corporation and its active management." This creates a "friendly, helpful but definitely unthreatening, and perhaps really compliant and passive, board. . . ."[102] Supreme Court Justice Louis Brandeis warned that interlocks reduced competition within industries, created conflicts of interest,

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[101] William G. Roy, *Socializing Capital: The Rise of the Large Industrial Corporation in America* (Princeton: Princeton University Press, 1997), 155.

[102] Edward S. Herman, *Corporate Control, Corporate Power* (Cambridge: Cambridge University Press, 1981), 37.

and concentrated “power in a small elite, a phenomenon that may have serious implications for democracy.”[103]

Berle and Means concluded *The Modern Corporation and Private Property* by prophetically declaring:

> The rise of the modern corporation has brought a concentration of economic power which can compete on equal terms with the modern state – economic power versus political power, each strong in its own field. The state seeks in some aspects to regulate the corporation, while the corporation, steadily becoming more powerful, makes every effort to avoid such regulation. Where its own interests are concerned, it even attempts to dominate the state. The future may see the economic organism now typified by the corporation, not only on an equal plane with the state, but possibly even superseding it as the dominant form of social organization.[104]

Keynes focused his attention on the interrelationship between politics and economics, believing that for democracy to survive and to flourish, there was always a need for government intervention, explaining that “in the future, more than ever, questions about the economic framework of society will be far and away the most important of political issues. The largest of all political questions . . . ,” are “the economic questions.”[105]

Keynes did not believe that what he called “individualistic capitalism” was successful, intelligent or virtuous. Capitalism should be changed when it “interfered with

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[103] "Berle and Means Revisited," *Theory and Society* (2004): 13.

[104] Adolf A. Berle and Gardiner C. Means, *The Modern Corporation and Private Property* (New York: Macmillan Company, 1939), 357.

[105] Conrad P. Waligorski, *Liberal Economics and Democracy* (Lawrence: University Press of Kansas, 1997), 39.

achieving basic principles – freedom, individualism, democracy, social justice . . ."[106] He argued that belief in some "invisible hand" or "natural force" precluding human intervention was "nonsense,"[107] and that laissez-faire competition with its belief that people were "autonomous," "purely self-seeking" and "self-motivating" endangered both capitalism and democracy.[108] Keynes maintained that

> capitalism and democracy had a future only if society modified its laissez-faire orientation, redefined individualism, embraced social justice, acknowledged that pursuit of self-interest is as likely to be chaotic and zero-sum as to be order-producing, and accepted that capitalism will not achieve its wealth maximizing potential without intervention, guidance, and general direction of the macro-economy.[109]

This chapter has discussed the corporation from its beginning as a creation of the sovereign state, chartered to serve civil society, to becoming an instrument of wealthy families to create additional personal wealth and power, to its eventual evolution as an economic entity, no longer controlled by owners but by a small group of unrestricted professional managers, who would be tempted to exercise power within the corporation for their own financial and political gain.

In 1978, in a U.S. Supreme Court ruling[110] Justices Byron White, William Brennan, and Thurgood Marshall warned that:

> corporations are artificial entities created by law for the purpose of furthering certain economic goals . . . It has long been recognized,

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[106] Conrad P. Waligorski, *Liberal Economics and Democracy* (Lawrence: University Press of Kansas, 1997, 40.

[107] Ibid., 41.

[108] Ibid., 44.

[109] Ibid., 64.

[110] *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978).

> however, that the special status of corporations has placed them in a position to control vast amounts of economic power that may, if not regulated, dominate not only the economy but also the very heart of our democracy, the electoral process . . . The State need not permit its own creation to consume it.[111]

This warning was prophetic: As the next chapter will discuss, the consolidation of power within the corporation by its materialistic self-interested managers, unrestricted by its diverse and diffused owners, allowed them to become self-perpetuating as well as exercising oligopolistic economic and political power that threatens state sovereignty.

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[111] Lee Drutman and Charlie Cray, *The People's Business* (San Francisco: Berrett-Koehler, 2004), 278.

CHAPTER 3

THE STATE

In the second chapter this paper reviewed the evolution of the corporation from its genesis as a creation of the state through its emergence in the twentieth century as an autonomous and powerful economic entity whose managers are independent of the control of owners, who have exchanged control for liquidity. This chapter will discuss how ownership has become diverse and dispersed, unable to exert meaningful ownership responsibility over its self-perpetuating mangers or over the corporation itself. This has resulted in the expansion of managerial and corporate materialistic self-interest and has fueled an attempt by the corporation to dominate state sovereignty and exercise political and economic power over the state to advance corporate self-interest.

Undisputed Management Control

By the end of the twentieth and beginning of the twenty-first century, managerial control of the corporation was absolute, and ownership was diffused and almost totally separate from control. The current established norm of the market and its behavior is that of oligopoly, or "constrained rivalry of a few independent sellers who compete mainly by means of product differentiation."[112] Many monopolies of the late nineteenth century have transitioned to stable and prosperous oligopolies.[113]

Ownership of the largest global corporations is dispersed, comprised primarily of institutional investors, including private and public pension funds, mutual funds, bank trusts, religious and educational organizations, family trusts and foundations, investment and brokerage firms and insurance companies. Institutional investors control about 66% of corporate stocks of large U.S. domestic corporations as represented by the Standard and Poors 500 Index;[114] or to put it another way, institutions hold more than 50% of the equity in 71.3% of the largest 1,000 corporations and more than 90% of the equity in 40 of them.[115] America's 100 largest investment firms hold 58% of all stocks.[116] While about one-half of all U.S. households own corporate stock, most of this is held in individual retirement and pension accounts. Direct ownership of stocks by American

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[112] Edward S. Herman, *Corporate Control, Corporate Power* (Cambridge: Cambridge University Press, 1981), 1.

