Tully Rector

Corporate Power. A Problem for Liberal Legitimacy

SCRIPTS Working Paper No. 8

SCRIPTS
CLUSTER OF EXCELLENCE
Contestations of the Liberal Script

CLUSTER OF EXCELLENCE "CONTESTATIONS OF THE LIBERAL SCRIPT – SCRIPTS"

SCRIPTS analyzes the contemporary controversies about liberal order from a historical, global, and comparative perspective. It connects academic expertise in the social sciences and area studies, collaborates with research institutions in all world regions, and maintains cooperative ties with major political, cultural, and social institutions. Operating since 2019 and funded by the German Research Foundation (DFG), the SCRIPTS Cluster of Excellence unites eight major Berlin-based research institutions: Freie Universität Berlin, the Humboldt-Universität zu Berlin, the Berlin Social Science Center (WZB), as well as the Hertie School, the German Institute for Economic Research (DIW), the Berlin branch of the German Institute of Global and Area Studies (GIGA), the Centre for East European and International Studies (ZOiS), and the Leibniz-Zentrum Moderner Orient (ZMO).

SCRIPTS WORKING PAPER SERIES

The SCRIPTS Working Paper Series serves to disseminate the research results of work in progress prior to publication to encourage the exchange of ideas, enrich the discussion and generate further feedback. All SCRIPTS Working Papers are available on the SCRIPTS website at www.scripts-berlin.eu and can be ordered in print via email to office@scripts-berlin.eu.

Series-Editing and Production: Dr. Anke Draude,
Dr. Gregor Walter-Drop, Cordula Hamschmidt,
Paul Geiling, and Carol Switzer

Please cite this issue as: Rector, Tully 2021: Corporate Power. A Problem for Liberal Legitimacy, SCRIPTS Working Paper No. 8, Berlin: Cluster of Excellence 2055 "Contestations of the Liberal Script – SCRIPTS".

Cluster of Excellence
"Contestations of the Liberal Script – SCRIPTS"
Freie Universität Berlin
Edwin-Redslob-Straße 29
14195 Berlin
Germany

+49 30 838 58502
office@scripts-berlin.eu

www.scripts-berlin.eu
Twitter: @scriptsberlin
Facebook: @scriptsberlin

TABLE OF CONTENTS

AUTHOR

Tully Rector is a postdoctoral researcher in the philosophy department at Utrecht University. His work addresses normative problems of political economy, and his related interests include social ontology, theories of practical reason, comparative philosophy, and the history of political thought, especially the ideas of freedom and power in Kant, Hegel, and Marx. Tully received his PhD in philosophy from the Freie Universität Berlin in 2019. From 2019 to 2020, he was an IRC Postdoctoral Research Fellow at "Contestations of the Liberal Script – SCRIPTS".

t.f.rector@uu.nl

Corporate Power

A Problem for Liberal Legitimacy

Tully Rector

ABSTRACT

This paper presents and defends an account of how the political power of business corporations undermines liberal forms of legitimacy. Corporations are created and empowered by the authority of the liberal state. Under capitalism, the logic of competitive advantage dictates that those powers be applied in ways that violate, directly and indirectly, basic liberal norms and values. That violation supplies reasons to contest the political order authorizing their occurrence. Corporate power therefore represents a failure of the liberal order to satisfy its own conditions of legitimacy.

1 INTRODUCTION

The mature democracies are undergoing a political sea-change. Loyalty to established parties has fallen dramatically. Centrist programs seem exhausted. Confidence in liberal-democratic government in general is waning. Movements and ideas that were once marginal, like ethno-nationalism, socialism, and radical climate advocacy, have entered the political mainstream. Civil unrest is increasingly common.[1] What explains these changes? Accounts vary, but most give considerable weight to the same explanans: deep and growing discontent with our globalized economic order.[2] Wage suppression; offshoring; tax avoidance; privatization of public services; joblessness and underemployment; environmental externalities; long-term stagnant growth; rentier financialization; rising indebtedness; austerity; precarity; surging inequality of wealth and income – were it not for these facts, the liberal dispensation would be much more stable. Arguments to that effect typically posit *corporations* as causally instrumental in, and culpable for, bringing about the relevant harms. Liberal order is impaired by the scope and effects of "corporate globalization" (Fraser 2017: 40), "corporate wealth" (Brown 2019: 26), "corporate control" (Streeck 2014: 91), or "corporate sovereignty" (Barkan 2013: *passim*).

My aim in this paper is to present a general conceptual structure for these empirical claims to be fitted into. Assume the facts mentioned above, and others to which they are related, entail or follow from – or themselves constitute – unequal relations of economic power. Rising unemployment means, for example, that persons with the power to fire other persons are using it more often. Such relations of power affect people's freedom, well-being, and status, thereby supplying them with reasons to oppose or endorse – depending on the effect – the political order authorizing those relations. This is hard to deny, as stated. It is a perennial concern of political theory: which sorts of economic relations give rise to what reasons, for which people, under what conditions, and why? Here I focus on one mode of economic power – that of the business corporation; one form of political reasoning – legitimation; and one kind of political order – liberalism. The argument is this. Because the business

1 Occupations, strikes, demonstrations, riots, transport blockades by enragés from the "invisible" social strata: according to the International Labor Organization (ILO), these and other such incidents have increased globally since 2009 (International Labor Organization 2020).

2 For representative arguments, see Geiselberger (2017); Crouch (2018); Eichengreen (2018); Kuttner (2018); Rodrik (2018).

corporation is created and empowered by the authority of the liberal state, and its powers are applied in ways that violate, directly and indirectly, basic liberal ideals and commitments, corporate power weakens the legitimation of liberal order. Corporate power, in brief, represents an internal failure of liberalism. Whether it can be resolved under an authority that still knows itself as liberal is among the most important questions of our historical moment.

This paper is divided as follows. The second section develops a version of liberal order's legitimating conditions, in terms of independence, welfare, and shared group agency. The conditions are supposed to ensure that law's public authority is used to promote the common good. It is against that background that corporate power's relation to liberalism should be understood. The third section discusses the emergence of the corporation from within those conditions, as an outcome of law being used in highly determinate ways. I review the significant properties of corporate power; these reflect both the nature of capital and the particularities of the corporate form. The fourth section demonstrates the specific ways in which corporate power contravenes values basic to liberalism's normative authority. I conclude with a recapitulation of the main points, considering their implications for, and their factual standing as an explanation of, liberal order's more immediately present challenges. But let me head off a few misconceptions at the outset. I do not suppose that economic factors are more significant for understanding our current political tumult than those of race, ethnicity, gender, and so forth, with which they intersect. Nor do I think business corporations have no social utility. I do not attribute to corporate power every socio-economic ill afflicting liberal societies. My purpose is narrow: to assess liberalism's instabilities in light of production via the corporate form, and, conversely, to assess the desirability of using that form as our principal vehicle of production, in light of those instabilities. It is a small contribution to the debate over whether our political institutions and values should serve, balance, or abolish private capital ownership. Contrary to Fukuyama-style hopes, that debate is likely to persist – if not intensify – as long as economic dynamics lead to significant inequalities of political and social power.

2 LIBERAL LEGITIMATION

In this section, I reconstruct an outline or digest of liberalism's legitimation conditions, and the place of economic life in those conditions. To begin at the beginning, as it were: persons have capacities to shape states-of-affairs, affecting the actions and preferences of others. They have powers. When they belong to a political order, they are governed under rules whose function, broadly, is to direct, develop, constrain, and enhance the various powers they have, as individuals and groups. When that order is a community, power is managed in the common interest. Rules are made and enforced according to principles that everyone has sufficient reason to favor. Resources are organized to create and sustain facilities that benefit everyone: bridges, courts, curricula, healthy ecosystems, etc. As a result, persons can formulate and realize aims valuable to them. They can meet their obligations. Their entitlements are equally secure. Relations of mutual respect and concern are promoted and stabilized. Exploitative and predatory relations are eliminated, wherever possible. Under these conditions, the political order generates reasons for loyalty – the conditions are those reasons. The system of governance, and the people staffing it at any given time, are accepted as bearers of rightful authority. Citizens experience themselves as belonging to an integrated social whole. Reasons of solidarity have a firm grip on their motivations. Because they see their narrowly private projects as depending, in some appropriate sense, on the common good, they are willing to make significant personal sacrifices, when called upon, to promote the common good.

