Voice, Exit… Arbitrage: The Politics of the Modern Multinational Firm

Ronen Palan

To be published: European Journal of International Relations

Abstract

Multinational Corporations (MNCs) are often seen as singular organisations with a parent company controlling branches in other countries. But this is an abridged version of decentred corporate groups that are structured as clusters of separate legal entities in several jurisdictions held together by equity ties. The article argues that while the abridged version of the MNC matches those aspects of those organisations that are of interest to economists, it fails to capture the principal mechanism of interaction between business and the institutional and political environment. I argue that the abridged version is a barrier preventing political scientists from asking salient questions about the power of MNCs and their shareholders, but surprisingly, the form of power used by decentred MNCs bears an uncanny resemblance to the discussion of power Foucault developed in his history of sexuality. I conclude by arguing that the failure to develop a theory of arbitrage as power goes back to the core of Foucault's work, to the question of epistemological framing.

Introduction

In *Seeing Like a State*, James Scott writes: 'I began to realize, rather like abridged maps... [political science and modern statecraft] did not successfully represent the actual activity of the society they depicted….[T]hey represented only that slice of it that interested the official observer' (Scott, 1998, 3). The same can be said of the treatment of multinational corporations (MNCs) in economics and political science. These organisations are typically viewed as singular productive units that due to their sheer size and financial resources ’play significant roles in shaping the global economy’ (Kim and Milner, 2020). While this perspective is not wrong, it offers an abridged version of what in reality are decentred corporate groups organised as clusters of independent companies linked to one another by equity ties.

In theory, a multinational can organise itself as a singular organisation with a parent company controlling branches in other countries,[i] But most known multinationals opt for a different arrangement (Robé, 2011). In the words of Itzhak Hadari, the typical ‘multinational corporation consists of a cluster of separate legal entities in several jurisdictions, which exist only if the laws of each jurisdiction recognise them as legal entities…. [It] is a business and economic creature, and the usage of that term is presently found only in those fields’ (Hadari, 1973, 754). The argument I put forward in this article is that the abridged version of the MNC is preferred because it matches the aspects of those organisations that are of interest to economists. The abridged version can be misleading, however, when it comes to the analysis of the way MNCs interact with the legal, institutional and political environment.

Economists and political scientists have long recognised the importance of the state to a functioning market economy. ‘The existence of a state is essential for economic growth’, argues Noble prize laureate, Douglass North, but at the same time, it is ‘the source of man-made economic decline’ (North, 1982, 20). North brilliantly analysed the reasons why states are unlikely to produce efficient property rights regimes (North, 1982, 28), and others have shown that markets are subject to state meddling and distortions (Posner, 1974; Stigler, 1971).

How is business supposed to operate in conditions of several such ‘inefficient’ regimes, each sporting its own set of inefficiencies? Political scientists have endeavoured to answer this, using the perspective of an abridged version of the MNC. They have amassed a great deal of solid evidence showing that multinationals employ a combination of coercive, consensual, and agenda control tactics, working with regulators for years and making their voices heard. They often threaten and sometimes exercise their own version of the nuclear threat, exit (Dörrenbächer and Geppert, 2011; Hill et al., 2013; Kelleher et al., 2009; Kim and Milner, 2020; Nye, 1974).

What the abridged version of the MNC tends to leave out is a third option. MNCs can establish a subsidiary or an affiliate in a different country or countries and transact through it, thus avoiding or evading undesirable rules and regulations. The third option is easier to execute, cheaper, and certainly a less politically fraught way of achieving the same aim: optimising a regulatory environment to suit the interests of the group and its shareholders.

I am referring to the widespread use of schemes known as *jurisdictional arbitrage* (Barzuza, 2011; Dine, 2014; Kerber, 1999; Muchlinski, 2001). These schemes typically involve two or more subsidiaries located in diverse jurisdictions and carefully designed to exploit gaps, loopholes, or omissions in the laws of one jurisdiction to avoid the rules and regulations of another. Some tax arbitraging schemes have achieved notoriety, labelled with pub crawl terminology such as Double Irish or Dutch Sandwich, and more recently, Double Irish and Single Malt (Coyle, 2017; Kelly, 2015; Loomis, 2011). Several additional tax mitigation schemes (Zucman, 2014) are used by corporate groups to mitigate against other unwanted regulations, such as liability rules that may send managers to jail or financial and environmental regulations. From the corporate groups' perspective, these tactics are essential tools of planning and adaptation to the risks and uncertainties produced by the state system. Jurisdictional arbitrage schemes are used, therefore, to hedge against future changes in laws or unanticipated political instabilities and thus maintain a sense of control of the institutional environment in which the corporate group operates.

Organisations who can achieve a degree of control over the environment and have the option of selecting the kind of institutional environment and the rules that apply to them, and only to them, have a very powerful weapon. Controlling one's institutional environment and/or achieving a degree of autonomy from the will of others (i.e., the will of the state) is the very definition of power. From very early on, businesses have sought this power. At the beginning of the 20th century, US President Theodore Roosevelt chastised 'bold and ingenious schemes by which [the] very wealthy clients, individuals or corporate, can evade the law which are made to regulate the interest of the public' (quoted in Fleischer, 2010, 230). In the 21st century, President Barak Obama remonstrated with organisations who sent 'a phalanx of lobbyists' to persuade the government to change the law or employed 'an army of lawyers and accountants to help evade the fee' (Fleischer, 2010, 228).

The impact of arbitraging techniques on power distribution has been known for a long time. However, while political scientists have little difficulty recognising that the voice and exit tactics employed by the corporate world are 'political mechanisms' (Hirschman, 1990, 19), they do not seem to consider arbitrage to be a technique of power.[ii] I argue that the abridged version of the MNC is a barrier preventing political scientists from asking these questions. In show that format of arbitrage as power echoes Foucault's discussion of power in *History of Sexuality*. Admittedly, Foucault was interested in the realm of 'discursive production', not in the world of scarcity or as he called it, 'power from above'. However, both sexual repression and MNCs operate within a man-made repressive apparatus; one is called sexual morality, the other societal rules and regulations. Both develop similar tactics of power.

A Question of Epistemological Framing

I argue that the failure to develop a theory of arbitrage as power goes back to the core of

Foucault's work, to the question of epistemological framing. It is almost certain that Foucault was not thinking about anything remotely related to modern MNCs. Instead, he consciously and decidedly wanted to move away from traditional notions of power. Foucault viewed conventional power forms as 'only the terminal forms power takes'(Foucault, 2019, 92). Yet as I will show, his articulation of power relationships can be harnessed to explain the more traditional concepts of corporate power, suggest reasons why jurisdictional arbitrage techniques are excluded from such a conception of power, and offer insights into how arbitrage can be viewed as a tactic of power.

Foucault was interested in behavioural patterns that sustained repression, self-discipline, and unequal distribution but were not commonly associated with power. He linked the failure to view these behavioural patterns in terms of power to questions of epistemological framing. Power, he argued, 'is proportional to the ability to hide its own mechanism' (Foucault, 2019, 86). The more power is able to masquerade as norms of behaviour, or better yet, as an attempt at improvement, moral progress, and the like, the more successful it is.

In his magnum opus, *History of Sexuality,* Foucault devotes considerable space to articulate what he has learned from the history about power. An often quoted, if equally often misunderstood sentence captures his ideas:

> It seems to me that power must be understood in the first instance as the multiplicity of force relations immanent in the sphere in which they operate and which constitute their own organization; as the process which, through ceaseless struggles and confrontations, transforms, strengthens, or reverses them. (Foucault, 2019, 92)

The key to unlocking these complex sets of related arguments is Foucault's concept of the 'sphere.' A sphere of action is not an objective or observational sphere, but an a priori reorganisation of space or activities, a framing idea that serves as the lens through which relationships, including relationships of power, are viewed.

