Corporate Power in a Global Economy

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Introduction

What is the nature of the powers of the corporations in a globalised economy? How can we measure such power? Has there been a shift of power from states to corporations? And if yes, how and why? Political science tends to focus attention on relational power, known otherwise as group politics theories. These theories assumed an existential condition of scarcity that encourages the formation of collective action groups, each intent on advancing or protecting their vested interest in order to compete with one another in the political sphere. Political scientist would use key concepts such as actors, intentions, interest, power, which combined, should have given the analyst a good grasp of causation and outcome.

I adopt a juridical rather than political science reading of power. I suggest that political science view, whereby sheer dead-weight power, translated in social world into one or another form of collective action to achieve an outcome is not the best way of understanding corporate power. My approach centres, instead, on the uncanny ability of economic power to arbitrate rule-bound environment, mores and conventions, to its benefits. They key to this kind of power, I argue, is not ownership but control. The results are that rules that benefit economic power, such as ownership and control that are fully backed by the power of the state are enforced (and in that sense economic power is leveraged), whereas rules that were devised to sustain state power but which are seen as costs, such as taxation and regulation, are avoided. To achieve that, economic power must be visible to those rule that benefit it, and at the same time invisible, to the extent that is possible, to those rule that do not.

***Theories of IPE***

The social sciences are replete with apparently deep, unbridgeable, epistemological positions – some even prefer to use the more grandiose term, ‘ontological’ propositions -- and these divisions found their way into the study of IR and IPE. Perhaps best known are the debates between rationalism and continental philosophy, positivism, post-positivism and anti-positivism (or deep constructivism), realism versus the rest: liberalism, Marxism; quantitative, qualitative and interpretative methods, the British versus the American school, and so on.

I view these typologies somewhat differently. I consider International Political Economy (IPE) as a synthetic field of study. The different schools of IPE are simulated encounters between diverse theoretical universes, typically drawn from economics and/or comparative and international politics. In doing so, they draw their conceptual frameworks from elsewhere (economics, comparative politics, sociology, anthropology, psychology). The theory is that there is a marked difference between behaviour of economic agents that are operating in an imagined smooth space called ‘the market’ or ‘international economics’, and their behaviour in a striated space divided among nation-states.

In one scheme, the so-called Westphalian construction of the world, theories of international politics are predicated on the idea that from about the seventeenth century jurisdiction over the earth is divided among discrete territorial entities, and furthermore, that these divisions are a key determining factor in politics. This rather absolutist conception of sovereignty has gone through a subtle reformulation in the hands of IPE scholars. The liberal states, which is the principle object of inquiry of conventional IPE, sees its ‘sovereignty effectively limited by holders of property rights’ (Robé, 2009, 862). Sovereignty is limited, therefore, spatially (at the borders), and legally, at the limit of the public sphere. In this formula, states (or governments) are forced to interact not only with other states, but also with private sphere actors that are located in their territory (domestic politics) or other territory (transnational politics).

Political science theories replicate this perspective by representing the key dilemmas in the modern world as a series of domestically circumscribed principled battles over resource allocation between centralized systems (states) and decentralized systems (markets). The former is viewed as the realm of the public sphere, or the political sphere; the latter is the private realm or economic sphere that consist of individuals I pursuit of material goals and happiness. Economic theories from Adam Smith onward provided a powerful argument in support of political systems that would give preferences to a decentralized system of resource allocation. Their argument, in a nutshell, was that a decentralised orders are far more responsive to individual needs than centralised orders. Furthermore, they argue, decentralized systems of resource allocation was likely to encourage personal responsibility, freedom and happiness.