[113] William G, Roy, *Socializing Capital: The Rise of the Large Industrial Corporation in America* (Princeton University Press: Princeton, New Jersey, 1997), traces the history of American monopolies that transitioned from monopolies to oligopolies, including the sugar and tobacco industries. "Only an ideology of monopoly can explain why some industrialists and financiers unnecessarily spent fortunes to underprice and buy out obviously unthreatening competitors. Monopolists and antimonopolists . . . assumed that total dominance of an industry was necessary for high profits and that monopoly was most effectively maintained and preserved by nipping competition in the bud, even if one had to lose money to weaken upstarts and then pay exorbitant prices to buy them out. Neither realized that oligopoly could be both stable and prosperous," 180-181. There can be, and often is, competition between modern oligopolies as well as marketing competition, but always within limits. Oligopolistic practices still require only a few large firms dominating a market, controlling supply, and often manipulating demand through expensive mass marketing.

[114] *The Heritage Foundation*, April 18, 2003, www.heritage.org/Research/Taxeswm265.cfm/ (accessed January 12, 2005).

[115] John C. Harrington, *The Challenge To Power: Money, Investing, and Democracy* (White River Junction: Chelsea Green, 2005), 224.

[116] John C. Bogle, "Individual Stockholder, R.I.P," *Wall Street Journal*, October 3 2005, sec. A, 16.

households has declined from 91% in 1950 to just 32% today, while financial institutions hold 68% of all stocks.[117] Only about 41.5% of individuals holding stock of 1,000 shares or fewer, however, actually vote their shares at annual meetings and almost all are voted by proxy.[118]

Management controls the proxy voting process because management is normally the only solicitor of proxies and has sole access to the list of shareholders. Most individual shareholders are not even listed as "shareholders of record," but are the "beneficial owners," owning their shares through broker dealers, with their shares held in "street name," or in the name of the broker dealer. The broker dealer is required to "pass through" voting rights to the beneficial owner.

The overwhelming majority of individual shareholders who hold their shares at a brokerage firm and are designated "beneficial owners" do not vote their proxies. Brokerage firms vote "non-instructed" shares for their clients in support of the election of incumbent directors, to approve auditors, in support of proposals to increase the number of shares (diluting shareholders), and in favor of cash compensation for directors and senior management. ADP Corporation, which processes proxy votes for corporations, reported that 23% of the votes in the 2002 proxy season were cast by brokerage firms that lacked instructions from shareholders, and that every vote by firms supported management,[119] thus insuring perpetual management domination.[120]

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[117] John C. Bogle, "Individual Stockholder, R.I.P," *Wall Street Journal*, October 3 2005, sec. A, 16.

[118] John C. Harrington, *The Challenge To Power: Money, Investing, and Democracy* (White River Junction: Chelsea Green, 2005), 228.

[119] Ibid., 228.

In addition, very few shareholders attend the annual shareholders meeting. Often shareholders meetings are held overseas and an increasing number of states now allow corporations to hold their annual meetings "on-line." Almost all shareholders vote by proxy, legally appointing management as their proxy. Normally management controls over 98% of all proxies. On the proxy card mailed to shareholders, there is no place for a shareholder to appoint another proxy. What was true in 1981, when Edward S. Herman wrote *Corporate Control, Corporate Power*, is true today: "Domination of the board and proxy machinery of the corporation is the link between the defacto power of the managerial leadership and the legal but nominal power of the diffused ownership."[121]

Not only does management self-select most board members, but the slate of nominee directors forwarded to shareholders is nominated by incumbent directors; thus the board is self-perpetuating. As early as 1913, the famous Pujo Committee report identified the separation of ownership from control and the loss of power of shareholders declaring, "The management is virtually self-perpetuating and is able through the power of patronage, the indifference of stockholders and other influences to control the majority of stock."[122] The Pujo Committee recommended that minority stockholders be

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[120] These brokerage firms are materialistically self-interested in the pursuit of management domination because their support of management will result in their ability to continue to have access, as investment bankers, to lucrative corporate underwriting business as well as management-controlled employee pension and supplemental (401[k]) retirement fund investment management.

[121] Edward S. Herman, *Corporate Control, Corporate Power* (Cambridge: Cambridge University Press, 1981), 28.

[122] Report of the Committee Appointed Pursuant to House Resolutions 429 and 504 to Investigate the Concentration of Control of Money and Credit, House report No. 1593, 62d Cong., 3rd sess.(Washington D.C.: Government Printing Office, 1913), 146-147

guaranteed representation on boards.[123] This recommendation has never been enacted into law.[124]

Shareholders cannot vote “against” nominees for the board of directors. They can only mark their ballots “For,” “Abstain,” or “Withhold.” A vote of “Abstain” or “Withhold” is ***not*** a vote against director nominees. In most corporations, if the entire slate of directors received only one vote “For” and all other votes were marked “Withhold” or “Abstain,” the entire slate of self-nominated directors would be elected.[125] This plurality voting system is prevalent at some 84% of Fortune 500 companies.[126]

There is a process, sanctioned by the U.S. Securities and Exchange Commission (SEC), permitting shareholders to file resolutions with the Corporate Secretary in order to introduce proposals that may be included in the proxy material mailed to shareholders and presented at annual shareholders meetings. These resolutions, however, must be submitted in compliance with an array of complex SEC rules. In addition, SEC Rule 14a-8(7) gives corporate management the authority to exclude a proposal from its proxy material because the resolution relates to “ordinary business.” A Social Investment Forum report published in 1997 found that from 1986 to 1995 an average of 226

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[123] William G. Roy, *Socializing Capital: The Rise of the Large Industrial Corporation in America* (Princeton: Princeton University Press, 1997), 155.

[124] Several states do allow "cumulative voting" which allows minority shareholders to combine their votes and theoretically elect a minority number of directors to the board. Most corporations incorporated in the United States are chartered in states such as Delaware, which does not mandate cumulative voting. For all intents and purposes, cumulative voting is non-existent since most states do not mandate cumulative voting and most corporate by-laws prohibit the practice.

[125] Jay W. Eisenhofer and Michael J. Barry, *Shareholder Activism Handbook* (New York: Aspen Publishers, 2006), 9-60.

[126] *Wall Street Journal*, March 18, 2006, "B14," http://online.wsj.com/article_print/SB114265003898002110.html. (accessed March 20, 2006).

companies or 15% out of the largest 1,500 companies actually forced votes on shareholder proposals.[127] Even if a shareholder resolution wins the votes of 100% of the shareholders voting "For" the proposal, it would be *advisory only*.