Although Foucault's referencing is problematic, to say the least, I believe his notion of the sphere may draw on Martin Heidegger's discussion of modern science. Heidegger thought Newton's great achievements were made possible by an epistemological reframing of the sphere of physics. Newton, Heidegger argued, somehow grasped that what were hitherto considered two separate realms, the earthly and heavenly realms, were one and the same. Once the unified sphere of physics was established, Newton was able to ask a question that his predecessors were unable to ask: What is the relationship between falling apples and the moon that hovers behind the apple tree that never fell to earth? Newton ran a thought experience and asked himself what happens if the apple is shot into the distance with increasing force. He concluded that with increasing force, the apple would land on earth at greater distance until a certain point of velocity, which Newton was able to calculate, at which it would not. Newton concluded the moon was 'falling' as well, but it was travelling at such velocity that it would never fall to earth.

From this, Heidegger took the notion that modern science is distinguished not by a method or methodology but by a procedure, and procedure 'already requires an open sphere in which it moves. And it is precisely the opening up of such *sphere* that is the fundamental event in research'(Heidegger, 1977, 150; my emphasis). In other words, an a priori epistemological reframing akin to axiomatic assertion opens a whole new sphere of questions and answers. Foucault deployed the same idea in the social sciences and applied it to the question of power relationships. The epistemological foundation of a sphere tacitly establishes, Foucault argued, the nature of the 'multiplicity of force relations' that are 'immanent' to that sphere and make them legible. Once a sphere is established, power becomes legible as 'ceaseless struggles and confrontations, transforms, strengthens, or reverses" among these force relations. In other words, once consensus is reached on the nature of the sphere of activity, the logic of its power relationship unfolds, but at the same time, other power relationships disappear.

The Two Faces of the MNC

Before we turn to an 'archaeology', as Foucault grandly called his methodology, of the origins of competing epistemological spheres, let us start with a primary archaeological artefact, the MNC. In a response to a suspected case of tax avoidance and state subsidies brought by the European Commission, the Apple corporation described itself in the following terms:

> [The Apple Group] designs, manufactures and markets mobile communication and media devices, personal computers and portable digital music players. It sells a variety of related software, services, peripherals, networking solutions and third-party digital content and applications. Apple sells its products worldwide through its retail stores, online stores and direct sales force, as well as through third-party cellular network carriers, wholesalers, retailers and value-added resellers. In addition, Apple sells a variety of third-party products compatible with Apple products, including application software and various accessories and peripherals, through its online and retail stores. (European Commission, 2016b, 7)

The description corresponds to what most people would consider to be "Apple." Apple is a business organisation engaged in 'producing saleable outputs for customers' (Hirschman, 1990, 3). This version corresponds to the prevalent notion of the sphere of economic life. Let us call this an abridged version of the Apple corporation. Yet on the same page of the submission, Apple presented another version of itself.

> The *Apple Group* is composed of Apple Inc. and all companies *controlled* by Apple Inc. (thereafter collectively referred to as "Apple"). Apple is headquartered in the

United States of America. (European Commission, 2016, 2.11, 40, my emphasis)

By saying this, 'Apple' informs the European Commission that the first version is an abridged version of a more complex reality. 'Apple' is not a singular organisation, but a network of companies controlled by a holding company registered in California. [iii] A network of companies that makes up a group known as MNCs tends to be organised as follows. First, investors set up a holding company. Then the holding company sets up other companies, known as subsidiaries, in which it owns majority shares (i.e., 50.01% or above), or affiliates, in which it owns minority shares. As the majority shareholder, the holding company nominates those companies' boards of directors. The board of directors, in turn, nominates the subsidiaries' managers (Ferran, 1999). In this way, the parent exercises control over the subsidiaries. Subsidiaries can set up their own subsidiaries and nominate their managers and directors. And those would be nominated, indirectly, by the parent as well. In this way, a group of formally legally separate companies acts as a unified, strategic, centrally coordinated body.

To avoid confusion, I will refer from now on to a hypothetical corporate structure that is organised as single legal person and acts across border as a 'multinational corporation' (MNC). I will refer to the non-abridged version adopted by the majority of corporate groups acting across borders as a *centrally coordinated multi-corporation enterprise* (CCMCE) (for a discussion, see Coli and Vasta, 2015; Ghoshal and Bartlett, 1990).

The European Commission was alerted to Apple's tax avoidance scheme by a report produced by the Permanent Subcommittee on Investigations of the United States Senate Homeland Security and Government Affairs Committee. One of the more outrageous tactics used by Apple, the Congressional Committee concluded, was to set up two Irish affiliates in a such way that they ended up being tax residents neither of Ireland nor of the United States. The affiliates reported a net income of US$30 billion and US$74 billion respectively between

2009 and 2012, more than a quarter of Apple's annual income during those years. Yet they 'declined to declare any tax residence, filed no corporate income tax return, and paid no corporate income taxes to any national government for three years' (Levin et al., 2013, 2). The key to the tactics was the relationship between these subsidiaries and Ireland. Specifically arbitraging nexus rules,[iv] Apple management and its advisors found a way to ensure that two of Apple's subsidiaries registered in Irland did not meet the threshold for tax residency in Ireland. Without tax residence, the two subsidiaries could not pay tax. Management also succeeded to shift an important set of property titles for the Apple logo and some patents outside the United States to these subsidiaries.

The European Commission case against Apple centred on the difference between the singular abridged version of an MNC called 'Apple' and the CCMCE that is Apple. The problem was that the European Commission, as well as the media, believed the MNC was in Court. But in reality, it was the CCMCE that defended in the European Court of Justice—and won the case. Contrary to common perceptions, there is no singular Apple that designs, manufactures, and markets mobile communication. MNCs cannot transact in the market, pay tax, or pay off politicians. However, Apple the CCMCE transacts in markets through its subsidiaries, and Apple makes sure that each subsidiary complies with law of its country of registration.

MNCs and International Politics: The Conventional View

The marginalists, a group of scholars who independently began a revolution in economic thought, sought to resolve a thorny question inherited from Adam Smith. Smith believed production costs were calculable in units of resource inputs. The theory made sense. But neither Smith nor his followers could show that market prices were directly related to resource input. The marginalists solved the problem by developing a general theory of exchange value determined by demand (Buchanan, 1978). According to the theory, prices are not determined by the cost of inputs but rather by demand and supply. This was a brilliant solution. The marginalists effectively 'de-anchored' economics from its supposed material base (known otherwise as the labour theory of value) and presented cost, pricing, and the entire economy as a gigantic information system.

The core to the marginalists' idea was a combination of two framing concepts, methodological individualism and the related idea of scarcity as the counterpoint to individual action. Methodological individualism has a long history that goes back at least to the reformation (Hill, 2018). Individualism became methodological individualism towards the end of the 19th century (derived from Dilthey, Hussserl and others) on the grounds that a scientific approach, as opposed to religion or mysticism, must use only openly accessible data (Muse, 1981). And the only openly accessible data available to social scientists are observations of individual action. Stanley Jevons argued that the 'the science of Economics… is in some degree peculiar, owing to the fact… that its ultimate laws are known to us immediately by intuition' (Jevons, 1879, 18). In other words, we know why individuals act in a particular way; we then observe their action and can reach a conclusion about the aggregative impact when each individual pursues his or her interests under certain constraints.