These are, in rough outline, the structural qualities of a flourishing political order. When they obtain, the governing apparatus can plan for and respond effectively to exogenous problems – hurricanes, invasions, viral pandemics – and adapt smoothly as problems arise from within. There are at least three ways a political order can fail, however, to have these qualities, or to have them in sufficient degrees. First, it can it be essentially dominative: some people, rulers, extract value from others, the ruled, with little consideration or concern for their independent interests. No civic relation of any substance binds them. Think of the État indépendant du Congo, or the Spartans' lordship over the helots. Violence must be applied by the dominators, at high opportunity cost, to keep their subjects in line, since they have no good in common. Second, a political order can define community as the negation of people's personal aims and projects. The good of some reified entity, like the Revolutionary State or the Volksgemeinschaft, is taken as the only proper aim of individual striving. This requires cognitive distortions that badly impair social learning, as well as significant applications of repressive force. Third, a political order can invert that problem, denaturing the common good by defining it in exhaustively private terms. The only political relations that matter, for any individual, lay within the horizon of that individual's personal life and projects. Public institutions, and the public realm in general, are only valuable as instruments for efficiently coordinating private attempts to maximize utility.[3] The reasoning required to run such institutions, however, conflicts with that of purely individualistic advantage-seeking. Public power amounts to just another resource, like land or jobs, that people compete for. Even if the incentive structure were configured to correct for that problem, a basic good is absent, that of the civic relation itself, conceived as a structure of solidaristic concern. These three failed orders are ideal types. Each reveals a specific way in which the laws and norms that manage power can deprive people of goods that have a distinctly political value, in addition to whatever other value they have. That deprivation impairs the political order's legitimacy.

Legitimacy's impairment, weakening, and loss can be immanent or external. An immanent loss involves the ruling authority failing to satisfy the terms of its own claims to power. An external loss involves the failure of those claims themselves, even when satisfied, to appropriately track the needs and interests of those over whom power is exercised, and to whom the claims are, therefore, directed. Usually legitimacy is defined, in these senses, as an attribute or quality of states, governments, rulers, and the actions they take.[4] It is the authority to determine features of the normative landscape – to make it the case that people should or should not do certain things – and, as a corollary, to use force to get them to comply with those determinations. The liberal heritage contains a family of stories about its grounds. The most influential – the one I treat as being at the core of liberalism – combines Kantian and welfarist elements. The former emphasizes independence, the latter emphasizes those basic goods criterial for satisfying rational preferences. Let me explain. In the Kantian schema, everyone has an innate right to be their own master, free from coercion by others. Governmental coercion is legitimate when and because it prevents that unilateral coercion. Government – the civil condition,

3 John Rawls (1999: 457) calls this a "private society", one in which "everyone prefers the most efficient scheme that gives him the largest share of assets". See also Hegel ([1821] 1991: §§182–188).

4 We will set aside descriptive accounts of legitimacy that focus strictly on the content of beliefs or de facto powers. C.f. Weber (2002: Ch. 8).

political order – exists, and must be created or entered into as a matter of right, in order to guard your basic entitlement to use your holdings and abilities to set and pursue the ends you think are worthwhile, consistent with others' exercise of that very right.[5] The welfarist view is somewhat different. If it makes sense for anyone to have preferences at all, then there are states-of-affairs that it would make sense for anyone to prefer: governing power is legitimate when it makes accessible the goods required to bring about those states-of-affairs. Basic physical safety, nutrition, health, knowledge, etc. – we need them if our lives are to go well, on any intelligible construction of what it means for a life to go well, so their provision is required independent of substantive moral, ethical, or religious commitments, of the sort that formerly underwrote legitimation claims. Liberalism braids the welfarist and Kantian strands together in a contractual synthesis. The terms of political association are binding when nobody they would bind could reasonably reject them. Power to force compliance with these terms – the power of government – is justified when warranted by doctrines to which there is no reasonable objection. When this acceptance is not itself an effect of some governing apparatus applying its coercive power, the claim to legitimacy is sound.[6] If nobody could reasonably object to free and fair elections, which result in people holding certain offices, and nobody could reasonably object to those people using their official powers to compel us to follow the rules we have every reason to follow, then we are made independent, and our welfare is delivered, by those rules. These are our reasons to follow them.

For legitimacy to be a normative power – the power to institute enforceable duties, privileges, and liabilities – those governed under that power have to share an identity with whoever holds it, where "sharing an identity" means, roughly, being equal members of the same group agent. That follows from independence. Liberal elections are justified as mechanisms for ensuring this: from among a common group of equally entitled citizens, a subset is chosen to carry out the tasks governing power exists to discharge – that the same group does the selecting, and that this group is numerically identical with the group that is governed, are criterial for legitimacy. Let us model it this way. B is legitimately governed by A when four conditions are met: (1) A's powers secure the independence and welfare of B; (2) A and B belong equally to the same group agent; (3) no B could reasonably reject the principles by which A acquires power; (4) no B could reasonably reject what is taken to count as securing its independence and welfare.[7] The important thing here is that A's governing power simply is the power to bring about social facts, and construct and maintain systems of coordination, that change B's material circumstances and conventional or institutional status.[8] What happens when these changes fail to promote welfare and protect independence? Or, rather, who decides that they do, and how is that decided? Answer: the same procedural arrangements responsible for relating A to B – in a word, government. Liberal legitimacy requires, again, that the principles embodied in these arrangements be such that nobody affected could reasonably reject them. Principles justify uses of power; uses affect persons; the effects give rise to reasons; reasons support principles. That is supposed to be the virtuous cycle of liberal stability.

How does economic power fit into this picture? In two ways: people (bosses, managers) are

5 See the discussion of Kant's "innate right of humanity" in Ripstein (2009). The ur-text is Kant's Rechtslehre of 1797 (1996).

6 Bernard Williams (2005: 6) calls this the "Critical Theory Principle".

7 Here I adapt the theory of legitimacy put forward by Applbaum (2020).

8 C.f. Applbaum (2020: 47–8).

authorized to give orders to other people (workers) in the productive workplace; and their product is distributed in the provision of welfare. So, legitimacy's core conditions are at issue. Liberalism, unlike communism, locates production in the private contractual sphere of civil society. The state's task is to secure the institutional conditions required for that civil domain to realize our essence as free and dignified moral equals. Independent, provisioned individuals can go around meeting their needs and satisfying their interests, acting in response both to legal facts and the actions of other independent, provisioned individuals, each attempting to meet their own needs and interests. The stable strategies of interaction that emerge are said to comport naturally with those same persons' lives as public, political actors, responsible for creating, executing, and submitting to the laws.[9] Market exchange reveals the content and intensity of their needs and desires, and the most efficient procedures for satisfying them; the state's job is not to impair the functioning of markets. Markets require the division of labor, and the jobs allocated to people in that division determine their level of welfare. As bourgeois vocations – modern version of the spiritual "calling" – they shape their practical identities, influencing the social recognition they receive. Just as their labor tasks interlock in the smooth functionality of the market, so their practical identities syncretize in civil society. Interacting as clients, customers, colleagues, and counterparties, they recognize one another as interdependent social subjects, whose needs and desires are mutually satisfiable via the market's coordinating apparatus. Such recognition makes the market, in this story, a sphere of social freedom. Associations formed on the basis on shared commitments and concerns, including business corporations, express and regulate that freedom. When market dynamics cause the beliefs and interests of people to diverge, they are realigned harmoniously through the process of political participation. Civil society does not degenerate into a private society, we are told, because our natural moral psychologies have been educated to treat politics as the site of the common good. That good belongs to an independent group agent, composed of formally equal, independent members. The power private members of the group have to affect the independence and welfare of others, as a function of their access to economic resources, is entailed by the very existence of those resources. It is just one of the private powers that public power exists to manage on terms nobody could reject, on a par with the natural or circumstantial power some people have to bop others on the head with sticks, or say unkind things.

Here we move from a consideration of legitimacy confined to liberal governmental structure, to one that bears on that structure's relation to other spheres of associated life. The reasons people have to believe they are sufficiently independent, that their welfare is a public priority, and so on, are necessarily given by their experience of life in those other spheres. When their experiences differ radically – with respect to vulnerability and status recognition – their reasons will conflict. When these differences are created and entrenched by the operations of the economy, it will be very hard to defend the idea that market relations are, in any substantive sense, private.[10] If the laws are responsible for the powers agents have within the economy, the relations among those agents are politically mediated. They are sensitive to legitimacy challenges. Experiences of

9 According to the Smithian and Hegelian strands in liberalism. See Herzog (2013).

10 Karl Marx (1992: 224) puts it this way: "Where the political state has attained its true development, man leads – and not only in thought, in consciousness, but also in reality, in life – a double life, a heavenly one and an earthly one, a life in the political community, in which he counts as a communal being, and a life in civil society, in which he acts as a private individual, views others as means, debases himself to the status of a means, and becomes the plaything of alien forces."

domination and deprivation furnish people with reasons to reject the laws that make them possible. Experiences of routine failure in attempting to change those laws furnish people with reasons to reject the political structure more generally. To the degree that society's constituent domains need to be ordered towards the maintenance of the whole ensemble over time, those reasons must meet with some kind of response, otherwise group agency collapses. Let us pause to consider this, since it makes sense of mobilization against "elites". Group agency requires that group-level routines of decision-making yield outputs, in the form of instructions that guide the actions of members. These instructions are tethered to shared purposes and goals. When these goals are shared, agents are more than merely "mutually responsive" to one another's actions: they have a freely-formed "intention that favors" the goal, and are independently disposed to aid or support one another in the fulfillment of their respective roles in the activities of its pursuit (Bratman 1992: 335).[11] The labor contract, for example, is supposed to prove the cooperative nature of the wage relation – that workers, managers, and owners have pooled their wills. Free group agency only obtains when agents have pooled their wills with those of other agents. But if it is the case that some agents have only succeeded in subordinating, breaking, and overriding the wills of those other agents, there is no group agent in the appropriate sense. A does not rule B legitimately, when B has reason to reject a claim of equal group-agent membership with A. Anti-elite politics expresses that rejection.