Marxist theory has radically different views on the matter. Marxist analysis centres on the concept of an averaging of national or international corporate profit rates, and the idea that business cycles as well as deeper capitalist crises are traceable to the movements in corporate profitability. Decline in corporate profit rate across the board triggers crisis-mode. The ‘ruling classes’ would seek on those occasions to recapture an adequate profit rate, typically at the expense of the rest of society. Deep crises of the sort that were experienced during the 1870s, 1930s, 1970s or the one experienced nowadays call for radical institutional reorganisation in the form of new ‘mode of regulation’ of capitalist markets. Modes of regulations are understood as profound re-ordering of the relationships between the public and private spheres in the liberal state. Such wholesale reordering of the public and private spheres of the kind that had been witnessed following the 1930s Great Depression (Fordism), are complex, complicated and diverse. Many observers however, reject the theory on the ground that conventional Marxist vision of political action, including the concept of the ‘ruling classes,’ conveniently gloss over some very challenging ‘collective action’ problems. How do the ‘ruling class’ in complex and diverse economies, which in truth is nothing but a theoretical proposition, able to maintains a common vision and sustained political action over decades in support of an unknown future? How indeed?

OIE theory, in contrasts, is highly legalistic in orientation. It centres, as John R. Commons argued, on the concept of the transaction, or the point of exchange of property titles which may, or may not, be accompanied by an exchange of goods or services. Economic transactions take place, argues Commons, simultaneously in two spheres, the sphere of actual delivery of goods or services, and a legal sphere where the transfer of ownership takes place (Commons, 1959 [1924]). Crucially, OIE maintains that the latter determines the former.

From a juridical and institutional perspectives, the lines separating private and public realms, politics and economics, are historically constituted ‘variables’ that have been (and still) are subject of intense political contestations. Considering that the size, organisation, liberties and institutions of the private sphere evolve and change in a political context, it does not make sense to isolate a politically neutral private sphere and discuss it purely in economic terms, From such perspective, corporate power evolve within the context of the emergence of a decentralized system of resource allocation, known as capitalism, whereby one type of corporate legal personality that make claims over territorial sovereignty (called states) bestow upon another corporate form, economic and social corporations (such as religious associations), the right to make decisions over societal savings and investments. States and markets becomes then an intra-corporate relationship that is guided partly by juridical and institutional considerations.

As the private corporate form grew in size and achieved oligopolistic position in their respective markets, the original logic of ‘classical’ theories of economics appeared less convincing. Large corporations are in addition were controlled by powerful individual or families. Corey calculates that the J.P. Morgan group alone controlled about 26% of US corporate assets, while the Rockefellers interests combined controlled approximately 18% of the rest of US corporate assets during the 1920s (Corey, 1930). In these circumstances, ‘classical’ and ‘neoclassical’ theories of decentralized orders were unlikely to correspond to the observable world.

 The question becomes, then, one of political economy. In one interpretation, the re-emergence of the archaic concept of political economy in the social sciences was closely tied to the rise of oligopolistic power. Social scientists were curious to know whether and how concentrated financial and economic power shape the environment to advance their interests, and whether such power concentration produce adverse systemic effects, such as lower economic growth, higher frequency of financial and economic crises, and so on.

An economic analysis of the business world should start, therefore, with a rigorous analysis of the transaction and the parties to the transactions, in this case, corporations and firms. Such an analysis yields a different set of generalization, or a theory of you wish, of the corporate world.

***OIE and Corporate Power***

Demestz (Demestz, 1988) notes, that classical economic theory is concerned less with competition, as often it is often thought, and more with the concept of decentralized order, which it opposes to the familiar order of its day (18th century) centralized or top-down order. Economics never developed a fully-fledged theory of the firm – something that only began, and that is debatable as well, since Roland Coase (Demestz, 1988). A default position has emerged of the firm as a proxy economic actor. The firm is understood accordingly as a profit maximising, single entity utility optimising operating for the benefits of its shareholders and generating income slowly as a consequence of its financial transactions with third parties. The theory assumes that such action taking place under the apparently disinterested direction of a board of directors who disregard their own personal welfare in the interests of the corporation and its owners to ensure that the interests of those owners alone.

It is generally believed that these utility maximising actors are profit oriented and would seek either to maximise profits or at the very least ‘beat the average’ profitability in their respective sectors. But theory does not pay sufficient attention to the differences between the concepts of pre-tax and post-tax profit. The presumption is that pre- and post-tax positions are closely correlated, only that the post-tax position of an entity is simply its pre-tax minus the necessary tax that is paid to government. Post-tax profit can, in this perspective and given known statutory tax rates, be read off the pre-tax position. Since pre-tax and post-tax profits are behaviourally the same, they can be treated for all intent and purposes in the same way.