The aggregative impact of individual action is pervasive competition over scarce resources, or what Léon Walras called 'wealth', defined as 'all things, material or immaterial (it does not matter which in this context), that are scarce' (Walras, 1954, 25). This means wealth is not simply a pile of goods, but control over scarce resources. I would submit that the perspective of individual and scarcity is akin to Foucault's discursive sphere, the lens through which the social world is perceived: 'The whole world may be looked upon as a vast general market made up of diverse special markets where social wealth is bought and sold'

(Walras, 2013, 84).[v] Ronald Coase later differentiated between a market for goods and a market for ideas: by the latter, he was referring specifically to the market in governmental regulation (Coase, 1974). Once power is seen in terms of hedonistic individuals competing over scarce resources, certain types of relationship of power come into sharp relief.

The beauty of neoclassical economics was its simplicity. It did not matter whether firms were single traders or MNCs. Neoclassical theory viewed complex entities as 'simple aggregates of lower-level entities' (Kay, 2000, 9). They were all 'production functions for transforming inputs into outputs according to the laws of technology' (Williamson, 2010, 676). In the context of the original debate on cost production, firms were classified under the category of the seller in Walras' universe, and they were understood to make 'their offers by underbidding each other' (Walras, 1954, 83).

The original conception of the firm[vi] changed somewhat after a seminal contribution by Coase. Coase asked his fellow neoclassical economists why, despite claims of the superiority of markets, large business organisations appeared 'like lumps of butter coagulating in a pail of buttermilk' (Coase, 2007, 487). Coase showed that seemingly minor externalities, the legal and other transaction costs produced by political systems, could explain the persistence of large 'market suppressing' organisations (Jensen and Meckling, 1976). In effect, Coase presented a spatial conception of the firm wherein the firm engages in two sets of trading activities. There is a considerable amount of trade between subsidiaries and affiliates located in different countries. This is known as 'intra-firm trade,'[vii] and as we will see, it is the realm of jurisdictional arbitrage. Although data on the scale and scope of intra-firm trade are hard to come by, it may amount to at least one third of all global trade (Lanz and Miroudot, 2011). But this trade takes the form, Coase assumed, of a bureaucratic command economy and hence is of little interest to economists.

Economists are more interested in the second trading relationship, the relationship between 'firms' and markets (Penrose, 2009, xvi). The market is viewed as a meeting place of buyers and sellers. Many organisations opt to expand beyond local markets because it is economically viable, but also because by doing so, they can further internalise transaction costs (Buckley and Ghauri, 1999). Some international firms have been extraordinarily successful. In an interesting metaphor, Kenneth Boulding likened the enormous success of MNCs (Dischinger and Riedel, 2010; Wilkins, 2005) to the expansion of rabbits in Australia into 'empty niches in existing ecosystems' (Boulding, 1991). Today, although numbering only a few thousands, MNCs are responsible for about 33% of global output, 49% of global export, and 23% of global employment (Garcia-Bernardo, 2021). Together with global banks, they form a core organisational and administrative vehicle driving the processes we subsume under 'globalisation.'

Firms of any size are faced by the dilemma highlighted by Coase: they seek to minimise transaction costs, including legal and other regulatory costs levied by states. In his 'Theory of Economic Regulation', George Stigler argued states can be either 'a potential resource or threat to every industry in the society' (Stigler, 1971, 3). Accordingly, as organisations grew in size and influence, they attracted greater attention from state regulators and political scientists. Problematically, however, the power concentrated in the hands of a few was allowed to 'roam relatively free in search of profit' (Cohen, 2007), and the resulting profits and wealth creation were not distributed equally among host countries. In addition, the sheer size of these corporate groups produced spill-over effects in the political realm.

By the 1970s, scholars were asking questions about the power of MNCs (Nye, 1974). In a study that can only be described as the politics of failure, Albert Hirschman rhetorically asked what happens when 'business firms, and organizations in general are subject to lapses from efficient, rational, law-abiding, virtuous, or otherwise functional behaviour' (Hirschman, 1990, 1). His answer was that consumers will respond by making their voices heard, and if all else fails, they will exit. It did not take long to realise, as Brian Barry observed, that Hirschman's voice/exit was 'one of those ideas that are obvious once they are stated, but which need to be set out explicitly before they can be used to organize the unlimited body of relevant observations' (Barry, 1974, 83). Just as consumers of business products and services can exercise voice or exit, so too can business organisations in their relationships with states and political authorities. MNCs exercise voice, seeking to amend rules and regulations in ways that suit them or their shareholders by influencing the political system; if this does not work, they may leave or threaten to leave an unresponsive political environment.

Barry (1974) suggested voice/exit as a political strategy is an example of an influential public choice theory known as the Tiebout dilemma. Writing about competition among municipalities in the Los Angeles area, Charles Tiebout posited householders are attracted to municipalities that successfully balance tax and public services (Tiebout, 1956). Municipalities who offer a desired mix of tax and services thrive, and those who do not fail because wealthy, tax-paying residents will exit those municipalities, echoing the market trend whereby competition encourages innovation and better services at lower costs. In effect, this is an exit theory. Douglas North employed a similar argument, claiming that competition sets a limit on the inefficiencies of the regulatory environment produced by states because inefficient states will simply fall by the wayside. Some academics sought to extend Tiebout by arguing that an international competition in taxation and presumably in other rules as well would lead to an optimal offering of bundles of regulatory environment (Rose and Spiegel, 2007). The idea, implicit mostly, was that markets will find a way to counter the market distortion, and by doing so, limit the 'natural' predatory tendencies of states. The theory became an official policy of the United States for a short time (Avi-Yonah, 2005).

Tieboat's exit theory was largely replaced by the more nuanced voice/exit theory. In an act of supreme irony, some political scientists working in the area of what is known as New Institutional Economics (NIE) drew on the work of Coase, Williamson, and others to show that the power relationships between business and state can act in reverse. Since the rules of the game vary from one country to another, diverse types of rules produce different types of MNCs and hence different varieties of capitalism (Hall, 2015; Hall and Soskice, 2003; Hall and Thelen, 2009). This tradition of thought known as 'varieties of capitalism' (VOC) also assumes MNCs are singular entities that adjust to the home state's rules and regulations.

This is a brief summary of how MNCs are viewed today. For the reasons outlined above, the path chosen by economics and then followed by political science seems to ignore intra-firm trade and organisation. Intra-firm trade was not 'immanent,' in the words of Foucault, to the sphere of economic life that became entrenched in the late 19th century; hence, economics and political science do not consider the 'multiplicity of force relations' that operate within the sphere to be of great importance. These activities are known, as indeed the practices of regulatory avoidance and arbitrage, but they are largely unattended to, and when they are discussed, they are often described as 'artificial' constructions.

History as a Series of Choices

I contrast the dominant concept of the sphere of economics with a different tradition of thought that evolved from the German historical school of the mid- to late-19th century (Pearson, 2005), through a group of scholars known as evolutionary economists or old economic institutionalists (OIEs) who claimed to have been strongly influenced by Charles Darwin (Bazzoli, 2000; Commons, 1990). This tradition of thought, I argue, adopted a different notion of the sphere of social science and economics, and it did so for reasons that are not well understood. In fact, the reasons go back to another epistemological revolution that is often ignored, the advent of evolutionary thought.

Charles Darwin is sometimes cast as the theorist of the survival of the fittest – a notion that was espoused by his student Herbert Spencer, but not by Darwin. In fact, Darwin's great insights were made possible by an a priori epistemological reframing of the concept of time, the development of a scientific sphere that also eluded Foucault, among others. The revolution in thought was in the air somehow and was shared with another new discipline, geology (Gohau, 1990; Monroe and Wicander, 2011). Both disciplines emerged with the realisation of the restrictive nature of the human time frame. Darwin realised that what appears as stable and unchanging in terms of a human time scale is fluid and changing in terms of a biological and geological time scale. Darwin's notion of a biological time scale led him to turn away from the individual as the carrier of historical change, to a different level, the specie or 'population' as the carrier of change (Darwin, 1909; Dennett, 1996; Sober, 1980).