Liberal legitimacy depends on how the decision-making apparatus detects and processes reasons arising from domination and deprivation. Those experiences can be moderated or eliminated, or they can be denied and concealed. Civil society, as described above, constitutes a nexus of institutions that reinforce legitimacy when they cultivate and express an autonomously willed consent to governing power. When their arrangement has come about in order to disguise the reasons to withhold consent, or to neutralize the purchase those reasons would otherwise have, if considered impartially, on peoples' judgments and choices, they maintain a political order via unfree or pseudo-consent. It is no secret that power courses through such institutions, imposing a form on the ideas and values out of which people develop their opinions, attitudes, desires and dispositions. Experiences of domination and deprivation can be politically neutralized; their subjects can misdescribe them as natural, inevitable, or necessary. People do not always already have all the cognitive and evaluative resources needed to fully account for their circumstances.

How have theorists accounted for political crises arising from economic circumstances? Habermas, to take one example, located our shared evaluative resources into a language-mediated domain, the lifeworld, that was distinct from a society's political and economic systems. The state, on his schema, was supposed to steer production, so if it could not repair what economists would recognize as standard system-failures – high inflation, unemployment, negative growth – discursive unrest in the lifeworld would begin to precipitate a legitimation crisis.[12] This framework is a useful starting point to assess the relation between corporate power and liberal legitimacy. But it involves some assumptions we should complicate, if not reject. First, the political apparatus does not have a simple one-directional economic "steering function". While this may have been accurate in managerial, welfarist capitalism's postwar period, our historical conjuncture is different. Law's relation to the market conditions it creates and sustains does not

11 See also List and Pettit (2011).

12 On legitimation crises, see Habermas (1976). The lifeworld-system distinction is presented in Habermas (1987).

shield it from capture by market winners – this is, in fact, increasingly how agents become market winners. Second, discursive reason-giving and justification are not, in the final analysis, external to the money-mediated relations of the economy and the command-mediated relations of the political system. We often need to use such divisions; I have done so here. But their real interanimation should always be kept in mind.

This is especially important in discussions of the business corporation, whose power in society is multiform and pervasive, but often obscure. Before considering it in detail, I will briefly set out its justificatory basis in liberal Kantian and welfarist terms. It is important to see how these terms are interpreted in support of a distinctly liberal economic outlook, predicated on a basic entitlement to property. That persons deserve private property is entailed by their independence, their right to set and pursue their own ends. To will an end involves, by necessity, willing its means. Freedom, in this case, requires the means of its realization: usable things that are at your disposal, to use as you will, for the ends you have freely chosen. One of those ends might be to join with other like-minded property owners to pool your resources, in order to make and sell things for profit, things that others can use in pursuit of their ends. Your gaggle of would-be producers gets together and clarifies your reciprocal claims and liabilities with a contract. The contract must perforce refer to your shared enterprise. That enterprise is more efficiently practicable if it can be treated as a stand-in for the nexus of contracts among its members (Easterbrook/Fischel 1991). Those members have rights, so their aggregated association – the enterprise – has them by proxy. Moreover, apart from whatever individuals ought to be free to do with the assets they are free to control, things go best for everyone when such enterprises are allowed to flourish. We all need to live off of products and services that must be created and distributed through cooperative, shared endeavor, and in any complex social arrangement, the choices of how to do so are uncountably vast. It is easier and less wasteful for us to let these choices be made according to the independent reasoning of people who control their own assets. Price signals tell them what is needed and how best to provide it. But unless they have something to lose by not detecting a signal, they will not be motivated to reliably detect it. Profit is an instrumental necessity. And unless they can join with others in open-ended collaboration, where every exchange between producers inside the enterprise does not have to be renegotiated anew, they will not be able to produce efficiently. So, the enterprise should not itself be structured as a market. It would not exist unless property-owners risked their assets in creating it, which gives them the authority to direct its operations. When the labor-owners with whom they freely contract follow the orders they are given, the enterprise as a whole is better off, and rewards flow to everyone. What could go wrong? It is to this question that I now turn. The next section theorizes corporate power as a distinct phenomenon. That will be the basis on which, in the fourth section, the conclusions drawn here about liberal legitimacy will be put to work in the evaluation of corporate power's practical reality.

3 CORPORATE POWER IN THEORY

The previous discussion concerned liberalism's legitimation conditions. Where does corporate power stand in relation to them? Let corporate power refer, broadly, to the ability of corporations to unilaterally shape the reasons, circumstances, preferences, choices, and actions of other agents, and the relations that obtain on account of their having such abilities. I will examine the corporate form as a site, instrument, and structure of political power, where the modifier "political", on this construal, picks out aspects of a given power, or its effects, or the relations it brings about, to which considerations of justice apply, as a ground for the involvement of public authority. I will sketch the social position and rationale of the business corporation's legal form, as well as the key features of its agency-structure. I will then investigate the modes of power that form makes possible, and how these are applied. The guiding question throughout will be: how do these varieties of power impair the legitimacy of liberal order, on account of their effect on independence and welfare? Corporations are rarely focused on in political theory, and incorporation, as a legal procedure, is rarely discussed as an instrument of political power.[13] Reasons to celebrate and promote corporate power have, of course, been advanced by its defenders, but their thorough review is outside the scope of this paper.[14] Let us simply stipulate that peoples' lives are positively enriched by the products and services the corporate production system makes available. Let us also stipulate that, just as a slave can be exquisitely well-treated by his master, and a wife in a patriarchal society can be fawned over and indulged by her husband (think of Nora and Thorvald in Ibsen's play A Doll's House), material benefits can obtain inside an unjust, dominative power structure.[15]

Let us move, at this stage, from the conceptual empyrean into real history. After the fall of the Soviet Union and its satellite dependencies, and the ascent of China as a market society, nearly everyone in the world is subject to, and integrated within, a common economic structure, operating on a single set of principles. Privately owned capital employs legally free workers to make and distribute goods and services for profit, via the coordinating mechanisms of market exchange.[16] Corporations are pivotal to this structure. Nearly all our material and nonmaterial means of life – food, clothing, medicine, conveyances, phones, computers, media content, etc., as well as the loans we rely on to buy a house, go to school, or start a business – are produced or made available by corporations, either directly or indirectly. We can only access those goods and services in exchange for the money we get by selling our labor, and most of us sell it to a corporation, or to a smaller firm contracting with, and dependent on, incorporated businesses. Incorporation is a legal attribute. Businesses having that attribute, and because they have it, can accumulate and direct capital in potentially unlimited volumes. Their centrality to production is not just an economic fact, but a political one. They can determine the independence and welfare of persons and communities, the actions of governments, and the social states-of-affairs to which concepts of justice apply. They are political actors, and incorporation, as a procedural act, should be conceived accordingly.

Normally our default approach to business is economic, in the narrow, restricted sense of market equilibria, exchange relations, efficient pricing, and so on. The authority possessed by corporations over workers, and their structural power over communities, tends to escape demands for political justification. Whether they can satisfy those demands requires us to inquire first into the nature of incorporation as a legal-ontological phenomenon. For example, Princeton, Greenpeace, and Bayer are all incorporated juridical persons, entitled to make and enforce rules within a distinct sphere of authority, and subordinate in that sphere to state law (their rules cannot

13 For exceptions see Mikler (2019) and Pistor (2019).

14 As exemplified by Cowan (2019).

15 "Nora: Our home has never been anything other than a play-house. I've been your doll-wife here, just as at home I was Daddy's doll-child" (Ibsen 2016: 80). See also Philip Pettit's (2002: 60) discussion of this example in the context of a Republican theory of freedom.

16 Branko Milanovic (2019) describes the scope of these. For a discussion of how they emerged and prevailed historically over other productive modes, see Wood (1999).

contravene the law). But they differ considerably in their organization, aims, and capacity to accumulate and direct various of forms of power. After acquiring Monsanto, for example, Bayer now controls, along with two other corporations, a majority of the global food system's basic inputs: seed and agro-chemicals (Mooney 2018). The ability to concentrate under its direction sufficient capital to supply a third of the world's crop seeds enables Bayer to shape the regulatory agenda of every country in which it operates, such that laws concerning patents, trade, subsidies, working conditions, land use, infrastructure, sanitation, and related phenomena are largely made in conformity with its interests (Schanbacher 2010). Crucially, the laws of incorporation themselves, which make this degree of influence possible, do not require that a corporation's interests be aligned in any specific way with those of the community in whose names the laws are passed.