Legally, nominations to the board of directors, as well as other proposals, can be introduced or placed before shareholders in person at the annual meeting, but shareholders are often not "recognized" by the chair of the meeting, or are ruled "out of order" when attempting to act against corporate management. In addition, because management holds the overwhelming majority of shareholder proxies of those owners who are not voting in person, a proposal not supported by management is guaranteed to fail. In some rare instances, there are proposals that can be submitted by shareholders that are binding on management, such as amendments to the corporate by-laws or articles of incorporation. These proposals, however, must receive a majority or super-majority vote by the shareholders *and* receive a majority vote by the board of directors, or a majority vote by the board of directors. Because shareholders have no access to the director nominating process and cannot vote "against" directors, corporate "democracy" does not exist. It is authoritarian rule by a self-nominated and elected board of directors beholden to senior management, primarily the CEO of the company.

Corporate ownership is widely diverse and diffused and corporate management absolutely controls the corporation. Senior corporate management and the board of directors are self-perpetuating, and shareholders are unable to significantly influence corporate management.

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[127] John C. Harrington, *The Challenge To Power: Money, Investing, and Democracy* (White River Junction: Chelsea Green, 2005), 234.

Materialistic Self-interest

The materialistic self-interest of management not only leads to the selection of a self-perpetuating board, but individual self-interest is consistent with the self-interest of the corporation itself. Corporate and individual materialistic self-interest are identical. Corporate self-interest, according to law, custom, and corporate by-laws, requires that the corporation maximize profits and financial return. Maximizing financial return for the stockholders and managers is consistent with the corporation's overall goals and objectives.

According to corporate policy, it is in the interests of shareholders, that in order to maximize corporate earnings, the corporation is required to employ and retain competent and well-qualified senior management. To attract skilled and experienced senior management, the board of directors believes it is necessary to compensate managers at a level of compensation competitive with other similar corporate management. It is therefore in the materialistic self-interest of management and the board of directors to set the salaries of senior management as well as board member compensation. Corporate by-laws specifically delegate the setting of management and board compensation to the board of directors. Herman argues that management and the board pay themselves "generously" and have:

> developed elaborate systems of compensation by deferred money payments, stock options, and bonuses, and expense account perquisites of large scale and ingenuity. Insiders and affiliated persons also sometimes benefit from the advantages of inside information in buying and selling company stock and occasionally from the sales of property by or to the corporation and other forms of misuse of strategic position.[128]

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[128] Edward S. Herman, *Corporate Control, Corporate Power* (Cambridge: Cambridge University Press, 1981), 248.

Currently in the United States the ratio of average CEO pay (now $11.8 million) to average worker pay (now $27,460) has increased from 301-to-1 in 2003 to 431-to-1 in 2004.[129] By way of contrast, the British CEO ratio is 25-to-1 and German CEO ratio is 13-to-1. Since 1980 CEO pay in the United States has gone up 442%, adjusted for inflation, while the average worker pay has risen 1.6%.[130]

According to a recent study by a Harvard Law scholar of executive pay practices, from 1999 to 2003, the five top corporate CEOs of the 1,500 largest publicly traded firms cumulatively earned $122 billion in salary, bonus, and stock, compared with $68 billion from 1993 through 1997. From 2001 to 2003, top executive compensation amounted to 9.8% of the companies' net income, almost double the 5% from 1993 to 1995.[131]

Non-senior executives that serve as "outside" board members also pay themselves generously. The average cash component of pay at Standard and Poors 500 companies is $50,000, up 15% in both 2003 and 2004, and according to a consultant for Pearl Meyer & Partners, an executive compensation consulting firm, director pay could increase to an average of $200,000 at Fortune 200 companies in 2006.[132]

On many large corporate board compensation committees, board members with conflicts of interest set their own pay. According to a December 2002 study, *The New*

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[129] *United For A Fair Economy*, September 28, 2005, "Another Year Of Executive Excess- Especially At Defense Contractors," www.faireconomy.org/ (accessed October 30, 2005).

[130] John C. Harrington, *The Challenge To Power: Money, Investing, and Democracy* (White River Junction: Chelsea Green, 2005), 72.

[131] Jesse Eisenger, "Memo to Activists: Mind CEO Pay," *Wall Street Journal*, January 11 2006, sec. C, p. 1.

[132] Gary Strauss, "Board Pay Gets Fatter As Job Gets Hairier," *USA Today*, March 6, 2005, www.workplacefainess.org/ (accessed October 25, 2005).

York Times found that of almost 2,000 of the largest U.S. corporations, 20% had compensation committees with members who had business ties or other relationships with the CEO or the company. At more than 70 companies, the chairman of the compensation committee had such ties and in 9 cases the chairman was actually an executive of the company.[133]

On many occasions, CEO-captive boards also violate their own policies in providing excessive severance payment packages to departing senior executives. For example, the Indiana Electrical Workers Pension Trust Fund and the Service Employees International Union filed suit in U.S. District Court in Northern California on March 6, 2006, alleging that Hewlett-Packard Corporation violated its own policy of restricting CEO severance payouts to two and a half times an executive's base salary and targeted bonus, unless shareholders approve a higher sum. The CEO received a total payout of an estimated $42 million. This total payout, based upon the Hewlett-Packard severance-cap policy for CEOs, should have been limited to $14 million.[134]

That is not to say that corporate management and the corporation itself do not benefit society and the economy by the creation of employment and ancillary businesses; they also contribute to numerous public charities and other non-profit organizations. Charitable donations in 2003 in the United States reached $241 billion, of which 17% were made by institutions including corporations.[135] One of the largest foundations, The

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[133] John C. Harrington, *The Challenge To Power: Money, Investing, and Democracy* (White River Junction: Chelsea Green, 2005), 74-75.

[134] Dawn Kawamoto, *cnet*, March 7, 2006, http://news.com.com/2102-1014_3-6046904.html?tag=st.utli.print/ (accessed March 7, 2006).