The early institutionalists accepted Darwin's notions of diverging times scales. They shifted their attention from individual action (and motivation) to the specie-equivalent in the sphere of human culture, which they defined as 'social institutions' (Commons, 1990; Veblen, 1898). In this line of thinking, individuals function within an institutional environment, and the evolution of human culture, considered a secondary biological evolutionary realm, occurs at the level of social institutions. Institutionalists shared a conviction with the German historical school that the evolution of legal institutions, such as sovereignty, contract, property, or entity, was key to the understanding of the modern world.

Thorstein Veblen believed the interaction between social institutions, each of which evolves at different rhythms, explains long-term social change. For Veblen, the social environment consists of a medley of social institutions and habits of thoughts. But due to diverging rhythms of technological advances, institutional change, and the evolution of societal 'habits of thought', the social realm is fractured and contradictory, held together by norms and conventions (Veblen, 2017a, 2017b). Veblen accepted the 'hedonistic' premise of methodological individualism, whereby individuals are utility maximising, but he argued that individuals are opportunistic: some will find ways to take advantage of the cracks and inconsistencies in the institutional environment to advance what they consider to be their material interests (material interests are also shaped by longer-term institutional and belief systems, or habits of thought). When opportunities are successfully exploited, others will inevitably emulate the pioneers. A single drop becomes a flood. Karl Polanyi, in many ways a follower of Veblen, argued that eventually society will respond by regulating the institutional environment (what Kaldor-Hicks called compensating policies) (Stanfield, 1980). The change in the institutional environment produces new sets of cracks and inconsistencies, new sets of opportunities, penalties, and rewards, and the whole process continues in an evolutionary manner.

These broad theoretical propositions were used by evolutionary economists to study of the evolution of the firm. They understood firms not as mere 'sellers' in markets, but rather as constructs of law that could be used opportunistically to advance investors' or managers' interests. The company or the corporation was an institutional form that was innovated so the 'wealth of innumerable individuals concentrates into huge aggregates' (Berle and Means, 1948, 4). The emerging corporate organisations of the late 19th century are emblematic of one of the core principles of Western law: entity law. Western doctrines consist of a fundamental divide into 'natural persons' and 'artificial' or juristic persons.[viii] Over time, doctrinal debates settled on the idea that a corporation was nearly the equivalent of a 'real' person. A corporation is 'an incorporate body that is able to act as if they were real persons for legal purposes' (Quentin, 2020).[ix] During the 19th century, artificial legal persons were given increasingly powers approximating real persons. In the United States, for instance, towards the end of the 19th century, as artificial legal persons, ‘corporations’ were protected by the First Amendment and had the right of free speech. Under the Fourteen Amendment, they gained the right to equal protection under the law and due process (Stern, 2017, 34; for a discussion, see Robé, 2020).[x] At some point, corporations ‘ceased to be merely legal devices through which the private business transaction of individuals may be carried on’ (Berle and Means, 1948, 2). They became the core of a modern economy that Berle and Means described as the corporate economy – a subset of a market economy that served as a platform for the exchange of property rights.

The evolutionary theorists established a different notion of the sphere of economic life that centred on the concept of institution and transaction. Like their neoclassical colleagues, they used their insight to tell a tale of ‘ceaseless struggles and confrontations,’ centring on forces immanent to their notion of the sphere of economic life. From their perspective, however, the story is about the corporation, a legal person, spilling over borders controlled by another legal person, the state, and the legal challenges this entails.

Seeing Like a Corporation

In 1867, the Merry Singer company of New York, a manufacturer of sewing machines, started a manufacturing facility in Glasgow, Scotland, before moving to a much larger plant in Kilbowie in 1882. Singer is considered the first multinational company of the modern era. It was soon followed by a host of manufacturers from the United States and Western Europe operating across borders. The new breed of companies had to find ways to ensure their transactions and property ownership, including their intangible properties, patents, logo, trademark, and goodwill (Singer had 22 patents) were recognised and protected in different countries.

The fledgling multinationals experimented with several possible solutions (Berk, 2004; Wilkins, 2005).[xi] Initially, many American firms preferred to use export commission houses to manufacture in other countries. The practice was soon abandoned because it did not lead to strong and independent demand. Others began to employ foreign agents or set up foreign branches.[xii] Singer, for instance, initially sent two of its employees to serve as general agents in the United Kingdom (Davies, 1969, 306.) These two agents applied for UK patents and innovated a whole new corporate organisation based on sub-agents and the like (Davies, 1969). But the experience of the system of foreign agents was not encouraging. Agents could, and often did, change sides and work with competitors. Foreign branches were subject to import tariffs. The parent and the branch maintained joined accounts, so the parent company was liable to the branch's debt or legal problems.

As if on cue, new options emerged following a series of amendments to the laws of incorporation introduced by the State of New Jersey between 1899 and 1892. Importantly, New Jersey allowed a corporation to own stock in other corporations (Grandy, 1989). This was soon emulated elsewhere in the United States, first and foremost by Delaware, and then by other American states as well (Arsht, 1976; Cheffins, 2015; Yablon, 2006).[xiii] New Jersey had no ambition to change the world. It liberalised its incorporation laws in a bid to attract business from its richer neighbour, New York State. As is often the case, New Jersey did not innovate in a vacuum. New York allowed a degree of cross share ownership in specific industries, such as insurance. New Jersey simply extended and universalised the idea.

Within a short period, the amendment was used by John Pierpont Morgan, the Rockefellers, and others to set up new organisational structures. The New Jersey amendment was soon described as the 'holding company' rule (Alef, 2009). Holding companies began to pop up, sometimes organised into a pyramid or a series of holdings for leverage (Bank and Cheffins, 2010; Berle, 1931).

The expansion of the holding company organisational patterns persuaded US Courts to begin to refer to those organisations as 'going concerns', a terms 'which they have taken over from the customs of business' (Commons, 1924, 8.). These going concerns were not necessarily unified legal bodies; nonetheless, they were animated 'by a common purpose, governed by common rules of its own making, and the collective behaviour' (Commons, 1924, 145). Unlike their predecessors who acted more like the firms of neoclassical economics, these organisations were not focused exclusively on production or sales. They sought to establish not only a sense of a present, but also of a past, and crucially, of a future.

The narrative of a body travelling in time became central, Commons (1990) argued, to the development of the modern corporate form, first in the United States, and eventually around the world. Many of the products manufactured by these organisations were presented as unique and of superior quality. The companies wanted to ensure that their customers got exactly what they paid for. The Courts responded by extending the law of trademark and tradenames to protect the consumer from the 'passing off' of inferior goods under misleading labels. And the Courts increasing came to view this branch of law as a protection of property rights in diverse economically valuable sale devices (Cohen, 1935). The rights to trademarks were commonly assigned to a particular subsidiary of the group, and this proved important, as we will see. But those rights were justified in terms of the products manufactured by the group as whole, the going concern.

The concept of the corporate body that travels in time was central in the first wave of mergers and acquisitions in the late 19th century United States. Investors tended to capitalise the merged group not only on the basis of current earnings, but also on its future earning capacity. Although many of those going concerns consisted, strictly speaking, of scores of separate corporations, they presented a common face to the market. Investors placed value on the group as a whole, and this necessitated a new set of accounting practices and methods.

These developed during the last decades of the 19th century around the concept of consolidated accounting (King, 2006). New sets of regulations were also introduced to protect investors' interests.