Only an official act of government can turn a disaggregated set of assets and relationships into a corporation.[17] Variants of the procedure have a long history, dating back at least to the Roman societas publicoranum, which allowed for wealth to be pooled inside a legal configuration that could, in turn, own assets and enter into commercial contracts. It was the English jurist William Blackstone who, in 1758, revised the corporate form into a recognizably modern entity, declaring that businesses like the East India Company were rights-bearing artificial persons with an identity separate from that of its shareholders and directors, whose commercial privileges depended, however, on their serving an identifiable public good (Winkler 2018: Ch. 2). That model prevailed largely until industrialization came to dominate 19th-century economies. The advancement of capital owners' private pecuniary interest was the end for which incorporation was a means. Corporate rights multiplied under new legal doctrines. Today, incorporation allows for the following advantages. Capital can be concentrated within the frame of a single legal personality and directed by managerial officers with broad authority over their labor force; the legal person can sustain its identity indefinitely over time, lock assets into its domain of control (preventing their alienation by individual shareholders and managers), and shield those assets against claims made by anyone to whom a corporate shareholder or director is indebted; limited liability indemnifies shareholders, directors, and managers against responsibility for debts accrued by the corporation, or for harms and wrongs committed by the corporation, whatever "committed by" turns out to mean.[18]

These attributes make the corporate form unique. Other enterprise types, like the partnership and the proprietorship, do not rely on state fiat to exist and are indissolubly bound to the natural persons who own them. Corporations are creatures of legal writ, and though their market exchanges are regulated on a par with other kinds of businesses, they are capitalized in a manner specific to their contractual individuality.[19] By virtue of being locked in and shielded against a range of external claims, corporate assets have fewer opportunities, as it were, to lose value. Investment capital is drawn by necessity into that fortification. Corporate assets can be deployed in more specialized ways at lower costs, creating powerful economies of scale. Limited liability makes capital even cheaper to acquire by reducing the risks of investment, which radically expands the scope of potential investors. Because no shareholders

17 Most legal systems today do not require direct state approval for the creation of a business firm, but all stipulate that incorporation only carries its defining advantages when businesses are registered as corporations in a specific jurisdiction, in compliance with that jurisdiction's statutory provisions. See Pistor (2019: 55).

18 For a survey of these features, see Stout (2017).

19 That corporations derive their existence, abilities, and entitlements from governments is known as the concession theory (McMahon 2012).

are on the hook for corporate debt – and vice versa – share value is independent of shareholders' other financial vulnerabilities, making it easy to price and sell shares. This keeps investor's shares "liquid". They can withdraw their value in the form of a commodity and sell it to some buyer, instead of having to dissolve the firm, as in a partnership (Ciepley 2013). This portability of the share, which is a residual property-claim on capital income, is the precondition for dynamic, high-volume capital markets. The behavior of those markets – especially the secondary market in financial assets – is decisive for outcomes in the "real" economy.[20]

These features have enabled corporations to accumulate unprecedented magnitudes of capital. In 1913, the total value of global GDP was approximately $2.5 trillion; at the end of the 2019, the total capitalization of global stock markets was estimated to be $90 trillion.[21] The market value of each of the world's top 50 corporations is greater than the annual GDP of 160 countries (PWC Global 2020). Three points are especially important to consider here. First, corporate law prescribes that managers are under a supreme fiduciary duty to promote the welfare of shareholders, where the content of that welfare is presumed, absent explicit contractual terms to the contrary, as maximizing share value.[22] This is the famous "shareholder value" principle. It makes profitability the weightiest consideration in managerial choice. Second, legal and technological changes have made capital globally mobile. Conflict-of-law rules have adopted the "incorporation theory", allowing businesses to select their place of incorporation without that choice affecting their recognition as a rights-bearing entity in other jurisdictions (Pistor 2019: 69). As a result, well-capitalized firms can now effectively shop for the legal environment that grants them the most freedom with respect to asset partitioning and shielding, financial disclosure, tax liability, labor and environmental standards, and so on. The third point concerns capital itself – what it is that corporations control. We should understand it in two ways. First, it is a legal feature or quality that is affixed to assets, endowing them with the capacity to generate money income (Levy 2017). That legal quiddity is itself a result of political authority being applied in a certain way. The state's powers of legislation and enforcement, and nothing else, are the causal instruments that turn physical things like land, buildings, and machines – not to mention more metaphysically exotic entities, like stocks, bonds, songs, glyphs, signatures, brand names, browsing data, pharmaceutical ingredients, mortgage debt, and DNA – into claims on money derived from these entities being used in certain ways. Under capitalism these claims are held by private persons, including corporations.

The laws of property, contract, trust, collateral, bankruptcy, and incorporation create and assign capital, and the power corporations have to shape those laws in conformity with their interests is a political power. This alerts us to the second thing we should remember about capital. Take the scope of markets as a universe of causality; within that universe, the most efficacious ability, the ability that proves most decisive in determining which states-of-affairs come to pass and which do not, is the ability to reassign, at will, property rights to a quantity of money. In other words: the power to pay someone to do something. Consider the most trivial micro-transaction. When you get a haircut at the barber shop for €20, you reassign your property rights over that €20 to the barber, on condition that they do something – in this case, cut your hair. You have changed several states-of-affairs here: the barber's bodily movements and mental states, your hair length,

20 See also Bond et al. (2011). The notional value of the derivatives market is calculated to be in the hundreds of trillions of US dollars, many times the value of the global real economy.

21 The first figure is in 1990 adjusted international dollars (Allen 2011); the second figure is a Deutsche Bank estimate (Pound 2019).

22 See Easterbrook and Fischel (1991: 37). That the so-called "Business Judgement Rule" breaks the link between fiduciary duty and profit is argued by Stout (2008) and Singer (2019: Ch. 5).

the condition of the scissors, the electric power and water flow in that location (the razor and blow-drier, the pre-cut wash), the barber's personal ability to get other people to do things (his stock of money), and much else besides. In commercial societies, most organized human activity takes place squarely within, or for the aim of being able to act more effectively within, the market. Basically all societies are now commercial societies, whose markets are integrated with one another. That means the universe or domain of circumstance, in which the power to unilaterally direct money income – i.e., the rights of capital ownership – represents the greatest ability to determine what does and does not occur, is global in scope. That, in turn, means that asymmetries in capital control are asymmetries in the power that is most generally efficacious, given the scope of markets. The corporate form, in this rough sketch, is a social technology whose sole function is to facilitate the accumulation of the most generally effective power at the highest possible scale, to be directed entirely by a unilateral private will, for private ends. That technology only works, however, as an application of the state's laws, i.e., as an exercise of the public's omnilateral will. Liberalism holds that state power is constrained by nature to be exercised only for public ends. The power asymmetry that simply is corporate capital accumulation, therefore, must itself be in the public interest. Is it? A closer look at that power may direct us toward an answer.

Any definition of power is contentious. Normally we regard it as the capacity to determine, unilaterally, the actions of others, or their beliefs, opinions, desires, dispositions, etc. It is normatively salient by virtue of its method or manner (how is it exercised?), object (over what or whom is it exercised?), and consequences. Methods include: being able to grant or withhold valuable resources (as in the discussion above); threatening or using force, especially physical violence; simply communicating that the ability to use force is possessed; using enticements, seductions, or other techniques that block rational autonomy; controlling processes by which choices or states-of-affairs are evaluated, proposed, categorized as feasible or unfeasible, etc. (Haugaard 2002). These capacities are all forms of power-to. For each form we can posit advantaged and disadvantaged parties whose relation is mediated by that form. These are typically relations of command, authority, compliance, and subjection: forms of power-over.[23] They reveal another modality. Relational structures – like the social system of gender norms, for example – can secure, and reproduce over time, the statuses, privileges, burdens, and types of power-to that individuals and groups come to possess (Young 2011: 30–33). What the advantaged possess, and what the disadvantaged lack, as a result of the pattern exhibited by these relations is structural power. Structural power is not necessarily dyadic. There need not be an isolated or specific agent who directly benefits from a disadvantaged party's being disadvantaged, or who is directly culpable for causing that disadvantage; it need only be that, for any agents related in this way, the vulnerable will be observably disadvantaged in comparison with some other agent located "inside" the structure that relates them. Corporate power is structural in two senses: vis-à-vis other social actors, within our kind of economic formation – capitalism; and with respect to the relation between shareholders, managers, and workers inside the corporate form.