Another commensurate of assumption is that utility maxising firms do not care about national borders or the nationality of their location, registrations or employees. National boundaries are simply one of those facts of life that firms need to adapt to. From the firm’s perspective, local regulations and controls are seen as hindrance or ‘extra’ costs. Firms would seek to locate wherever their market is, and would try and adapt to local conditions to the best they can. The assumption seems to be that transactions that directly or indirectly have cross border implications are both marginal and do not affect the basic structure or goal of the firm.

An institutionalist position begins from a different set of assumptions. Jean-Philip Robé maintains that one of the great, and arguably most problematic, innovation of Western civilisation was the concept of the corporate legal personality. A system of law that had developed to adjudicate among people was extended therein to include two type of corporate entities, states and corporations. An OIE approach begins from the study of corporate power from the analysis of the legal personality of the corporation.

***The legal personality of the corporation***

The concept of the legal personality of the corporation is highly controversial. An important debate ensued among jurists whether states or corporations are ‘real’ persons, or mere terms of convenience that was develop to approximate existing system of laws.

The debate appears rather esoteric, but it had enormous implications to the nature of corporate power in the modern world. In the word of Robé,

‘Corporations are apart among the legal instruments used to legally structure firms. The reason for this is that they are treated by the legal systems as if they were “real” persons (with some adaptations), i.e. they can participate in the legal systems through the phenomenon of “juridical personality”. They can own property, have debts, contract, sue and be sued in courts, get bankrupt, etc. –i.e. they can “function” in the economy like human beings because they are treated by the legal system as if they were “persons” (Robé, 2011, 11).

Similar discussions are taking place in public international law. Hans Kelsen, for instance, argues that the state is a ‘real’ legal personality in the sense that individuals’s legal status is separate from their biological existence. ‘’The relation of law and State is regarded as analogous to that law and the individual. Law ‑‑ although created by the State ‑‑ is assumed to regulate the behaviour of the State ... just as there is the juristic concept of person beside the biological‑physical concept of man, a sociological concept of State is believed to exist beside its juristic concept and even to be logically and historically prior to the latter" (p.182).

Why is this debate important? To take one instance, until 1965 companies and individuals were considered the same and hence paid the same type of taxation in the UK. But since individuals and corporations are not the same, the former are unified physical bodies and can be only at one geographical point at any moment in time, the latter are spread among different jurisdictions, British Courts had to grapple with the thorny question of the spatial difference between these two for tax purposes. The Courts developed their position on tax residencies by analogy to real persons. They settled on the idea that a person’s brain must be the most important organ and concluded, by extension, that companies were physically located for tax purposes where the equivalent of their brain was located i.e., their financial and operational management.

This proposition was developed through a series of test cases that took place in late 19th century throughout the early 20th. In a famous case of the Egyptian Delta company of 1929, it was shown that although the company was registered in London, its operational and financial headquarters were located in Egypt.[[1]](#endnote-1) Hence, the Courts concluded, the company was not tax resident in the UK. In doing so, British Courts unwittingly created the facility of a system of offshore registered of corporations, which was subsequently used for tax avoidance purposes so that companies could transfer registration to low tax jurisdictions without showing any substantial activity in these jurisdiction. As we will see later, this is the principle used by Apple Inc. as its principal tax avoidance scheme.

Another interesting example of the implications of such debate is noted by Paddy Ireland (Ireland, 2014). Ireland returns to judge Warren’s grumbling observation of the prevalent confusion among 19th century English judges who referred to corporation as ‘they’ as opposed to ‘it’. The judges assumed, in other words, that corporation were mere vehicles in the hands of their owners, the shareholders. This was odd considering that the complete separation of the legal entity from its shareholders was inherent in the act of incorporation. It was only in the early 20th century that English judges began to treat the corporation as ‘it’, conceptualised as a property-owning legal person, completely separate from its shareholders.