Seen from the legal-institutional perspective, then, we can discern a history of dislocation between the legal person, the corporation, and the acting body – the going concern. It is the acting body, the going concern, that is of interest to economists. Economists use the shorthand, 'firm' to capture the way they believe going concerns operate in constrained markets. The dissonance between the legal organisation and the going concern was left to legal scholars to worry about. But as Foucault argued, 'success is proportional to the ability to hide.' Left to their own devices, the lawyers and accountants seized the opportunity to advance the interest of their clients, and themselves, innovating a whole new tactics of power.

The Age of Jurisdictional Arbitrage

Quite early on, legal scholars realised the dislocation between the two faces of the corporate forms had enormous implications in the sphere of regulations. In the 1930s, Adolf Berle, a lawyer and economist who was advising the Roosvelt administration, observed an important implication of the dislocation between the group and the legal person. The holding company model produced, he argued, a situation where each company was subject to the rules and regulation of its respective American state. This was known as the 'internal affairs doctrine' (IAD). But the organisation, the 'business concern,' was free from many regulations. As he saw it, the parent-subsidiary model ensured federal rules and regulations 'did not correspond to the actual enterprise, but merely to a fragment of the enterprise (Berle, 1947, 348). Berle argued investors took advantage of the regulatory myopia to arbitrage anti-trust rules and other rules designed to limit concentration in markets. These legal loopholes were taken advantage of opportunistically to set up an enormous concentration of corporate power in the United States.[xiv]

Over time, regulatory myopia went global. There is evidence that many of the new multinationals were adopting the CCMCE model by the early 1900s. Investors discovered they could set up a company in a host country that would serve as a subsidiary. The company/subsidiary would be considered for all intents and purposes a domestic company in the host country. As such, the subsidiary was subject to and protected by the laws of its country of residency. The model proved popular for other reasons as well. A parent could 'sell' or simply assign rights to the subsidiary. The subsidiary would apply for local patents and in this way protect the parent's right over these patents. A subsidiary could also raise funds in the local market.[xv] Subsidiaries solved, therefore, many of the issues of compliance, access to local markets, and protection of property and transaction that beset early multinationals.

Berle noted that the federated political system of the United States produced a fragmented regulatory environment, but the situation was more acute internationally. Rules are defined by states, and they operate on a territorial basis. But how can boundaries separate intangible property? Rules, regulations, and norms, the substance of state, evolved parochially predicated on the assumption that each state is a separate and independent sovereign authority, akin to a solitary planet travelling in the vastness of space. Each state decides its laws and will only cooperate with other countries on a bilateral basis – rarely multilaterally. Each regulatory authority is enabled but also constrained by a higher set of rules, the basic ordering of the world according to the system of sovereignty and sovereign equality, and is able to regulate and control activities registered in its territory.

This is the familiar system of state sovereignty, wherein each state has an exclusive right to write the law in its territory. But that system acts, paradoxically, as a barrier to the ability of those states to exercise economic sovereignty over corporate groups. The CCMCE model, which became popular because it solved the problem, ensured countries got to 'see' only the portion of cross-border business transactions that happened to reside in their 'territories' – or worse, the portion of transaction that the going concern decided to register in its territory. With this, the power pendulum swung decidedly toward corporate groups. Authorities know, of course, that MNCs are operating as one unit internationally, but they have access to the accounts and can regulate directly only those entities that are in their territory.

The techniques of jurisdictional arbitrage did not evolve intentionally to avoid or evade regulations. On the contrary, the new CCMCE had to contend with a volatile sovereign state system, replete with risks and uncertainties. It had to develop legal and accounting departments whose role was to ensure compliance with host country's rules and regulations. Compliance proved insufficient, however. Regulatory changes, including taxation, could alter the economics of an investment. Therefore, corporate groups began to develop hedging strategies anticipating potential change in regulations or political instability. Many of the hedging strategies inevitably involved alternative group structures that could come into play in case of volatility. UNCTAD (2023) reports that about 25% of the subsidiaries of multinationals in developing countries maintain only balance sheets and show no income statement. One possibility is that these subsidiaries are hedging against possible nationalisation or bribery attempts by shifting actual activities to non-local subsidiaries.

The legal and accounting departments mushroomed, becoming large departments in charge of corporate treasury operations and often organised around a series of subsidiaries in offshore financial centres (OFCs). Emerging evidence suggested that corporate subsidiaries were used opportunistically to exploit divergence in national rules of taxation, particularly divergence in nominal corporate tax rates. Organisations set up subsidiaries in low-tax areas and registering larger portions of their profits as if they were 'sourced' by these subsidiaries (Birkinshaw and Morrison, 1995; Dowd et al., 2017; Forte, 2016, 2016; Greggi, 2019; Grubert and Mutti, 1991; US Department of the Treasury, 2016). These tactics worked best by reallocating to offshore subsidiaries rights over intangible assets, such as patents or trademarks. The suspicion was that the real source of profits was elsewhere, in a country with higher taxation, and multinationals simply found ways to use existing rules to artificially transfer those profits to a low-tax jurisdiction.

Tax arbitrage became common, but both in the United States and internationally, it was only one dimension of a wider sphere of arbitrage. The 20th century was characterised by the rise of the regulatory state, replacing the 19th century private litigation regimes with regulatory agencies (Glaeser and Shleifer, 2003; Majone, 1994). Regulatory costs, including taxation, mounted, and with them, the incentive to find optimal regulatory routes through the maze of rules of corporate governance, including rules of taxation (corporate, income tax, value added tax, inheritance tax, stamp duty and the like for the corporate entity and individual stakeholders), rules pertaining to the liabilities of the divergent stakeholders, rules of disclosures, rules of conduct, and labour and environmental laws. To this list, we can add accounting rules, 'a collection of dialects' that evolved 'when professionals applied quantitative methods to qualitative endeavours'(King, 2006, 203). These include financial accounting, tax accounting, operational accounting and specialised accounting rules for those 'lucky banks, insurers, utilities, and transportation firms' that are required to file reports demonstrating solvency or compliance with government rules (King, 2006, 4).

For a CCMCE operating in conditions of structural myopia, any of these rules can potentially be arbitraged, that is, side-stepped by an arbitraging scheme. There is strong evidence of the expansion of these schemes. A pioneering study of British Petroleum conducted by OpenOil revealed BP is made of 1,280 affiliates in 84 countries going 12 tiers deep (that is, 12 tiers of affiliates holding other affiliates, and so on) (OpenOil, 2018). A study commissioned by the New York Fed revealed that the number of subsidiaries and affiliates owned by some of the largest US banking holding companies rose to an average of 3,400 in 2012, up from about 1,000 in 1990 (Avraham, Selvaggi, and Vickery, 2012). In 2012, Stephan Cohen noted with wonder that the entire group of multinational corporations possessed about 77,000 subsidiaries; a 2018 study found the 100 largest non-financial firms alone had more than 73,000 subsidiaries (Anonymous). Nor has this trend stopped: the number of subsidiaries of these firms had risen by an average 8% when we took stock 18 months later.

By no means all or even most international businesses avail themselves of the full spectrum of arbitraging solutions. The scope for the actual use of arbitraging is an empirical question that needs a separate line of research. Furthermore, management is answerable to a wide range of stakeholders, from shareholders to consumers, their employees, politicians, and sometimes even their conscience (Dyreng et al., 2016, 22). The point is that the techniques of jurisdictional arbitrage offer organisations *options,* and they can establish, up to a point, the environment of taxation, corporate governance, financing, liability, rules, or reporting that suits their requirements, without moving their businesses elsewhere or employing an army of lobbyists.