Power, of course, need not be malign. When its exercise assists people in acting for their own good reasons, it is valuable. Legitimate power does exactly that. Sometimes we are unable to access

23 That all power is best understood as power-over is a main Foucauldian tenet. See the interview with Foucault in the afterword to Dreyfus/Rabinow (1983). The difference (or non-difference) between power-to and power-over is an enduring problem in social theory. Here I assume they can be distinguished for the purposes of practical analysis.

those reasons without the power in question's help. As Joseph Raz (1986: 53) puts it, power is legitimated when "the alleged subject is likely to better comply with the reasons which apply to him (other than the alleged authoritative directive) if he accepts the directives of the alleged authority as authoritatively binding and tries to follow them, rather than by trying to follow the reasons which apply to him directly". Power can free the subject's will by enabling that will to be guided by the good reasons it already has, when it is exercised in line with, and because of, those reasons. Accordingly, power is malign when it does the opposite, when it corrupts or usurps or commandeers the subject's will. Someone is dominated when their actions, attitudes, desires, etc. are determined not by themselves, via independent review of the values and reasons they have, but by another's power. A dominates B when B is constrained by A's power – not some value that would bind B independently, like a moral value – to serve A's interests and aims, to adopt them as B's own. Domination is the illegitimate seizure, direct or indirect, of another's agency. So how, then, can corporate power dominate?

I will exclude cases in which corporations directly, or via their influence over a government's military and police forces, use physical violence to advance their interests. These cases are now rare in liberal states. They remain frequent in those places where primary commodities are extracted – Pakistan, Chile, Indonesia, Cambodia, Nigeria, and so on. Mining, timber, and oil companies violate the human rights of union leaders, indigenous rights activists, environmental protestors, and dissident politicians.[24] These violations are unjust, but their relevance for the present legitimation case will not be directly considered. My focus instead is on corporate power's operation inside liberal societies. Let us distinguish between the kinds of agency exposed to that power: individual and group agency. The first is subject to subordination, the second to decoherence. Workers inside the corporate structure are unfreely governed, while individuals interacting with the corporation in the market have their agency usurped and undermined in other ways. The group agency of polities is made less coherent by the application of corporate power to the political process. Collective choice procedures are either distorted or negated – i.e., corporations do the choosing. This application shapes the content, scope, and enforcement of law, as well as the conditions of public reason. Having one's individual agency disabled or usurped by another is a reason to reject the political arrangements responsible for your domination. Being impeded in the formation of a coherent, self-governing group agent defeats legitimacy. Apart from domination's being intrinsically wrong, the aims that corporate power is used to promote – maximal profit for shareholders – are often inconsistent with the welfare of those whom liberal states are obligated to protect. Legitimacy is weakened when the cost of enriching corporations is the harm, insecurity, or under-resourcing of natural persons.

4 CORPORATE POWER IN PRACTICE

In what ways does corporate power actually dominate and deprive? We will start at the group-agent level. There are at least four distinct applications of corporate power that weaken democratic will-formation. These are lobbying, extortion, mendacity, and extralegality. Let lobbying include direct cash payments to political campaigns, paying skilled influencers to brief lawmakers, mounting public relations (PR) campaigns for or against a regulatory change, inducing lawmakers to favor corporate interests by offering non-cash rewards, paying think tanks to generate corporate-friendly "research" that lawmakers or journalists can cite

24 For examples see Arboleda (2020). Other examples, as well as the effort to get multinationals to comply with human rights norms, are documented in Ruggie (2013).

in public debate, etc.[25] These are the most obvious and well-known examples. There is nothing inherently wrong with lawmakers consulting experts to get hard data and sound interpretations about a sector of the economy. How else would they be able to understand the effects of a regulatory decision? But registered lobbyists are but one element in a complex, reciprocal gift economy of influence that entrenches the disproportionate power of corporations to pursue their own interests, as a function of their disproportionately larger capital holdings.[26] When the actions and preferences of public representatives are ultimately determined by the unilateral will of the private corporation, they block the formation of a public omnilateral will. But let us say the legislator has good independent moral or prudential reasons to act in ways that benefit some corporation's interests. The fact that the action resulted from a causal chain of influence through which corporate power was exercised – via indirect exchange for something of value (a job, a donation) – makes the action a response to corporate power, not those independent reasons. Most importantly, legislators have conclusive reasons not to respond to corporate power at all: the appearance of corruption leads citizens to think they do not share equal group membership with their legislators, and, as a result, are not themselves the sovereign sources of law. This incentivizes anti-cooperative behavior, such as law-breaking or disengagement from the political process.

The lobbying described above is indirect, but as Colin Crouch (2011: 131) puts it, businesses are usually "right inside the room of political decision-making [...] setting standards, establishing private regulatory systems, acting as consultants to government, even having staff seconded to minister's offices". Governments have by now removed the long-established capital controls designed to keep investment cycling back into national jurisdictions. Corporations can now easily invest in countries with undemanding regulatory constraints, especially with regard to labor rights and environmental protection. The state revenue promised by such investment rewards those governments that keep the rules corporate-friendly. The relative weakness of transnational governance bodies, which lack the agential cohesion of corporations, puts the former at a disadvantage. Transnational corporations (TNCs) have comparatively greater agility and bargaining power when it comes to setting norms and criteria for trade and investment. The single organization most responsible for organizing, coordinating, and regulating global commerce – the WTO – differentially acts to benefit companies domiciled in the liberal core, whose government negotiators seek the terms most favorable to corporate interests (Risse/Wollner 2019: Ch. 8). As a consequence, business practices worldwide have been shaped to a considerable degree by corporations themselves. This both results from, and strengthens, the ability of corporations to practice extortion: threatening to withdraw, or not direct, valuable capital investment, unless the terms are set in their favor. The governments of liberal states are routinely extorted into further tailoring local laws to suit the interests of private capital owners.

Public reason is distorted by corporate influence on the provision of information and the open discursive process. This is a problem of corporate mendacity. Markets are dysfunctional when information is absent or insufficiently shared. The role of advertising and PR – its justification – is thus to inform other market participants and stakeholders; persuasion may not rightfully operate by means of deception. It is plain to every adult, however, that most advertising "overrides the autonomy" of consumers, not through bold-faced lying,

25 Described by Hussain and Moriarty (2014: 430) as "old corporate political activity", in contrast to the newer forms, whereby corporations take over what were formerly the prerogatives of the democratic state.

26 Legal scholar Lawrence Lessig (2011: 107) uses the anthropological conception of a "gift economy" in his analysis of lobbying.

but through techniques of association and seduction devised, with the aid of our most advanced psycho-neural and social science, specifically to short-circuit rational evaluation (Crisp 1987: 414).[27] As participants in public discourse, corporations cannot be relied on to communicate sincerely on matters fundamental to their profit sources. Market rivals collaborate to deceive the public about the harms their products cause. The gravest instance is arguably the fossil fuel industry's extensive funding of press campaigns denying the scientific validity of climate-change predictions.

Corporate power is not only expressed in control over legislation, but in routinized commitment of socially prohibited wrongs. Call this extralegality. Apart from the injuries done to specific parties, these injure the political community by weakening social trust, taking advantage of law-abiding citizens, and disregarding the values that define their shared political commitment. Tax avoidance, for example, deprives the community of resources, shifts the tax burden unfairly to others, and expresses an outright rejection of equal group membership. As discussed above, TNCs can, as a result of capital mobility and favorably tailored conflict-of-law rules, engage in tax arbitrage – they can choose the jurisdiction with the lightest tax burden and either relocate there or, more commonly now for large firms like Apple and Starbucks, channel their revenues there via elaborate sub-incorporation and accounting techniques. According to the IMF, "tax havens collectively cost governments between $500 billion and $600 billion a year in lost corporate tax revenue" (Shaxson 2019). Figures for the US alone indicate that over 40% of profits made overseas by American firms are untaxed: in 2018, Amazon, Netflix, and General Motors – along with nearly 60 other TNCs – did not pay any taxes whatsoever on approximately $80 billion in earnings (Stiglitz 2019). Aside from tax avoidance, corporations with high profit-margins in highly regulated sectors, like finance and energy, systematically price the payment of fines into their business models, when the profits to be earned through violating rules vastly exceed the costs of both paying the fine and hiring PR firms to mitigate reputational damage.

The rule of law, one of liberalism's defining principles, requires that persons be governed by laws that they themselves have reason to endorse, and that these laws be equally enforced, in line with the terms under which they have been authored. In previous eras, corporations were constrained into lawful obedience by means of their charters, which set forth specific aims. They are no longer required to be chartered for any specific purpose other than capital accumulation. Chartering law was replaced by criminal and civil penalties as the means of legal constraint (Ciepley 2019). These must either target the corporation itself, as an independent agent, or its officers as natural persons. Corporations are free to use the law of incorporation to subdivide their legal personalities, introducing firewalls to block accountability. It is standard practice to have subsidiaries plead out corporate malfeasance cases to avoid penalizing the parent company, as well as to price the payment of penalties into business strategies that may result in legal infractions. This reflects the fact that only monetary penalties can be levied against the corporation itself, and if these are significant enough to change behavior, they have to be significant enough to cause bankruptcy – but that would involve economic stakeholders who are not themselves culpable for the offense, like workers and their communities, suffering harms, leading to knock-on economic effects that may be worse than the original transgression. Sub-critical penalties are therefore the norm. If a corporation is sufficiently large, it can simply be too systemically vital to prosecute, much less euthanize,

27 For consideration of more current techniques, see Lee et al. (2016).

no matter how grave its crimes.[28] Targeting individual lawbreakers within the multinational is the other option, but this presents its own difficulties. It is often logistically impossible for outside investigators to establish criminally actionable lines of responsibility, and even when they can, fining or jailing specific persons does not address the real sense in which the corporation itself, as a group agent, may be responsible. We see here clearly how the very ontology of the corporate form, and the scale of capital at stake, denies juridical equality.