The confusion, however, worked in the long-run for the benefit of the shareholders. Ireland argues that the concept of the ‘company’ in English law was an abridgement of the older joint Stock company (JSC) law. Crucially, JSC Stock companies were seen as economic, not a legal form. They could be incorporated or unincorporated, much depended on their economic nature. The confusion between the two formats of ownership became significant in time as the JSC created a situation of the best of both of worlds for the shareholders. On the one hand, shareholding have access to financial benefits of the corporation, and have a say in its control of its management. At the same time, company law ensured that shareholders had no residual liabilities, as the company is conceive as an asset-owning legal person completely separate from its share-holders liability.

In both of these instances, conventions and rules have emerged that clearly benefits shareholders -- but it is difficult to argue that their privileged position emerged as a result of collective action.

***The Firm and the four dimension of the sovereign space***

Corporations are licensed by a sovereign corporate body to operate within an imagined four dimension national territorial space. The national space contains the three physical dimensions of space as countries have a depth and a defined height, in additional to their territorial coverage, national spaces are projected into a fourth dimension, legal space. Crucially, different countries define their projection into that fourth dimensions differently.

Sovereignty rules create a barrier to internationalisation, which are perhaps best understood through the lenses of the conceptual distinction between firms and the corporations. Robé insists that the economic unit, which may or may not operate through different jurisdictions, is not the corporation but an entity that he defines as ‘the firm.’ This is not a legal definition of firms, but perhaps a convention that I am happy to adopt. The rules of incorporation implies that firms that wish to operate internationally must organise their corporate structure as a string of independent legal entities or corporations that may or may not be united together through series of contractual relationships, some of which are visible and some are not. Modern firms consist, as a result, of many such corporations, at times numbering in the thousands. These firms are clearly important economic actors, but strictly speaking, they lack legal existence. In other words, legally speaking, there is no such thing as a ‘multinational corporation’.

 The discrepancy between the legal status of the corporation and economic agency of the firm is glossed over in standard economics – or the economics that does not distinguish between pre-tax and post-tax profit situations. But in the business world, a world that is concerned primarily with post-tax positions, the discrepancy has proven to be crucial and serves as the mainstay of so-called legal corporate tax avoidance. In essence, tax minimisation techniques exploit the ‘blind spot’ in the legal foundation of the corporation that results from the differences between the economic control of firms and the legal foundations of territorially bounded companies. (They also exploit the separation shareholders from the firm for liability purposes, so if and when an aggressive tax scheme proves untenable, the shareholders are none the worse, whereas they enjoy the fruits of tax avoidance as long as it lasts– in that way existing legal opinion create a perverse incentive structures for corporate tax avoidance)

Companies are bound by national rules and regulations, and if those are shown to be duly observed, the corporation is considered to have acted within the law. Firms, on the other hand, are organisations that are put together by accountants, typically one of the Big Four accounting firms (Deloitte, PwC, Ernst and Young, KPMG), as a string of companies registered in different locations. Most household names firms typically span a number of territories and are used to link companies from different jurisdictions in such a way as to minimise their overall tax footprint. All the evidence suggest that considerable resources are spent, and indeed, many corporate entities are created for no other purpose but tax avoidance. The business of setting up such structures is highly profitable, estimated recently by a UK parliamentary committee to turnover of $US 55 billion.

Let us take the example of Apple Inc. The following is taken from a detailed study of the Levine Congressional Committee (Apple, 2014; The Permanent Subcomittee on Investigations, 2013). It appears that Apple Inc. has created three offshore corporations which receive tens of billions of dollars in income, but which have no tax residence – neither in Ireland, where they are incorporated, nor in the U.S., where the Apple executives who run them are located. ‘Apple has arranged matters so that it can claim that these ghost companies, for tax purposes, exist nowhere. One has paid no corporate income tax to any nation for the last 5 years; another pays tax to Ireland equivalent to a tiny fraction of 1 percent of its total income.'