[135] John C. Harrington, *The Challenge To Power: Money, Investing, and Democracy* (White River Junction: Chelsea Green, 2005), 155.

Bill and Melinda Gates Foundation, which was endowed with $28 billion by the founder and chairman of Microsoft Corporation, donates over one billion dollars per year, primarily to support world health and immunization.

While many non-profit organizations have reported lower corporate giving, many contributions that are reported as given by individual corporate senior managers are actually donations in which executives took personal credit but which came out of shareholder pockets. For example, Tyco International CEO Dennis Kozlowski took credit for a $43 million donation, which was really Tyco's.[136] John C. Bogle, founder and former CEO of the Vanguard mutual fund group, believes that senior executives normally get personal credit for corporate contributions and that the typical CEO fails to "recognize boundaries between the company's assets and his own."[137]

John Kaler maintains that managers make charitable donations in order to gain public esteem, which should not be considered altruism, since self-gratification is rewarded by doing "the right thing for the wrong reason."[138] Nevertheless, corporate charitable donations, besides serving the self-interest of the corporation and senior management, including providing a tax benefit for up to 10% of net income, provide an increasingly important social benefit to society.

Not everyone agrees that the corporation should be making charitable contributions, and occasionally shareholders will introduce resolutions at annual

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[136] John C. Harrington, *The Challenge To Power: Money, Investing, and Democracy* (White River Junction: Chelsea Green, 2005), 155.

[137] John C. Bogle, *The Battle for the Soul of Capitalism* (New Haven: Yale University Press, 2005), 19, 21.

[138] John Kaler, "Reasons to be Ethical: Self-interest and Ethical Business," *Journal of Business Ethics* (2000): 165.

shareholder meetings in an attempt to convince corporate management that it is not a proper use of corporate funds. Conservative economist Milton Friedman, for example, believes “Such giving by corporations is an inappropriate use of corporate funds in a free-enterprise society,” and furthermore, “If the corporation makes a contribution, it prevents the individual stockholder from himself deciding how he should dispose of his funds.”[139] Friedman argues that:

> The direction in which policy is now moving, of permitting corporations to make contributions for charitable purposes and allowing deductions for income tax, is a step in the direction of a true divorce between ownership and control and of undermining the basic nature and character of our society. It is a step away from an individualistic society and toward the corporate state.[140]

John Kaler agrees with Berle and Means and Herman that the separation of ownership from control in the modern corporation has created opportunities for management to pursue their materialistic self-interest in the form of compensation, but also status and power which is derived from psychological gratification.[141] Kaler maintains that management identifies its total compensation with achievement, and overall corporate performance with individualistic pride and self-esteem.[142] Adam Smith aptly claimed that men are more disposed to “admire, and almost worship, the rich and powerful, . . .[and the] . . . respectful attentions of the world [are] more strongly directed towards the rich and great, than towards the wise and the virtuous.”[143]

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[139] Milton Friedman, *Capitalism and Freedom* (Chicago: University of Chicago Press, 1962), 135.

[140] Ibid., 135-136.

[141] Ibid., 164.

[142] Ibid., 165.

[143] Adam Smith, *The Theory of Moral Sentiments* (Amherst: Prometheus, 2000), 84.

The "rich and great" that are managers of corporations have the identical self-interest as that of the corporate organization. The separation of ownership from control permitted the emergence of a class of managers whose self-interests are tied to the self-interest of the corporate organization and the existing legal structure of the business entity. As Allen L. White maintains, by the end of the nineteenth century:

> Private enrichment had replaced public benefit as the core purpose of the corporation. A series of legal decisions in both the U.S. and the U.K. created an entity with, essentially, all the rights of natural persons, limited liability for investors, few controls over mergers and acquisitions, and rights to own stock in other companies. The imbalance between expanded corporate rights and few corporate obligations, … evolved. . . .[144]

Perrow claims that the corporate form is an "entity in itself;" that it acts as if it has a life of its own, "as though they had their own interests apart from the humans who run them and benefit from them."[145]

Joel Bakan claims that the corporation is a legal institution, "whose existence and capacity to operate depends upon the law . . .[and whose]. . . legally defined mandate is to pursue, relentlessly and without exception, its own self-interest, regardless of the often harmful consequences it might cause to others."[146] Bakan argues that "the corporation is a pathological institution, a dangerous possessor of the great power it wields over people and societies," which needs to be controlled by government.[147]

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[144] Allen L. White, "Lost in Transition? The Future of Corporate Social Responsibility," *The Journal of Corporate Citizenship* 16 (2004): 2-3.

[145] William G. Roy, "Power and Culture in Organizations: Two Contrasting Views," *Sociological Forum* 19, no. 1 (2004): 166.

[146] Joel Bakan, *The Corporation* (New York: Free Press, 2004), 1-2.

[147] Ibid., 2.

Herman claimed in 1981 that large corporations were able to constrain and limit public interest legislation and regulation of corporate activities because of "too narrow or hopelessly broad" legislation and weak enforcement of regulatory oversight.[148] Milton Friedman, author of *Capitalism and Freedom*, admitted that "the regulatory agencies often tend themselves to fall under the control of producers . . . ."[149] U.S. government regulators in the twenty-first century are still captives of industry, as illustrated by the recent United States Department of Agriculture's appointment of industry representatives as "consumer representatives" to the National Organic Standards Board.[150] Herman also maintains that not only do corporations exert significant influence on the appointment of government regulators, they have been successful in litigating against specific regulatory restrictions.[151]

Corporations have been able to successfully influence both legislation and regulation, primarily by dominating the funding of (1) political campaigns, (2) government lobbying, (3) commercial or "free" speech, and (4) litigation.[152] John Hendry claims that business entrepreneurs have always sought to influence the state by placing their "self-interest above obligation," and that corporations have used their money to gain influence and protection "to the tune of $1.5 billion in 1997-8, . . . and

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[148] Edward S. Herman, *Corporate Control, Corporate Power* (Cambridge: Cambridge University Press, 1981), 177-178.