The above examples illustrate how corporations can disable the mechanisms of free collective government, and harm or dissolve group agency thereby. What about individual agency? Here I will distinguish between the domination of workers inside the corporate form, and the domination of persons outside it. Workers are – frankly – exploited by their corporate employers. Let me explain. Employees contract with firms, which, as group agents, own the resources needed to produce whatever economic good is the ultimate source of shareholder's dividends and the employees' wages. The worker agrees to have their actions and choices determined, within the remit of the contract, by the will of whomever "speaks for" the firm – upper management, the board, etc. Firms are like dictatorships, hierarchies of command in which orders are passed down and noncompliance is sanctioned. Even in liberal states, the law fails to prevent management from regulating what workers do in their private lives, in "their political activities, speech, choice of sexual partner, use of recreational drugs, alcohol, smoking, and exercise" (Anderson 2017: 39). Firms and the bosses running them, who are typically paid in shares, have these powers of command and regulation because of their power to grant or withhold from workers access to a resource they cannot reasonably live without – money, wages –, which, in turn, is a power derived from the firm's exclusive control over capital. Workers therefore stand in a relation of vulnerability to bosses and firms. Their ability to avoid social and material harm (poverty and joblessness) depends on what the latter decide to do with their superior power. When corporations profit from the contractual arrangements to which workers submit themselves, they use the workers' vulnerability as a means of enrichment. This is exploitation.

Two things are important to note here. One is that firms are constrained to do this. Sharing profits equitably lowers profits for shareholders, which will lower the share price, which just is the redirection of capital investment away from that firm, towards its competitors. Boards and managers are required by the logic of competitive disadvantage to dominate workers (Vrousalis 2016). Two, this is perfectly consistent with the wage contract being a Pareto improvement. The choice to dominate improves the worker's material situation, when compared with, say, unemployment and poverty. That does not redeem the choice. Workers are unfree because workers are persons, and persons are only free when they can decide how to realize the worthwhile aims they have themselves chosen to pursue, consistent with others' right to do the same – which is what workers cannot do, unless and until they organize for equal power inside the corporation. Only by pooling their wills into shared agency can workers leverage their bargaining power. Capital mobility, however, ensures that workers now compete in a global labor market. The collective action problem this presents is insurmountable.

28 The most conspicuous recent example being HSBC, the multinational bank that was found by the US Justice Department to have willingly, and with the full knowledge of senior executives, laundered nearly $ 1 billion for the Sinaloa drug cartel and various terrorist groups. It also helped Sudan, Libya, and Burma evade international financial sanctions. The US government declined to prosecute the bank, or any of its staff, on account of the collateral impact this might have on the global financial system. See Ryder and Pascolili (2020: Ch. 5) and Coffey (2020).

Many factors have contributed to increasing rates of underemployment and the long decline, persistent for nearly 40 years, of labor's income share.[29] Many cite automation, but overproduction – or "secular stagnation" – is probably a more accurate diagnosis (Benanav 2020). Productive capacity has expanded, and capital accumulated, beyond what demand can rationalize, producing low growth rates and less need for labor in a planetary labor pool. Rapid profitability is what draws investment, so firms have to use their leverage to block new entrants into markets, colonize rivals' existing market share, and keep wages as low as is possible. Hence the increasing size and market power of major corporations – their consolidation – across all sectors. Firms in a consolidated sector can work together to keep wages down and prices high, channeling profit to an ever-shrinking number of high-level managers and owners of financial assets. As a 2014 study put it, "economic elites and organized groups representing business interests" shape and influence lawmaking, "while average citizens and mass-based interest groups have little or no independent influence" (Gilens/Page 2014: 564).

Corporations also apply their power over other actors in the market, like customers, in ways that negatively affect independence and welfare. Here I will detail two prominent dimensions of this. The first is limbic power, the second surveillance power. Each is sufficiently widespread to have become a handy moniker for contemporary capitalism (Courtwright 2019; Zuboff 2018). Limbic capitalism has been defined as a "technologically advanced but socially regressive business system in which global industries, often with help of complicit governments [...] encourage excessive consumption and addiction" (Courtwright 2019: 6). Let "help" in that sentence stand for the result of corporate power having been applied to the legal system in the ways described earlier. The limbic system is the area of the brain that regulates, among other things, the craving-reward feedbacks of behavior reinforcement. Corporations selling processed foods, soft drinks, apps, media content, etc. – not to mention pharmaceuticals, alcohol, and tobacco – use product-design and marketing techniques to maximize the probability that customers will become psychologically dependent on them. The products are not the problem. Independent persons should be free to use them in moderation. But moderate use conflicts with the profit-maximizing imperative. People who have developed dependency-behaviors with these products in fact account for most of these industries' customer base. They suffer, accordingly, more of the related harms to physical and psychological health, and are more likely to be economically and socially disadvantaged in other ways. The cost of their dependence is not paid by the corporations who encourage it, but externalized to taxpayer-funded social welfare, police, and health services. Addiction may result from initially voluntary choices, but it constitutes the diminished capacity to make those choices. Consumers of highly addictive products become less able to control the future extension of their own wills. They act for reasons grounded in the power of the commodity producer: the corporation. Their agency is not only usurped, but directed against itself, and against their own material and social welfare.

The powers derived from corporate surveillance are well-known. Anyone who uses a smartphone navigates their daily experience under the corporate gaze: reading the news, exercising, setting alarms, commuting to and from work, scheduling appointments, figuring out which street you are on, sending and receiving texts and images, paying for goods and services, browsing for useful and useless information, administering bespoke entertainment routines. All of these actions are

29 In the US, labor productivity grew by over 80% from 1973 to 2012, while median hourly compensation grew by only 10% (Mishel 2012).

tracked, encoded, stored, and studied, for the purpose of being transformed into commodities. The value of these commodities inheres in their predictive utility. The more corporations know about customer behavior, the more they can engineer it, designing their choice arrays to optimize profitability. Powers of surveillance structure the business model of some of the most profitable firms: Facebook, Google, Amazon, Uber. Businesses buy the data they generate and use it to create personal psychometric profiles, which are sold on to other corporations so that they can determine how to price products differently for different customers. Some health insurance companies, for example, price their policies according to data acquired from personal fitness apps (Wu 2020).

What are the problems here, with respect to independence and welfare? Having one's conduct modified in order to increase corporate revenue or shareholders' dividends is an affront to independence. Surveillance, even by non-state actors, causes people to change their behavior accordingly – their freedom is compromised by the very fact of being watched. Central to respecting persons is the idea that there is an independent, valuable bearer of identity – above and beyond, metaphysically speaking, the set of facts about their observable actions – with whom one stands in a moral relation. An economy that reduces persons to their data is as inhuman as an economy that reduces them to their labor. In his critique of industrial manufacturing, Marx argued that the production process converted the workers into a "monstrosity" – "just as in the States of La Plata they butcher a whole beast for the sake of his hide or his tallow [...] the individual himself is made the automatic motor of a fractional operation, and the absurd fable of Menenius Agrippa, which makes man a mere fragment of his own body, becomes realized" (Marx [1867] 1976: 481).[30]

30 I am grateful to Nicholas Vrousalis for this reference.

Treating someone as a mere fragment of themselves is a mode of exploitation: their properties or attributes – in this case, behavioral – are converted into sources of private enrichment and advantage.

5 CONCLUSION

The legitimacy conditions of liberalism pivot on the values of independence and welfare. They obtain when persons are able to structure and apply their common choice procedures as equal members of the same group agent. These conditions limit the powers such members can have and use with respect to one another. Corporate power, I have argued, violates these conditions in various ways. Its conditions of possibility are legal. The authority of the state is the common authority of all persons in the society, conceived as sovereign over themselves. It is invoked and applied to create the corporate form, a vehicle – in its present condition – for aggregating unilateral power. In a free society, however, the law is meant to express to those it governs their equally inclusive political membership. Coercion is legitimate when the subject is being coerced into doing what they have independent reason to do, according to principles nobody could reasonably reject. The values of independence and welfare furnish such reasons. Legal institutions exist to foster collaborative relations of mutual respect – the reciprocal promotion of independence and welfare – to the greatest possible degree. Under liberalism, the state is that institution we all share in the reality of, contributing to it as equal voters and officers, enacting its rightful authority, which is identical with our own. The liberal state should be – or, at least, liberals aspire to make it into – what Rousseau called "a form of association that will defend and protect the person and goods of each associate with the full common force, and by means of which each, uniting with all, nevertheless obey only himself and remain as free as before" (Rousseau [1762] 1997: I.6.4). That "full common force" is the force of moral equals, joined as a group agent. It is to be realized in the structure, adaptation, formation, and execution of the laws, and in the outcomes and social environments they bring about (Shiffrin 2018). When legal instruments and authority are used to dominate and deprive, they are denatured. The problems of corporate power force the question of how much a society whose conception of legitimacy is structured around the value of equal group membership can tolerate social and economic inequality, asymmetric advantage, and institutional predation, before it decays, or advances, into a different form.