One of Apple's shell companies is Apple Operations International (AOI). AOI directly or indirectly owns most of Apple's other offshore entities. Under Irish law, only companies that are managed and controlled in Ireland are considered Irish residents for tax purposes. Since AOI is only incorporated, but not managed or controlled, in Ireland, it does not count as an Irish tax resident. Under U.S. law, on the other hand, a company is generally taxed on the basis of where it is incorporated, not where it is managed and controlled. Since AOI is not incorporated in the U.S., it is not tax resident in the US either. AOI, therefore, is tax resident nowhere. In fact, AOI has no employees either.

The second corporate shell set up by Apple in Ireland is Apple Sales International (ASI). ASI holds the economic rights to Apple intellectual property rights outside of the U.S. From 2009 to 2012, its sales income amounted to $74 billion. Similarly to AOI, the company is incorporated in Ireland but operated from the US. ASI only paid a minimal amount of tax to Ireland. For example, in 2011 it paid $10 million against $US 22 billion in revenue. Apple's third subsidiary, Apple Operations Europe (AOE), sits between ASI and AOI. It, too, has not tax home.

Not unlike many firms of its kind, Apple is taking advantage, in other words, of discrepancies in incorporation and tax residency rules between different countries and the fact that countries project their sovereignty into a common legal-juridical space differentially. The US and Ireland maintain divergent positions of their territorial boundaries in the fourth dimension discussed above. The US assets its sovereignty on a territorial basis, Ireland followed the UK’s principle of conceiving companies by analogy to real persons. The divergence is the conception of the relationship between the corporation and the legal space, combined with the differentiation between Apple as an economic unit and Apple Inc. as a string of corporate entities, is arbitrated by ‘Apple’ (the firm) to achieve a rare and highly sought after position of having virtually no-residence for tax purposes. Compared with more sophisticated techniques used by other household name firms, this is one of the simplest schemes of tax minimisation, but one that makes full use of multi-jurisdictional tax arbitrage. Needless to say, it is all legal.

 Legal techniques of tax arbitrage are taking advantage, therefore, of the discrepancy between the legal foundation of the corporation, the economic logic of the firm and the divergent projection of sovereign rules into the fourth dimension. Rather than view the discrepancy between the legal personality of the corporation and the economic rationle of the firm as a problem, firms have learned to take advantage by re-arranging their legal presence in such way as to minimize taxation.

***Ownership and control***

Another important factor in the institutional make-up of contemporary capitalism is the all- important innovations of the limited liability company, and more specifically, the holding company. As far as I can tell, the holding company concept was innovated more or less concomitantly in two separate countries in the late 19th century, the US and the Netherlands. Further deregulation of corporate control in the U.S. took place in 1889, when New Jersey allowed the facility of company ownership of other companies. These institutional innovations produced an institutional infrastructure of corporate control that encouraged great concentration of capital funds of many investors under the control and management of small groups. Furthermore, and this is crucial to understanding the nature of modern capitalism, controlling groups typically have small stakes compared to the capital under management and control. In effect, these institutional structures serves, therefore, to leverage control under pyramidal structures. It also means that ownership, income and control need to be unpacked further.

 There is barely conceptual literature on the holding company. I came across important study written by Bonbright and Means in 1932 (Bonbright & Means, 1932). Crucially, it formed part of the background information of the Roosevelt administration brain trust. Bonbright and Means take note of the quick expansion in use of holding companies in the late 1920s. They argue:

‘The public significance of the holding company, as distinct from the simple business corporation is twofold. In the first place, the holding company is the most effective device that has ever been invented for combining under a single control and management the properties of two or more hitherto independent corporations… holding company, perhaps more than any other legal device, is being used by business men as a means of avoiding various forms of social control’ (Bonbright & Means, 1932, 5-6).

The continue,

‘partly because it is protected from interference by our traditions of constitutional law, and partly because it often extends beyond the jurisdiction of any one state, the holding company has so far been largely, though not completely, exempt from the restrictions to which other business corporations have been subject’ (Bonbright & Means, 1932, 6)

 The holding company has a place of honour in the offshore world. It is the mainstay business of the offshore sectors of Ireland, Luxembourg, the Netherlands, joined now by a whole host of others such as Malta, Cayman Islands and the like.