[149] Milton Friedman, *Capitalism and Freedom* (Chicago: University of Chicago Press, 1962), 128.

[150] http://www.organicconsumers.org/organicbytes.htm. 3-4.

[151] Edward S. Herman, *Corporate Control, Corporate Power* (Cambridge: Cambridge University Press, 1981), 179-180.

[152] For a review of recent corporate political and financial influence peddling refer to John Harrington, *The Challenge To Power*, chapter entitled: Are Politicians and Government Relevant? p. 13-66

over $1 billion for the 2000 Presidential elections."[153] Over the last decade, corporations gave $636 million to Republican Party candidates for Congress and $449 million to Democratic candidates, while both political parties raised more than $1 billion in 2004 and elections for Congress and the White House were estimated to cost roughly $3.9 billion.[154]

Government attempts at corporate regulation, while largely futile, continue to be increasingly utilized by the states. Increasing corporate globalization of financial markets, many scholars suggest, has caused national governments to lose their "ability to regulate their own business communities,"[155] while William E. Connolly maintains that: "Detailed regulation of self-interested individuals makes it all the more necessary for them to become more aggressively and creatively self-interested; they therefore become less governable even while following the letter of the law."[156]

Mizruchi and Perrow claim that corporations have an increasing ability to pursue their narrow self-interest to the point of engaging in illegal activity,[157] and corruption,[158]

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[153] John Hendry, *Between Enterprise and Ethics* (Oxford: Oxford University Press, 2004), 80-81.

[154] John C. Harrington, *The Challenge To Power: Money, Investing, and Democracy* (White River Junction: Chelsea Green, 2005), 16.

[155] "Berle and Means Revisited," *Theory and Society* (2004): 26.

[156] William E. Connolly, *Political Theory & Modernity* (Ithaca: Cornell University Press, 1993), 56.

[157] "Berle and Means Revisited," *Theory and Society* (2004): 27. In addition, in 2004, both Halliburton and Monsanto corporations admitted that corporate officials violated the U.S. Foreign Corrupt Practices Act by bribing foreign officials in Nigeria and Indonesia, respectively. I introduced a shareholder resolution requesting more detailed information in the case of the Halliburton violation, and filed a resolution requesting that a special board oversight committee be created to protect shareholders in the case of the Monsanto violation. The SEC in both cases allowed the corporations to omit the shareholder advisory resolutions from the proxy statements, based on its ordinary business operations (i.e., general conduct of a legal compliance program).

[158] Charles Perrow, *Organizing America* (Princeton: Princeton University Press, 2005), 198.

while Harrington maintains that many corporations simply look at government lobbying, campaign contributions, litigation, government fines and monetary penalties; as the "cost of doing business."[159] Government has also been so eager to serve the business community that companies receive more government financial benefits than they demand,[160] receiving almost fifty billion dollars in "incentives" every year.[161]

Materialistic self-interest has primarily motivated senior corporate management to generously, if not excessively, compensate themselves and their board of directors. Corporate self-interest, consistent with managerial materialistic self-interest, has led the corporation to expend significant corporate resources to exert political influence on the state to materialistically benefit the corporation. Adam Smith's fears of "merchants and manufacturers, pursuing their own self-interest, to orchestrate government regulation and patronage to their advantage,"[162] has been realized.

Global Markets vs. The Nation State

Based upon Smith's findings in *The Theory of Moral Sentiments* and *The Wealth of Nations*, as relationships move further away from community and familiar individuals and increasingly become more impersonal, materialistic self-interest (if it becomes excessive) may turn to selfishness and indifference. Self-interest can also lead to

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[159] John C. Harrington, *The Challenge To Power: Money, Investing, and Democracy* (White River Junction: Chelsea Green, 2005), 68.

[160] David Vogel, *Fluctuating Fortunes: The Political Power of Business in America* (New York: Basic Books, 1989).

[161] John C. Harrington, *The Challenge To Power: Money, Investing, and Democracy* (White River Junction: Chelsea Green, 2005), 280.

[162] Adam Smith, *The Wealth of Nations* (New York: Bantam Dell, 1776), xviii.

unintentional public benefits or intentional or unintentional harm to the public. William Hazlitt believes that the individual morality of duty and obligation has been submerged within the corporate structure and materialistic self-interest is the dominant morality of the global marketplace: "The corporation has no soul. Corporate bodies are more corrupt and profligate than individuals, because they have more power to do mischief, and are less amenable to disgrace or punishment. They feel neither shame, remorse, gratitude, nor good-will. . . ."[163]

Hendry likewise claims that "large corporations break the law regularly and with complete impunity – a freedom that in developed counties is denied even the wealthiest of individuals."[164] Similar to Hazlitt, Hendry also finds corporate entities "soulless," and as "remorseless as human machines whose actions impacted on everyone but whose decision makers were remote from the communities in which they operated, out of human contact and with no sense of public duty."[165]

The modern corporation has little resemblance to Adam Smith's sole proprietorship, partnership, or even the joint stock monopoly of the eighteenth century which was chartered by the state and required to serve civil society. The corporation is large, bureaucratic, and impersonal, and its sole reason for existence is to pursue its materialistic self-interest through multiple economic transactions between unfamiliar individuals as well as other impersonal economic relationships with other corporations,

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[163] William Hazlitt, *Table Talk* (London: Everyman Edition, 1952), 264.

[164] John Hendry, *Between Enterprise and Ethics* (Oxford: Oxford University Press, 2004), 78.

[165] Ibid., 79.

businesses, and the state. Corporate law professor E. Merrick Dodd argues that compared to a family-run company, in which there is a strong bond and moral obligation between owners (who are also managers) and their communities, global corporations that are run by managers who are often removed or remote from community responsibilities, physically, psychologically, emotionally, and economically, and are solely responsible to maximize global corporate profits. There exists no bond whatsoever between the corporation and the community.[166] Global corporations, operating in dozens if not hundreds of countries, in which senior management is totally divorced and physically separated from the communities in which the corporation operates, have no sense of obligation or responsibility, morally or politically, to the unfamiliar individuals assumed to be similarly materialistically self-interested.