Jurisdictional Arbitrage and Power

Seen from the institutionalist notion of the sphere of social and economic life, the evolution of the CCMCE's jurisdictional arbitrage in conditions of structural myopia was inevitable. Put differently, it is difficult to see this practice as an anomaly. The institutionalist provides a different concept of the social and economic sphere, a lens through which a 'multiplicity of forces immanent' to the sphere take advantage of the inconsistencies in the institutional makeup of the world.

The CCMCE evolved historically through trial and error. The model was adopted widely because it offered good sets of solutions to the difficulties corporate groups faced in markets dissected among sovereign authorities. But the solution created its own problem: it exacerbated a trend observed in the late 19th century United States of an emerging gap between the legal corporation and the business organisation, or the firm. The gap has been exploited ever since by CCMCEs to arbitrage national rules and regulations. In this way, by unwittingly *mimicking* the de-entered geopolitical environment in which they operate, the CCMCEs have learned to use arbitraging techniques to immunise themselves from national rules, forging their preferred regulatory path within the cacophony of sovereign rules.

Are these the tactics of power? These types of arbitraging techniques are often seen as strategies of coping opportunistically with law to achieve cost reduction. Seen in isolation, that is, from the perspective of the conventional sphere of economics and social life, each scheme of jurisdictional arbitrage may be viewed as an abuse, complying 'with the letter of a law while violating its very spirit in order to obtain a regulatory advantage' (Fleischer, 2010). Such schemes can have profound implications for the economy and society.

Foucault argued power is immanent to a sphere of action, but he wanted to disengage from the methodological individualist/scarcity concept of the sphere, stressing: 'I would like to disengage my analysis from the privileges generally accorded the economy of scarcity and the principles of rarefaction' (Foucault, 2019, 16). To that end, he outlined different spheres of discursive production. If there is a such a thing as Foucault's theory of power, then arbitraging seem to correspond to it. Let me return to the *History of Sexuality* where Foucault defined his theory of power and relate these to arbitrage power:

Point 1: 'Power is not something that is acquired, seized, or shared, something that one holds on to or allows to slip away; power is exercised from innumerable points, in the interplay of nonegalitarian and mobile relations' (Foucault, 2019, 94). As we saw above, arbitrage power is exercised from many different points; crucially, not everyone can avail themselves of expensive legal and accounting advice. Arbitrage power is a power that is exercised, as Foucault put it, in 'the interplay of nonegalitarian and mobile relations'.

Point 2: 'Relations of power are not in superstructural positions, with merely a role of prohibition or accompaniment; they have a directly productive role, wherever they come into play' (Foucault, 2019, 94). Arbitraging power is not exercised from above. No one planned the CCMCE model; no one supported and planned the structural myopia that characterises a modern market economy operating in conditions of dissected sovereignty. Arbitraging has a productive role. Its techniques are used to 'extract value', but also to ensure corporate groups can function efficiently within an environment that is not of their choosing or making.

Point 3: 'Power comes from below; that is, there is no binary and all-encompassing opposition between rulers and ruled at the root of power relations…. One must suppose rather that the manifold relationships of force that take shape and come into play in the machinery of production, in families, limited groups, and institutions, are the basis for wide-ranging effects of cleavage that run through the social body as a whole (Foucault, 2019, 94). Arbitrage power is clearly also a power that comes from below. It is a not a behavioural power; there is no A that forces B to do what B would not do otherwise. But the effects of arbitrage power in aggregate are 'wide-ranging effects of cleavage that run through the social body as a whole', by which I mean there is indirect evidence that such tactics have vast distributive effects. There is little doubt that the wealthiest individuals in today's world are large shareholders in successful corporate groups. The core of this group comprises managers of large MNCs and related 'born global' corporations, such as Tesla, eBay, and the like, large investment houses, such as Blackrock, Blackstone, and Vanguard, hedge funds, leading international investment banks, and elite legal, consultancy and accounting firms. Their wealth is represented not in the form of holding of scarce resources as per Walras. Rather, it is typically based on their shareholding of stocks in corporate groups that are among the most sophisticated arbitraging groups in the world (Anonymous; Anonymous). And since those billionaires rarely need to sell their shares, they are rarely subject to capital gains tax. Meanwhile, the corporate groups in which they are invested pay little or no tax while hedging against other national rules.[xvi]

Point 4: 'Where there is power, there is resistance' (Foucault, 2019, 95). Since the core problem with arbitrage is regulatory myopia, major countries devote considerable effort to combatting myopia; only now are they beginning to consider the core problem – the CCMCE model. It is worth highlighting four anti-abuse tactics employed by states.

The first was the introduction of the arm's length principle of accounting. The principle decrees that different arms of the same group should trade with one another as if they were truly independent and adversarial market actors. The theory is that if they did, the problem of transfer pricing would disappear (Langbein and Fuss, 2017; Wittendorff, 2010). The second tactic, when the first did not work, was the Kennedy administration's introduction of the controlled foreign company rule (CFC rule) in 1962. The CFC rule was designed initially so that a US holding company would provide information on its subsidiaries, including foreign subsidiaries, to the US Department of Revenue. CFC rules were adopted by many countries, but due partly to meddling by the US Congress, a new set of arbitraging techniques to circumvent CFC rules evolved as well (Dueñas, 2019; Lokken, 2005). Third, in 2014, the OECD introduced the idea of country-by-country reporting to counter tax arbitrage. The theory was that corporate groups would not be able to hide behind scores of subsidiaries, each reporting separately and by doing so, arbitrage rules. Corporate groups would have to present aggregate country-by-country reports of their revenues, costs, profits, and taxation. The new rules are being implemented gradually and their impact is still to be studied (Evers et al., 2014; Langbein and Fuss, 2017; Tang and Schultz, 2017). Fourth, as part of the Inflation Reduction Act of 2022, the Biden administration proposes to impose a 15% minimum tax on the adjusted financial statement income of large corporations, with average annual financial statement incomes over $1 billion. The aim is to undermine the ability of the CCMCE to arbitrage tax rules through its subsidiaries (Walker et al., 2022).

Conclusion

John Kenneth Galbraith famously referred to 'the great black hole of economics', by which he meant power (Galbraith, 2007, xxxiv). As he put it, 'the exercise of power within the modern corporation… [is] enhanced as the enterprise grows or combines with others' (Galbraith, 2007, xxxv). In this article, I have argued that the current vacuum in understanding corporate power is the result of epistemological framing. Arbitrage power is not unknown, but it is ignored in the study of corporate power because it does not sit well with the predominant notion of the economy. It belongs to the sphere of intra-firm trade, a sphere that traditionally held little interest to economists. Political scientists simply adopted the economic notion of the firm and fail as a result to acknowledge power tactics that lay hidden behind the common confusion between firm and corporation. In fact, modern corporate groups are political to their core. They are political, not simply because they have the financial resources to lobby, buy off politicians, or threaten their constituencies with exit. They are political because they have created an organisational model, the CCMCE, to cope with the political environment, and they employ it to arbitrage rules, regulations, and taxation that are not to their liking.

CCMCEs are not designed to operate in the smooth homogenous markets of the economic textbook. Instead, they are designed to flourish in markets dissected among political authorities. They are designed to arbitrage rules. The creation of the modern

CCMCE modality and jurisdictional arbitrage has been an historical-evolutionary process whereby certain individuals identified opportunities in the legal wording and contemporary habits of thoughts that applied to the corporate artificial person to achieve personal gains; others emulated them to forge a new corporate organisation that proved highly adept at arbitraging the constraining rules of the game of society, taking advantage specifically of the fact that there is not one rule or one society, but several, a market dissected among sovereign authorities.