It helps to summarize the inequalities corporate power constitutes and engenders.[31] These are: unequal concern – the law prioritizes the interests of capital owners, just because they own capital; unequal status – social respect and esteem flow to wealthy, credentialed, high-salaried corporate shareholders and managers, just by virtue of their position in the power architecture; unequal opportunity – the children of those who benefit from corporate power have more and better opportunities to set and pursue the ends they value, just because of their parentage; unequal circumstances – beneficiaries of corporate power enjoy higher levels of safety, health, and education, just because of their relation to capital; unequal citizenship – people should have similar opportunities to use their political liberties, to organize and express themselves, to seek political office, to influence legislation, and so forth: needless to say, capital owners have more of these opportunities, just because they own capital.[32] These exist on account of the structure of rule in which citizens interact; corporations derive their structural power from it. This is the power to shape manifold states-of-affairs by directing capital. The enabling rule-structure reproduces, directly and as an indirect cause, relations of command and obedience that conflict with the liberal value of independent self-sovereignty, of being one's own master.

It also brings about macrosocial welfare deficits that affect legitimacy. We can identify recent examples linked to the rise of populist anti-liberalism. Investment banks put pressure on governments to deregulate the sale of financial instruments that were, on account of their baroque configuration, nearly impossible to value rationally. This caused deep dysfunctions in the securities markets. The resulting financial crisis of 2008 crippled the real economy: according to the US Treasury Department (2012), the US alone lost approximately $19 trillion in household wealth, and unemployment, homelessness, and poverty rates skyrocketed; global wealth losses approximate $35 trillion. Governments recapitalized insolvent banks with taxpayer money, and a sovereign debt crisis took hold in Europe. Unable to devalue the common currency, indebted governments like Greece – whose borrowing had been encouraged and abetted by German, French, and US banks – were forced to slash social spending and impose severe fiscal austerity to satisfy bond investors. Suicide, poverty, and social exclusion spiked dramatically. The idea that the banks should be broken up or taken under public control was never seriously considered. Corporate lobbyists ensured this. Most policy-makers anyway share the worldview of financial executives: that privately-run corporations, following the market's profit imperatives, serve social needs more effectively.

That view has come to prevail in many liberal states. The push by corporations to access government contracts has resulted in the large-scale privatization of public services, such as prison management, health care, and even military

31 A survey of inequality's wrongs and harms – from a liberal perspective – is given by Scanlon (2018).

32 Rawls (2001) calls this the "fair value of political liberties".

operations. This has not only "commercialized" the character of the public sphere but lowered the quality and raised the costs of those services. This has been especially damaging to communities that formerly boasted a strong manufacturing sector and supportive middle-class incomes. Stripped of their bargaining power, tens of millions of citizens are now constrained to survive on high-interest debt and precarious low-wage work. In the US, life expectancy in 2015 started to decline sharply: suicides and death from alcohol and drugs now take 190.000 lives each year in places affected by outsourcing and automation. A recent study by economists Anne Case and Angus Deaton (2020: 259) links these "deaths of despair" directly to corporate actions, stating plainly that, on account of corporate power's influence over the regulatory environment: "people's lives are sacrificed to corporate profits." Pharmaceutical manufacturers aggressively market highly addictive opioids, which in 2017 alone killed more people than the US lost in Vietnam, a problem compounded by insurance companies and for-profit hospitals, who systematically extract as much value as possible from vulnerable patients. The covid-19 pandemic has underscored how significant the privatization of health care is. Pharmaceutical corporations profit less from research and development of new antiviral drugs, a universal influenza vaccine, or treatments for hospital infections: fifteen of the largest eighteen largest companies do not even do it anymore, because medicine for chronic illnesses like heart disease – not to mention addictive tranquilizers and anti-impotence medication – offer higher returns for shareholders (Davis 2006). The industry spends more on advertising than on research. Together with profit-driven cuts to emergency medical treatment, and austerity-driven cuts to the state's emergency-preparedness systems, we should not be surprised at our vulnerability.

This suggests that the current upheavals in liberal polities are, as an empirical matter, a result of what corporations do and are. Corporations embody, rely on, and profit from our mutual dependence, but corporate power is not constrained to operate according to norms of reciprocal recognition and respect. Legitimacy requires that people enjoy independent, resourced lives, free from the humiliations of low status and unequal treatment. Structures of domination create resentment, rage, cognitive distortion, mutual suspicion, and other morbid symptoms of decayed legitimacy. Higher taxes on capital owners, corporate social responsibility initiatives, the return of offshored jobs – the usual suite of liberal technocratic repairs – might be able to alleviate these symptoms, at least in the short term. But unless the underlying economic structure can satisfy political rights it will generate ongoing, chronic backlashes. Unless it can contain production within the limits required for a stable climate, the strategic rationale of social actors will change. Defection from shared commitments will become more rational. Norms and laws will have less binding authority, and fewer people will make sacrifices for anyone but their own family. Incorporation and private capital ownership are social technologies whose ultimate function and rationale – to create jobs, income, meaningful social positions, welfare-enhancing innovations, etc. – strengthens legitimacy, when satisfied. Our current problems cannot be addressed, or even understood, without considering whether these social technologies have not instead become a fetter on the development of our common powers.

REFERENCES

Allen, Robert C. 2011: Global Economic History, Oxford UK: Oxford University Press.

Anderson, Elizabeth S. 2017: Private Government, Princeton: Princeton University Press.

Applbaum, Arthur I. 2020: Legitimacy: The Right to Rule in a Wanton World, Cambridge MA: Harvard University Press.

Arboleda, Martin 2020: Planetary Mine: Territories of Extraction Under Late Capitalism, London: Verso.

Barkan, Joshua 2013: Corporate Sovereignty, Minneapolis: University of Minnesota Press.

Benanav, Aaron 2020: Automation and the Future of Work, London: Verso.

Bond, Philip / Edmans, Alex / Goldstein, Italy 2011: The Real Effects of Financial Markets. Working Paper 17719, Washington DC: National Bureau of Economic Research.

Bratman, Michael E. 1992: Shared Cooperative Activity, *The Philosophical Review* 101(2): 327–341.

Brown, Wendy 2019: In the Ruins of Neoliberalism, New York: Columbia University Press.

Case, Anne / Deaton, Angus 2020: Deaths of Despair and the Future of Capitalism, Princeton: Princeton University Press.

Ciepley, David 2013: Beyond Public and Private: Toward a Political Theory of the Corporation, *American Political Science Review* 107(1): 139–158.

Ciepley, David 2019: Can Corporations Be Held to the Public Interest, or Even to the Law? *Journal of Business Ethics* 154: 1003–1018.

Coffey, John C. 2020: Corporate Crime and Punishment, San Francisco: Berrett-Koehler.

Columbia Journalism School 2017: Two Year Long Investigation: What Exxon Knew About Climate Change, https://journalism.columbia.edu/two-year-long-investigation-what-exxon-knew-about-climate-change (8 March 2021).

Courtwright, David T. 2019: The Age of Addiction, Cambridge MA: Harvard University Press.

Cowan, Tyler 2019: Big Business, New York: Macmillan.

Crisp, Roger 1987: Persuasive Advertising, Autonomy, and the Creation of Desire, *Journal of Business Ethics* 6(5): 413–418.

Crouch, Colin 2011: The Strange Non-Death of Neoliberalism, London: Wiley.

Crouch, Colin 2018: The Globalization Backlash, London: Wiley.

Davis, Mike 2006: The Monster at Our Door, London: Verso.

Dreyfus, Hubert L. / Rabinow, Paul 1983: Michel Foucault: Beyond Structuralism and Hermeneutics, Chicago: University of Chicago Press.

Easterbrook, Frank / Fischel, Daniel 1991: The Economic Structure of Corporate Law, Cambridge MA: Harvard University Press.

Eichengreen, Barry 2018: The Populist Temptation: Economic Grievance and Political Reaction in the Modern Era, Oxford: Oxford University Press.

Fraser, Nancy 2017: Progressive Neoliberalism Versus Reactionary Populism: A Hobson's Choice, in: Geiselberger, Heinrich (ed.): The Great Regression, Cambridge UK: Polity Press, 40–48.