By the beginning of the twenty-first century, the center of political and economic power in the world had shifted to the United States, Western Europe, and Asia. More importantly, however, has been the shift to a global market-based economy, dominated by large transnational corporations. As Hendry claims:

> Economic ideas currently dominate public discourse, which has resulted in a set of propositions that (1) free markets are economically more efficient; (2) whatever is economically most efficient is best, (3) [therefore] free markets are inherently good, (4) free markets depend on self-interest, (5) [therefore] self-interest is not only normal but also positively good.[167]

As early as 1981, Herman noted that an efficient world capital market "was in the process of making political boundaries obsolete and reducing governments' ability to

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[166] John Hendry, *Between Enterprise and Ethics* (Oxford: Oxford University Press, 2004), 77.

[167] Ibid., 106.

control large global corporations."[168] He also believed that these corporations were uncontrollable because of weak government, corporate autonomy and corporate dominance over basic global economic activities.[169] Perrow also claims that "a weak state allowed the private accumulation of wealth and power through the medium of big organizations. Elites developed modern bureaucracy over the century, and it was to be the means for maintaining an inequality of wealth, despite periodic reform efforts.[170]

Global corporations, according to Richard J. Barnet and Ronald E. Müller, seek to establish one overriding point: "that they can create an integrated world in which everybody gains, but only if 'obsolete' governments leave them alone."[171] Barnet and Müller stress that global corporate "ideology" is "antinationalism," avoiding "national prejudices and fears" and not allowing governments to interfere "with the free flow of capital and technology."[172] In quoting Carl A. Gerstacker, the former chair of Dow Chemical Corporation, Barnet and Müller argue that: "The new globalists firmly believe that the magic of the market, provided it is helped and not hindered by politicians, is the best, fairest, and freest regulator of human affairs."[173] They quote both A.W. Clausen, former president of Bank of America, and George Ball, former U.S. Undersecretary of State and Ambassador to the United Nations, indicating that they believe the ultimate

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[168] Edward S. Herman, *Corporate Control, Corporate Power* (Cambridge: Cambridge University Press, 1981), 249.

[169] Ibid., 295.

[170] Charles Perrow, *Organizing America* (Princeton: Princeton University Press, 2005), 226-227.

[171] Richard J. Barnet and Ronald E. Müller, *Global Reach* (New York: Simon and Schuster, 1974), 47.

[172] Ibid., 55.

[173] Ibid.

solution "is for the corporation to shed all national identify, not owing its charter to any nation state, where it will be . . . trusted to fulfill the general interest, without the sanction of a specific chartering government."[174]

Princeton University political scientist Robert Gilpin questions whether corporate and U.S. national interests coincide, arguing that gigantic American corporations now dominate the world economy. He chastises both economists and political scientists for neglecting to recognize this "remarkable" explanation for the change in the global political economy due to the fact that "economists do not really believe in power; political scientists, for their part, do not really believe in markets."[175] Technological and financial change and corporate globalization and organizational materialistic self-interest exercised impersonally by markets, however, often have unintended economic and political consequences. Professor Susan Strange maintains that the authority of the state has been weakened as a result of the "accelerated integration of national economies into one single global market economy," and "that some of the fundamental responsibilities of the state in a market economy . . . are not now being adequately discharged by anyone."[176]

By 1997, 53 of the world's largest economies were not countries, but corporations — the top 100 controlling 33% of the world's assets,[177] while the 3 richest corporate moguls' wealth exceeded the combined Gross Domestic Product of the world's 58

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[174] Richard J. Barnet and Ronald E. Müller, *Global Reach* (New York: Simon and Schuster, 1974), 56.

[175] Robert Gilpin, *U.S. Power and the Multinational State* (New York: Basic Books, 1975), 5.

[176] Susan Strange, *The Retreat of the State* (Cambridge: Cambridge University Press, 1996), 14.

[177] John C. Harrington, *The Challenge To Power: Money, Investing, and Democracy* (White River Junction: Chelsea Green, 2005), 56.

poorest countries.[178] This unequal distribution of wealth, resources, and power has long-term political consequences for the future of humanity.

Strange believes that there has been a "substantial shift of power from territorial nation states to world markets, and indirectly therefore to the major operators in those markets, the transnational corporations"[179] She claims that transnational corporations (TNCs) determine "who-gets-what" in the world system, because (1) states have retreated from ownership and control over industry, trades, and services; (2) TNCs have done more than states and international aid organizations in redistributing wealth, creating employment, and raising living standards; (3) TNCs have reduced government's role in managing conflicts of interest; and (4) TNCs have escaped government taxation and are now themselves acting as "tax-farmers" and collectors of revenues.[180]

Mizruchi believes that corporations now have "unchecked power" in the absence of any disciplinary forces, and are "increasingly able to operate without the restraints, even from within the business community."[181] Stephen L. Harris claims that the state is so weak that corporations set the economic rules, while the state simply legitimizes them, "putting the industry in a hegemonic position and the state consequently becomes captured."[182]

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[178] John C. Harrington, *The Challenge To Power: Money, Investing, and Democracy* (White River Junction: Chelsea Green, 2005), 2.

[179] Susan Strange, *The Retreat of the State* (Cambridge: Cambridge University Press, 1996), 53.

[180] Ibid., 54.

[181] "Berle and Means Revisited," *Theory and Society* (2004): 28.

[182] Stephen L. Harris, "Financial Regulation and the Influence of Non-State Actors," (2002): 7.

Sovereignty of a nation state generally assumes autonomous political power of a supreme nature, free from external control over its own territory and people. Pursuant to international law, sovereignty is defined as the right to exercise control over a territory to the exclusion of another state. Clearly, there has been a shift of power to global self-interested corporations which have, as Susan Strange has suggested: "a command over the nature, location and manner of production and distribution of goods and services," which clearly raise, "new questions about the nature of sovereignty and the dispersion of power and political control."[183] Power, according to Strange, is gauged by influence over outcomes, and transnational corporations are exercising power and certainly affecting outcomes.