Notes:

[i] UNCTAD TDR 2023 explains: 'A critical distinction needs to be drawn between "branches" and "affiliates" or "subsidiaries" in the structure of banking and corporate operations…. A branch is merely an office of a legal person; transactions concluded by personnel out of this office are transactions of the legal person owning the branch. An affiliate, or subsidiary, as opposed to a branch, is a separate legal person having its own legal personality, assets, and personnel' (TDR 2023).

[ii] Even if jurisdictional arbitrage schemes have negligible impact on wealth distribution in society, they display many of the characteristics associated with power. The question of power, therefore, is a conceptual one. It has little to do with outcome.

[iii] The word 'control' is not explained in Apple's submission, but 'control' tends to imply the right to appoint a board of directors, a right normally achieved through equity ownership of 50.01% (Ferran, 1999).

[iv] Nexus rules define the degree of 'sufficient contact' between a taxpayer and a regulatory authority to establish the residency of the taxpayer (see O'Hara and Ribstein, 2009).

[v] As Kenneth Arrow put it: 'The individual in the economy and in the society is like the atom in chemistry; whatever happens can ultimately be described exhaustively in terms of individuals involved' (Arrow, 1994, 3,)

[vi] Economists tend not to use the concept of the 'MNC'. It is now generally recognised that the original concept of the firm treated 'black boxes' designed to fit in with theory of markets as mere conceptual appendages, at least initially (Demsetz, 1988).

[vii] Intra-firm trade involves, in the words of an OECD report, 'international flows of goods and services between parent companies and their affiliates or among these affiliates' (Lanz and Miroudot, 2011). Trade and transfers take place not only between subsidiaries and affiliates located in different countries, but also between parent and subsidiaries and affiliates that are in the same country.

[viii] Kurki traces the idea of the artificial person to the Romans, whereas Robé believes that the Catholic that was formed as the people of the body of Christ facilitated the acceptance of the idea of an artificial person. An artificial person can be 'any other types of legal persons, such as associations, limited liability companies, and foundations, all of which can own property and enter into contracts in their own names' (Kurki, 2019, 7).

[ix] Although as Dewy explains, '"artificial" is not fictious, ie,, that is artificial is real, and not imaginary', once a corporation is created, it is real (Dewey, 1926, 655). There is considerable debate on the origins of this innovation, but the general consensus is that the modern corporation emerged 'from a stew of medieval and early modern European business forms' (Wright, 2013, 20).
[x] Individuals can be replaced but the legal person persists. This, of course, is the reason why individuals are prepared to invest in the development of the legal person for future gains. It also allows flexibility, as not everything must be decided in advance.
[xi] The early MNCs were cautious and targeted only similar legal ecologies, be they American, Western European, or British companies operating within the British empire. The rise of the United States in many ways ensured the US-based solutions to internationalisation were emulated elsewhere.
[xii] A business association could hire an agent located in another country, and the agent could handle the association's businesses in that country (Wilkins, 2005). Alternatively, businesses might set up a foreign branch in a separate country (in countries allowing these branches to be set up). The branch would then be considered part of the same business; hence, if a branch office were involved in a lawsuit or litigation of any kind, the liability extended to the parent organisation (Bondzi-Simpson, 1990).
[xiii] There is a debate about whether the New Jersey amendment truly changed the world. Freedland (1955), for instance, shows New York already allowed cross-company shareholding among insurance companies from 1854. Freedland agrees, however, that New Jersey universalised the rules and made cross-company shareholding the norm.
[xiv] One method of concentration of power favored by J.P Morgan was the use of pyramidal holding companies. In a simple model, a holding company would control another holding by owning 50.01% of the subsidiary holding shares. The subsidiary holding would set up another holding controlled through 50.01% of the subsidiary shares and so on. In this way, a relatively modest investment could be leveraged through chains of holding companies to control vast amount of resources.
[xv] (his facility proved particularly important in the late 1950s with the emerging Euromarket in London. American companies were subject to strict financial regulations, but their foreign subsidiaries could raise funds in the Euromarkets.
[xvi] This elite core is joined by several ancillary groups. Arguably the most significant are midsize corporate groups, many of which are privately held. Numbering in the hundreds of thousands, perhaps even millions, they employ tactics perfected by large corporations to arbitrage rules and ensure corporate and other forms of taxation, rules specifying personal or group liabilities or other regulations, including protection of shareholders and the like, are either partially or fully avoided. To these, Ricardo de Soares adds another group; he argues elites from development countries latch onto existing institutional and professional providers serving those other elites; once they achieve their goal of transferring capital out of their own countries, they participate actively in the process of wealth and power concentration described in this paper (Soares, 2021).

Bibliography

Alef, D., 2009. J. P. Morgan: America's Greatest Banker. Titans of Fortune Publishing.
Arrow, K.J., 1994. Methodological Individualism and Social Knowledge. Am. Econ. Rev. 84, 1–9. https://doi.org/10.2307/2117792
Arsht, S.S., 1976. A History of Delaware Corporation Law. Del. J. Corp. Law 1, 1.

Avi-Yonah, R.S., 2005. All of a Piece Throughout: The Four Ages of U.S. International Taxation. SSRN Electron. J. https://doi.org/10.2139/ssrn.742525
Bank, S.A., Cheffins, B.R., 2010. The Corporate Pyramid Fable. Bus. Hist. Rev. 84, 435–458. https://doi.org/10.1017/S0007680500002191
Barry, B., 1974. Review Article: ‘Exit, Voice, and Loyalty.’ Br. J. Polit. Sci. 4, 79–107. https://doi.org/10.1017/S0007123400009376
Barzuza, M., 2011. Market Segmentation: The Rise of Nevada as a Liability-Free Jurisdiction (SSRN Scholarly Paper No. ID 1920538). Social Science Research Network, Rochester, NY. https://doi.org/10.2139/ssrn.1920538
Bazzoli, L., 2000. L’économie politique de John R. Commons: essai sur l’institutionnalisme en sciences sociales. L’Harmattan.
Berk, G., 2004. Whose Hubris? Brandeis, Scientific Management, adn the Railroads, in: Lipartito, K., Sicilia, D.B. (Eds.), Constructing Corporate America: History, Politics, Culture. Oxford University Press.
Berle, A.A., 1947. The Theory of Enterprise Entity. Columbia Law Rev. 47, 343–358. https://doi.org/10.2307/1118398
Berle, A.A., 1931. Corporate Powers as Powers in Trust. Harv. Law Rev. 44, 1049–1074. https://doi.org/10.2307/1331341
Berle, A.A., Means, G.C., 1948. The Modern Corporation and Private Property. Macmillan.
Birkinshaw, J.M., Morrison, A.J., 1995. Configurations of Strategy and Structure in Subsidiaries of Multinational Corporations. J. Int. Bus. Stud. 26, 729–753. https://doi.org/10.1057/palgrave.jibs.8490818
Bondzi-Simpson, P.E., 1990. Legal relationships between transnational corporations and host states. Praeger, New York.
Boulding, K.E., 1991. What is evolutionary economics? J. Evol. Econ. 1, 9–17. https://doi.org/10.1007/BF01202334
Buchanan, J.M., 1978. Cost and Choice: An Inquiry in Economic Theory. University of Chicago Press.
Buckley, P.J., Ghauri, P.N., 1999. The Internationalization of the Firm. Cengage Learning EMEA.
Cheffins, B.R., 2015. Delaware and the Transformation of Corporate Governance. Del. J. Corp. Law 40, 1.
Coase R. H., 2007. The Nature of the Firm. Economica 4, 386–405. https://doi.org/10.1111/j.1468-0335.1937.tb00002.x
Cohen, F.S., 1935. Transcendental Nonsense and the Functional Approach. Columbia Law Rev. 35, 809.
Cohen, S.D., 2007. Multinational Corporations and Foreign Direct Investment: Avoiding Simplicity, Embracing Complexity. Oxford University Press.
Coli, A., Vasta, M., 2015. The enduring logic: the history of business groups in Italy | Department of Political Economy and Statistics (No. 723). Department of Political Economy and Statistics, Siena.
Commons, J.R., 1990. Institutional Economics. Vol. I: Its Place in Political Economy. Transaction Publishers.
Commons, J.R., 1924. Legal Foundations of Capitalism. Transaction Publishers.
Coyle, D., 2017. Multinationals turn from ‘Double Irish’ to ‘Single Malt’ to avoid tax in Ireland [WWW Document]. Ir. Times. URL https://www.irishtimes.com/business/economy/multinationals-turn-from-double-irish-to-single-malt-to-avoid-tax-in-ireland-1.3290649 (accessed 5.28.18).
Darwin, C., 1909. The Origin of Species. P. F. Collier & Son.
Davies, R.B., 1969. “Peacefully Working to Conquer the World:” The Singer Manufacturing Company in Foreign Markets, 1854–1889. Bus. Hist. Rev. 43, 299–325. https://doi.org/10.2307/3112385