 The pervasive use of the facility of the holding company leads to me to question the supposed centrality of the firm, as the core economic unit as well! In other words, I believe that the so-called multinational corporations are simply another institutional layer that is arbitrated as well for various purposes. Indeed, we find a more complex typology of ‘actors’ in modern capitalism that consists of corporations, firms, shareholders and what I would call, ‘controlling interests’. The concept of economic logic lies with this elusive controlling interest, who may prefer at times to sacrifice whole firms, in support of their goals.

Paddy Ireland’s discussion above alerts us to the crucial difference that was introduced already by Berle and Means between share ownership and corporate ownership. Robé summarised this position:

‘shareholders do not own *firms* and nor do they own *corporations*: they own *shares* issued by corporations. The shareholders enjoy the privileges of the owner towards what they own: the shares. They don’t and can’t have these privileges towards the corporation having issued the shares. They own neither corporations nor firms; no one does’ (Robé, 2011, 4).

The truly innovatory aspect of the concept of the legal personality of the corporate structures, states and firms, is their ultimate independence from the people that make them up. As a result, one cannot ‘own’ a state or a corporation, one can merely control them.

Let us take the case of the state, which is a fictional legal personality and demonstrates so vividly the problem of ownership. The theory is that states have complete and absolute sovereignty over territory and its people. At the same time, modern theory of sovereignty assumes that the ‘people’, those who are subject of that corporate personality called the state, are the ultimate sovereign of that state. The ‘people’, are therefore simultaneously sovereign and subjects of the state, and the state is simultaneously sovereign and subject of the people. This is a logically absurd – but it seems to work. There is no notion of ownership here, but of control of the machinery of the state through the political process.

In this analysis, there are two reasons for one to bother with share ownership, and each leads towards very distinct type of behaviour. One reasons for share ownership is to have access to the income the benefits that accrue from rising share-value and/or dividends. The other reasons for share ownership is to have seats on the firms’s board in other to influence the firm’s behaviour.

 If share ownership was traditionally intended to achieve the first goal, access to the rise in share-value and/or dividends, then in time the business logic suggests that share ownership maynot be the best way of going about it. Ownership is an intermediate step towards speculative ‘investment’ that has many disadvantages. It may be cumbersome in the sense that one has to pay brokerage fees, profit making is aligned with rise in share value, but it is very difficult to make money of negative bets, ownership ‘locks’ money in less liquid assets. On top, many countries impose capital tax on rise in share value. But ‘investors’ are interested in making profit, not in owning companies, and they prefer to make profits from both rise and fall in the value of shares.

Firms, in turn, have shareholders who may be located in many jurisdictions in the world. There is a tendency now for a certain class of share-ownerships to be ‘owned’ for very short time, down to seconds or milliseconds, due to techniques such as high frequency trading. Indeed, trade in stocks and shares spawned its own, and far larger in terms of volume, parallel world of trading (or betting) on share movements known as financial derivative. For that purpose, a parallel world of financial derivatives has emerged, worth notionally in excess of US$ 600 trillion nowadays.

Clearly, the concept of ‘ownership’ in these cases is a legacy term that does not capture what is going on. ‘Investors’ are not interested in property ownership as it is normally understood. It also shows that the relationship between ownership and profit making is not as straightforward as assumed.

Shares ownership for the second goals is different altogether. It suggests that focus on the firm may be misleading as well. For instance, new financial techniques have seen the emergence of what is called ‘empty ownership’ in the words of

‘The derivatives revolution in finance, especially the growth in equity swaps and other privately negotiated ("over the counter" or "OTC") equity derivatives, and related growth in the stock lending market, are making it ever easier and cheaper to decouple economic ownership from voting power. Both company insiders and outside investors (especially hedge funds) are taking advantage of this new opportunity. Sometimes they hold more votes than shares -- a pattern we call "empty voting" because the votes have been emptied of an accompanying economic interest. Persons with more votes than economic interest are said to be "long the vote." In an extreme case, an investor can be long the vote while holding a "net short" economic position, which gives the investor an incentive to vote in ways that reduce company value’.