Harris agrees with Strange, pointing out that investment bankers have "used" their structural power to influence central banks on monetary policy, while Geoffrey Underhill believes that large financial firms "make it increasingly difficult for democratically elected governments to adopt policies against the preferences of the market."[184] Philip C. Cerny has gone so far as to point out that deregulation of financial markets by national - based regulatory systems was in response to their inadequacy in dealing with the new "internationalization" of finance.[185]

Corporations, currently operating in developing countries, especially those involved in the extraction and transportation of natural resources, are innovatively utilizing a combination of arbitration clauses in Bilateral Investment Treaties (BITs) and

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[183] Susan Strange, *The Retreat of the State* (Cambridge: Cambridge University Press, 1996), 45.

[184] Stephen L. Harris, "Financial Regulation and the Influence of Non-State Actors," (2002): 4.

[185] Ibid., 7.

standard concession agreements in Host Government Agreements (HGAs), to challenge national laws, local administrative regulations, taxes and other governmental action in order to dominate the sovereign state. Meanwhile, oil and gas companies are using Production Sharing Agreements (PSAs), to gain almost complete control over national laws that apply to their corporate activities. Under some of these PSAs which guarantee "freedom of petroleum transit," oil companies have been able to "trump" all existing and future national laws, other than respective constitutions, but impose obligations that "severely limit the state's ability to act in the interest of its citizens."[186] Some of these PSAs, "once signed, are fixed for 25-40 years, preventing future elected governments from changing the contract."[187]

Corporations claim that HGAs are "treaties" under international public law as well as private contracts, and thus, it is extremely difficult, if not impossible, for a new sovereign government to overturn them. Often HGAs or PSAs contravene existing national laws with "voluntary, vague and unenforceable corporate guidelines,"[188] which often allow companies "to supersede the state's national and international human rights and environmental obligations. . . ."[189]

In a paper presented to the annual meeting of the American Society of International Law, Susan Leubuscher claimed that Bilateral Trade Agreements

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[186] Nicholas Hilyard and Greg Muttitt, "Turbo-Charging Investor Sovereignty: Investment Agreements and Corporate Colonialism," *Destroy and Profit*: 46.

[187] Ibid., 57.

[188] Ibid., 9.

[189] Ibid., 52.

represented the “privatization of justice,” arguing that international environmental law was also being displaced by unenforceable corporate voluntary guidelines, and that:

> Those contracts allow multinational enterprises to impose changes in host country legislation, thereby undermining national legal regimes and international treaty obligations. In essence, they create a parallel legal universe where multinational enterprises take over state function without monitoring or control.[190]

Increasingly, corporations have been able to dominate the state and exercise political and economic power over the state. As corporations are engaged in impersonal economic transactions throughout the world, the morality of materialistic self-interest has become the dominant secular philosophy of the corporation and that of corporate management. Corporate management, and the corporation itself, removed from personal relationships with familiar individuals within a community, have developed economic relationships which have intentionally created material wealth for themselves and unintentionally created tremendous wealth for the global community.

The morality of self-interest has been the motivating force for individuals to strive to seek materialistic gain in a market-driven global economy currently dominated by large corporations. The dominance of materialistically self-interested corporations, controlled by like-minded individuals seeking their own self-interest, has led these large corporations to attempt to dominate the state economically as well as politically.

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[190] Susan Leubuscher, *The Displacement of International Obligations: BITs and the Commodification of the Environment* (Washington D.C.: Proceedings of the 98th Annual Meeting, American Society of International Law), 1.

CONCLUSION

The morality of materialistic self-interest articulated by Adam Smith in the eighteenth century has become the dominant secular philosophy of the twenty-first century. Classical liberal individualism and capitalism have been radically distorted by the growth and concentration of corporate wealth, as well as by the economic and political power of the corporation, that is exercised by those individual managers who control it. The corporation, through its exercise of power, threatens, if not already dominates, the sovereign state.

Adam Smith in *The Theory of Moral Sentiments* found that individuals were naturally benevolent, compassionate and sympathetic when dealing with familiar others in a local community. On the other hand, in *The Wealth of Nations*, he found that when individuals are engaged in impersonal economic transactions with unfamiliar individuals, self-interest dominates the relationship. He also discovered that personal benevolence and compassion decrease and impersonal self-interest increases as the economic relationship becomes more distant from the community and more unfamiliar. When impersonal self-interest becomes excessive, it can lead to selfishness, indifference and autonomous behavior.

When Adam Smith wrote *The Wealth of Nations*, all but a few business enterprises were small and often family-owned and controlled. A few large businesses were organized and capitalized by groups of individuals into joint stock companies. Sovereign governments granted special rights and privileges to these enterprises, allowing for the concentration of capital to be utilized in the interest of civil society. This resulted in the provision of monopoly rights, limited liability for owners, and other privileges granted to chartered businesses, including state protection.

As the number of larger business enterprises grew, requiring greater amounts of capital to compete, the state enacted general incorporation statutes, extending rights and special privileges, while only requiring corporations to file audited financial statements upon registration with the state. With this liberal chartering granted to any business upon request that required only limited disclosure to the states, coupled with important judicial rulings, corporate obligation and duty to serve civil society disappeared.

In the twentieth century, corporations transitioned from ownership wedded to control, to ownership almost totally divorced from control. This resulted in independent managers gaining almost unlimited power over shareholders, who were diverse, diffused, and had little, if any, ability to exercise ownership responsibility, much less control over senior management. Management has been able to nominate and elect themselves as well as other corporate board members, set their own compensation, which is often excessive, and become self-perpetuating. Materialistic self-interest has become the dominant secular morality of corporate management and the corporation. This self-interest has been shown to be excessive and has led to corporate and management selfishness, indifference and autonomous behavior.