Geiselberger, Heinrich (ed.) 2017: The Great Regression, Cambridge UK: Polity Press.

Gilens, Martin / Page, Benjamin I. 2014: Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens, *Perspectives on Politics* 12(3): 564–581.

Habermas, Jürgen 1976: Legitimation Crisis. Translated by Thomas McCarthy, Cambridge UK: Polity Press.

Habermas, Jürgen 1987: The Theory of Communicative Action, Vol. 2, Boston: Wiley.

Haugaard, Mark (ed.) 2002: Power: A Reader, Manchester UK: Manchester University Press.

Hegel, Georg W. F. [1821] 1991: Elements of the Philosophy of Right, Cambridge UK: Cambridge University Press.

Herzog, Lisa 2013: Inventing the Market: Smith, Hegel, and Political Theory, Oxford: Oxford University Press.

Hussain, Waheed / Moriarty, Jeffrey 2014: Corporations, the Democratic Deficit, and Voting, *Georgetown Journal of Law & Public Policy* 12: 429–450.

Ibsen, Henrik 2016: A Doll's House and Other Plays, London: Penguin.

International Labor Organization 2020: World Employment and Social Outlook Report: Trends 2020, https://www.ilo.org/global/research/global-reports/weso/2020/WCMS_734455/lang--en/index.htm (8 March 2021).

Kant, Immanuel [1797] 1996: The Metaphysics of Morals, Cambridge UK: Cambridge University Press.

Kuttner, Robert 2018: Can Democracies Survive Global Capitalism? New York: W.W. Norton.

Lee, Nick / Broderick, Amanda J. / Chamberlain, Laura 2006: What is ‹Neuromarketing›? A Discussion and Agenda for Future Research, *International Journal of Psychophysiology* 63: 200–204.

Lessig, Lawrence 2011: Republic Lost: How Money Corrupts Politics, New York: Hachette.

Levy, Jonathan 2017: Capital as Process and the History of Capitalism, *Business History Review* 91: 483–510.

List, Christian / Pettit, Philip 2011: Group Agency, Oxford: Oxford University Press.

Marx, Karl [1867] 1976: Capital, Volume 1, London: Penguin.

Marx, Karl 1992: Early Writings, London: Penguin.

McMahon, Christopher 2012: Public Capitalism: The Political Authority of Corporate Executives, Philadelphia: University of Pennsylvania Press.

Mishel, Lawrence 2012: Wedges Between Productivity and Median Compensation Growth, EPI Issue Brief 330.

Mikler, John 2019: The Political Power of Global Corporations, Cambridge UK: Polity Press.

Milanovic, Branko 2019: Capitalism, Alone, Cambridge MA: Harvard University Press.

Mooney, Pat 2018: Blocking the Chain: Industrial Food Chain Concentrations, Big Data Platforms, and Food Sovereignty Solutions, ETC Group Report, http://www.etcgroup.org/content/blocking-chain (8 March 2021).

Pettit, Philip 2002: Republicanism: A Theory of Freedom and Government, Oxford: Oxford University Press.

Pistor, Katharina 2019: The Code of Capital, Princeton: Princeton University Press.

Pound, Jesse 2019: Global stock markets gained $17 trillion in value in 2019, CNBC Online, https://www.cnbc.com/2019/12/24/global-stock-markets-gained-17-trillion-in-value-in-2019.html (8 March 2021).

PwC Global 2020: Global Top 100 Companies, https://www.pwc.com/gx/en/audit-services/publications/assets/global-top-100-companies-2019.pdf (8 March 2021).

Rawls, John 1999: A Theory of Justice, Cambridge MA: Harvard University Press.

Rawls, John 2001: Justice as Fairness, Cambridge MA: Harvard University Press.

Raz, Joseph 1986: The Morality of Freedom, Oxford: Oxford University Press.

Ripstein, Arthur 2009: Force and Freedom, Cambridge MA: Harvard University Press.

Risse, Mathias / Wollner, Gabriel 2019: On Trade Justice, Oxford UK: Oxford University Press.

Rodrik, Dani 2018: Populism and the Economics of Globalization, *Journal of International Business Policy* 1: 12–33.

Rousseau, Jean-Jacques [1762] 1997: The Social Contract, Cambridge UK: Cambridge University Press.

Ruggie, John G. 2013: Just Business: Multinational Corporations and Human Rights, New York: W.W. Norton.

Ryder, Nicholas / Pascolili, Lorenzo (eds.) 2020: Corruption, Integrity, and the Law: Global Regulatory Challenges, London: Routledge.

Scanlon, Thomas M. 2018: Why Does Inequality Matter? Oxford: Oxford University Press.

Schanbacher, William D. 2010: The Politics of Food, Santa Barbara: Praeger.

Shaxson, Nicholas 2019: Tackling Tax Havens. IMF Finance and Development Report, Washington DC: International Monetary Fund.

Shiffrin, Steven 2018: Democratic Law. The Tanner Lectures on Human Values 37, https://tannerlectures.utah.edu/Shiffrin%20Lectures.pdf (8 March 2021).

Singer, Abraham A. 2019: The Form of the Firm, Oxford UK: Oxford University Press.

Stiglitz, Joseph 2019: Corporate tax avoidance: it's no longer enough to take half measures, The Guardian, 7 October (online), https://www.theguardian.com/business/2019/oct/07/corporate-tax-avoidance-climate-crisis-inequality (8 March 2021).

Stout, Lynn A. 2008: Why We Should Stop Teaching Dodge vs Ford, *Virginia Law and Business Review* 3(1): 163–190.

Stout, Lynn A. 2017: The Economic Nature of the Corporation, in: Parisi, Francesco (ed.): The Oxford Handbook of Law and Economics, Vol. 2: Private and Commercial Law, Oxford: Oxford University Press, 337–357.

Streeck, Wolfgang 2014: Buying Time: The Delayed Crisis of Democratic Capitalism, London: Verso.

US Department of the Treasury 2012: The Financial Crisis Response: In Charts, https://www.treasury.gov/resource-center/data-chart-center/Documents/20120413_FinancialCrisisResponse.pdf (8 March 2021).

Vrousalis, Nicholas 2016: Imperialism, Globalization, and Resistance, *Global Justice: Theory Practice Rhetoric* 9(1): 69–92.

Weber, Max 2002: Political Writings, Cambridge UK: Cambridge University Press.

Williams, Bernard 2005: In the Beginning Was the Deed: Realism and Moralism in Political Argument, Princeton: Princeton University Press.

Winkler, Adam 2018: We the Corporations, New York: W.W. Norton.

Wood, Ellen M. 1999: The Origin of Capitalism: A Longer View, London: Verso.

Wu, Tim 2020: Bigger Brother. New York Review of Books, 9 April, https://www.nybooks.com/articles/2020/04/09/bigger-brother-surveillance-capitalism/ (8 March 2021).

Young, Iris M. 2011: Responsibility for Justice, Oxford UK: Oxford University Press.

Zuboff, Shoshana 2018: The Age of Surveillance Capitalism, New York: Profile Books.

SCRIPTS WORKING PAPER SERIES

No. 1 2020 Tanja A. Börzel and Michael Zürn
Contestations of the Liberal Script. A Research Program

No. 2 2020 Hans-Jürgen Puhle
Populism and Democracy in the 21st Century

No. 3 2020 Tanja A. Börzel and Michael Zürn
Contestations of the Liberal International Order. From Liberal Multilateralism to Postnational Liberalism

No. 4 2020 Daniel Drewski and Jürgen Gerhards
The Liberal Border Script and Its Contestations. An Attempt of Definition and Systematization

No. 5 2020 Tanja A. Börzel
Contesting the EU Refugee Regime

No. 6 2021 Claudia Rauhut
Slavery, Liberal Thought, and Reparations. Contesting the Compensation of Slave Owners in the Caribbean

No. 7 2021 Camilla Reuterswärd
Organized Religion and Contestations of the Liberal Script. The Catholic Church, Body Politics, and Anti-Gender Mobilizations

No. 8 2021 Tully Rector
Corporate Power. A Problem for Liberal Legitimacy

All SCRIPTS Working Papers are available on the SCRIPTS website at
www.scripts-berlin.eu
and can be ordered in print via email to
office@scripts-berlin.eu

Hosted by:

Freie Universität Berlin

Berlin University Alliance

In Cooperation with:

Humboldt-Universität zu Berlin

WZB Berlin Social Science Center

Hertie School

DIW BERLIN

ZOiS Zentrum für Osteuropa- und internationale Studien Centre for East European and International Studies

GIGA German Institute of Global and Area Studies Leibniz-Institut für Globale und Regionale Studien

ZMO Leibniz Zentrum Moderner Orient

The Cluster of Excellence
“Contestations of the Liberal Script – SCRIPTS”
is funded by:

DFG Deutsche Forschungsgemeinschaft
German Research Foundation