 Whereas economists are fond of concepts such as Pareto optimality, supply and demand curves, marginal utility and efficiency, business speaks in a language that is more familiar to students of international relations (like myself), the language of battles and war. Business literature is replete with military terms such as tactics and strategy, attack, defence, control, competitive alliances and secret negotiations. And so on. A key strategy in this war is leverage and pyramidal structures.

The technique of leverage can work as follows. (I am presenting the simplest structure). Let us take a firm, firm A, currently capitalised at US$ 10 billion. Controlling interests can purchase 51% of shares in the company, or US$ 5 billion, to achieve control over the entire company (or leverage of 1:2). Controlling interests can then create a holding company, company B, preferably in the Netherlands or Ireland for tax purposes, and sell half of the shareholding of the of the US$ 5 billion holding company so that it maintains only 51% in that holding company. They can also issue bonds, for say, US$3 billion in holding company B, and then sell nearly US$ 1 billion of the holding company’s stock in the market. At this stage, those controlling interests have invested effectively US$ 1 billion in order to control in effect a US$ 10 billion enterprise. They can then create another layer through holding company C that my dilute again holding by a factor of 10 again. By this stage, 3 tier pyramidal structure the leverage of holding reaches 1 x 100. Israel is now introducing laws to limit pyramidal structures to 3 tier, down from 6 or 7 tiers that are the more typical of its oligarchic interests.

Such pyramidal structures are very common and serve to leverage control over great amount of capital, combined with minimal investment. Although there is scant research on the subject, all the evidence suggests that firms, even very large firms, are sometimes used as pawns or ‘cash cows’ by controlling interests in order to maintain such pyramidal structures. The firm may have an interest in survival, as economists believe, but controlling interests may have a different set of strategies and tactics that may, or may not, benfit the firm in the long run.

The analysis suggests that the powerful ‘actors’ in the business world are neither firms nor corporations, or even the majority of fleeting owners of various corporate structures, but the somewhat amorphous and legally confusing groups that I describe as ‘controlling ownership structures’. These controlling ownership structures tend to operate through pyramidal share ownerships that are used to leverage their power within the corporate world. Such ownership structures are often in control of a great many firms, let alone corporations, and may choose to exercise their power through one legal unit controlling the rest (holding companies), or may devise complex sets of controlling units, located in various tax havens.

The power of the corporation

I started this discussion with a simple set of questions about the nature of corporate power. The conclusion of this discussion are two:

1. A complex rule-bound environment of the international political economy creates many opportunities for arbitration. These are exploited by businesses in order to advance their interests.
2. Formal-legal entities are used as vehicles for arbitrations, but they should not be confused for the economic actors themselves.
3. The irony is that a rule-bound environment encourages the ‘actors’ to remain in the shadow.

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1. ‘In England the decisions in Cesena Sulphur Company Ltd v Nicholson [**(1876) 1 Ex Div 428**](http://www.saflii.org/cgi-bin/LawCite?cit=%281876%29%201%20Ex%20D%20428) and Calcutta Jute Mills, Ltd v Nicholson [**(1876) 1 Ex Div 437**](http://www.saflii.org/cgi-bin/LawCite?cit=%281876%29%201%20Ex%20D%20437) marked the beginning of the elaboration of a different doctrine in England. The company concerned in each case was a joint stock company incorporated in England. In both cases the ratio decidendi was that the test of a company's residence for purposes of Income Tax was that of control; a test later established beyond doubt by the House of Lords in the case of De Beers Consolidated Mines, Ltd v Howe [**(1906) AC 455.**](http://www.saflii.org/cgi-bin/LawCite?cit=%281906%29%20AC%20455) In Egyptian Delta Land and Investment Co., Ltd v Todd [**(1929) AC 1**](http://www.saflii.org/cgi-bin/LawCite?cit=%281929%29%20AC%201) the Income Tax Commissioners held that an investment company registered in England, but controlled from abroad, was not resident in England. In an unanimous judgment the Court of Appeal held that a company regulated by the 1908 Companies Act had’ (South Africa: Supreme Court of Appeal, 1990) p.36 [↑](#endnote-ref-1)