By the early twenty-first century, these centralized, large, oligopolistic corporations have grown in size and number, extending their operations beyond territorial boundaries, creating great wealth for their owners and managers, and exercising global economic and political power which has challenged state sovereignty. Due to their financial and increasing political power, corporations have been able to exercise considerable, if not dominant, influence over state agencies and regulatory bodies, and exercise significant, if not dominant, control over legislation and litigation, including greatly influencing judicial and government appointments. Corporate influence has also been dominant in the financing of political campaigns and in lobbying efforts to influence legislation, administration, and regulatory agencies at all levels of government. Smith's fears have been realized; corporate selfishness, indifference and autonomous behavior have motivated the corporation to "oppress the public."[191]

It was British economist John Maynard Keynes, as early as 1926, who recognized that the great political questions are, indeed, economic. Economist Milton Friedman, a staunch conservative supporter of capitalism, based his theory of political freedom upon the separation of economic and political power by arguing: "The kind of economic organization that provides economic freedom directly, namely competitive capitalism, also promotes political freedom because it separates economic power from political power and in this way enables the one to offset the other."[192]

Large corporations have consolidated wealth and power into oligopolistic domination, if not control, of global markets. Likewise, they have not only exerted significant influence in the economic marketplace, but have utilized their wealth and power to dominate the political arena as well. Economic power is no longer separate

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[191] Adam Smith, *The Wealth of Nations* (New York: Bantam Dell, 1776), 339.

[192] Milton Friedman, *Capitalism and Freedom* (Chicago: University of Chicago Press, 1962), 9.

from political power.[193] It is one and the same. It is in the self-interest of the corporation and of the individual managers to control the corporation and to dominate the economic, as well as the political, marketplace. The sole purpose of the corporation in the twenty-first century is now to enrich its managers and owners and exert political control over the sovereign state to further the self-interest of the corporation.

If the state is to remain sovereign, consistent with classical liberal democratic individualism and capitalism, it must reassert its authority over the corporation, which is self-perpetuating and authoritarian. The self-interest of the individual and the corporation must be recognized by the state, but controlled. The corporation is a legal entity created by the state. The corporation must submit to the public interest and to civil society represented by the sovereign state. A balance must be secured between excessive and harmful corporate self-interest to serve the materialistic interests of its managers and owners, but also to respect and exercise its moral obligation to serve civil society.

Aristotle identified virtue as virtue of character and that "virtue finds and chooses what is intermediate,"[194] meaning that virtue of character is a mean between the two vices, "one of excess and one of deficiency."[195] A balance must be found between the impersonal materialistic self-interest of the marketplace and the personal morality of benevolence, compassion and sympathy. Materialistic self-interest may unintentionally

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[193] Irving Babbitt, *Democracy and Leadership* (Indianapolis: Liberty Fund, 1979), 23, also believed that economic power could not be separated from political power: "When studied with any degree of thoroughness, the economic problem will be found to run into the political problem, the political problem in turn into the philosophical problem, and the philosophical problem itself to be most indissolubly bound up at last with the religious problem."

[194] Aristotle, *Nicomachean Ethics* (Indianapolis: Hackett Publishing), 25.

[195] Ibid., 29.

benefit the public interest. On the other hand, it may intentionally or unintentionally harm the public interest, especially if self-interest is excessive and turns into selfishness, indifference and autonomous behavior. This paper has argued that corporate and management materialistic self-interest has been excessive and has ultimately been expressed in an attempt to dominate the state, thus leading to the demise of capitalism as well as state sovereignty.

A balance is required between the morality of self-interest not driven to excess, and that of the morality of obligation to the community. The state must exercise sovereignty through the rule of law to restrain, discipline and regulate corporations and corporate management. Ultimately, however, materialistic self-interest must be controlled and balanced by man himself, not by the corporation. The less man can control his excesses internally, the more man will need to be controlled externally by the state. As Irving Babbitt so aptly articulated, "What is important in man in the eyes of the humanist is not his power to act on the world, but his power to act upon himself."[196] If, in fact, the corporation is destined to control the global economy and state sovereignty, it will be man who restores Aristotle's balance and that of man's own virtue of character.

Based upon the findings of this paper, two additional avenues of inquiry are necessary. First, to limit man's natural self-interest, which has evolved into excessive materialistic self-interest and become the dominant secular morality of both corporate management and the corporation, the state must reassert its sovereign powers to protect public interest and civil society. A determination needs to be made in what form or

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[196] Irving Babbitt, *Literature and the American College* (Washington D.C.: National Humanities Institute, 1986), 100.

manner should the state exercise its powers to restrain, discipline, and regulate corporate conduct. This question is of special import, since corporations no longer recognize territorial boundaries or state sovereignty over political and economic affairs, and are no longer required by governments, through chartering, to serve national public interests or civil society. This problem is exacerbated by the creation of the World Trade Organization (WTO), an extra-territorial, global trade organization that has already usurped powers from national and local governments regarding international trade and finance, as well as issues involving labor, human rights, and environmental law. The state must reassert its powers to restrain management and corporate selfishness, but in what form or manner should such restraint take?

Secondly, this paper has found that there is a need in man to better understand how to cultivate his natural morality of benevolence, compassion, sympathy and reverence for community and the common good. The morality of obligation and duty to public interest is necessary to counter or offset man's natural self-interest which can often lead to unintentional benefits to civil society, but can also lead to unintentional or intentional harm. If excessive, self-interest can lead to selfishness, indifference and autonomous behavior. As man looks inward, what is necessary for him to recognize and understand the need for self-control, discipline and control of his passions, which if uncontrolled, may not only lead to excessive commercialism and individualistic behavior, but drive him to control others instead of himself? Why is one man humanistic, balancing individual self-interest with overall community interests, while another man surrenders to selfishness and indifference to public interest and civil society? To restore balance and the virtue of character of man, this may be the most important of all questions that deserves our attention.

In response to an inquiry into what form or manner should the state reassert its power to respond to the usurpation of its power by corporate management and the corporation, no doubt concrete recommendations will emerge of a legislative, regulatory, economic and legal nature. On the other hand, it will be much more difficult to specifically identify definitive approaches to improving the cultivation of moral character in man in an effort to offset the almost overpowering allure of materialistic self-interest, greed and the "magic of the markets" in the twenty-first century. Of necessity, it must be primarily a philosophical inquiry, but to look deeply into the nature of man, the research must be interdisciplinary, comprehensive, and utilize all the disciplines of the Humanities. Cultivating a universal morality for man deserves no less.

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