Demsetz, H., 1988. The Theory of the Firm Revisited. J. Law Econ. Organ. 4, 141–161.
Dennett, D.C., 1996. Darwin's Dangerous Idea: Evolution and the Meanings of Life, New Ed edition. ed. Penguin, London.
Dewey, J., 1926. The Historic background of Corpoate legal Personality. YALE LAW J. xxxv, 20.
Dine, J., 2014. Stopping Jurisdictional Arbitrage by Multinational Companies: A National Solution? Eur. Co. Law 11.
Dischinger, M., Riedel, N., 2010. The Role of Headquarters Firms in Multinational Profit Shifting Strategies (Working Paper No. 2010–12). Munich Discussion Paper. https://doi.org/10.5282/ubm/epub.11352
Dörrenbächer, C., Geppert, M., 2011. Politics and Power in the Multinational Corporation: The Role of Institutions, Interests and Identities. Cambridge University Press.
Dowd, T., Landefeld, P., Moore, A., 2017. Profit shifting of U.S. multinationals. J. Public Econ. 148, 1–13. https://doi.org/10.1016/j.jpubeco.2017.02.005
Dueñas, S., 2019. CFC Rules Around the World.
Dyreng, S.D., Hoopes, J.L., Wilde, J.H., 2016. Public Pressure and Corporate Tax Behavior. J. Account. Res. 54, 147–186. https://doi.org/10.1111/1475-679X.12101
Dyreng, S.D., Mayew, W.J., Williams, C.D., 2012. Religious Social Norms and Corporate Financial Reporting. J. Bus. Finance Account. 39, 845–875. https://doi.org/10.1111/j.1468-5957.2012.02295.x
European Commission, 2016. COMMISSION DECISION of 30.8.2016 ON STATE AID SA.38373 (2014/C) (ex 2014/NN) (ex 2014/CP) implemented by Ireland to Apple (Decision No. C(2016) 5605 final).
Evers, M., Meier, I., Spengel, C., 2014. Transparency in Financial Reporting: Is Country-by-Country Reporting Suitable to Combat International Profit Shifting? (SSRN Scholarly Paper No. ID 2394035). Social Science Research Network, Rochester, NY.
Ferran, E., 1999. Company Law and Corporate Finance. Oxford University Press.
Fleischer, V., 2010. Regulatory Arbitrage. Tex. Law Rev. 89, 227.
Forte, R.P., 2016. Multinational firms and host country market structure: A review of empirical literature. J. Int. Trade Econ. Dev. 25, 240–265. https://doi.org/10.1080/09638199.2015.1049198
Foucault, M., 2019. The History of Sexuality: 1: The Will to Knowledge. Penguin UK.
Freedland, F., 1955. History of Holding Company Legislation in New York State: Some Doubts as to the New Jersey First Tradition. Fordham Law Rev. 24, 369.
Galbraith, J.K., 2007. The New Industrial State. Princeton University Press.
Garcia-Bernardo, J., 2021. Offshore Finance adn Corporate Tax Avoidance. Ipskamp, Amsterdam.
Ghoshal, S., Bartlett, C.A., 1990. The Multinational Corporation as an Interorganizational Network. Acad. Manage. Rev. 15, 603–626. https://doi.org/10.5465/amr.1990.4310825
Glaeser, E.L., Shleifer, A., 2003. The Rise of the Regulatory State. J. Econ. Lit. 41, 401–425. https://doi.org/10.1257/002205103765762725
Gohau, G., 1990. A History of Geology. Rutgers University Press.
Grandy, C., 1989. New Jersey Corporate Chartermongering, 1875–1929. J. Econ. Hist. 49, 677–692. https://doi.org/10.1017/S0022050700008810
Greggi, M., 2019. Transfer Pricing and Tax Law – BEPS Actions 8, 9, 10 and the Italian System: an Assessment, in: Kraft, W.W., Striegel, A. (Eds.), WCLF Tax und IP Gesprächsband 2017: Immaterielle Werte als zentrale Komponente internationaler Steuerstrategien. Springer Fachmedien Wiesbaden, Wiesbaden, pp. 205–220. https://doi.org/10.1007/978-3-658-24953-3_14
Grubert, H., Mutti, J., 1991. Taxes, Tariffs and Transfer Pricing in Multinational Corporate Decision Making. Rev. Econ. Stat. 73, 285–293.

Hadari, Y., 1973. The Structure of the Private Multinational Enterprise. Mich. Law Rev. 71, 729–806. https://doi.org/10.2307/1287788

Hall, P.A., 2015. Varieties of Capitalism, in: Emerging Trends in the Social and Behavioral Sciences. American Cancer Society, pp. 1–15. https://doi.org/10.1002/9781118900772.etrds0377

Hall, P.A., Soskice, D., 2003. Varieties of Capitalism and Institutional Complementarities, in: Institutional Conflicts and Complementarities. Springer, Boston, MA, pp. 43–76. https://doi.org/10.1007/978-1-4757-4062-2_3

Hall, P.A., Thelen, K., 2009. Institutional change in varieties of capitalism. Socio-Econ. Rev. 7, 7–34. https://doi.org/10.1093/ser/mwn020

Heidegger, M., 1977. The Question Concerning Technology, and Other Essays. Garland, New York.

Hill, C., 2018. Reformation to Industrial Revolution: 1530-1780. Verso Books.

Hill, M.D., Kelly, G.W., Lockhart, G.B., Ness, R.A.V., 2013. Determinants and Effects of Corporate Lobbying. Financ. Manag. 42, 931–957. https://doi.org/10.1111/fima.12032

Hirschman, 1990. Exit, Voice and Loyalty: Responses to Decline in Firms, Organizations and States, New Ed edition. ed. Harvard University Press, Cambridge, Mass.

Jensen, M.C., Meckling, W.H., 1976. Theory of the firm: Managerial behavior, agency costs and ownership structure. J. Financ. Econ. 3, 305–360. https://doi.org/10.1016/0304-405X(76)90026-X

Jevons, W.S., 1879. The Theory of Political Economy. Macmillan and Company.

Kelleher, R.B., Krislert, S., Timmons, J.F., 2009. Lobbying and Taxes. Am. J. Polit. Sci. 53, 893–909. https://doi.org/10.1111/j.1540-5907.2009.00407.x

Kelly, L., 2015. Looking to the Future: Life after the Double Irish. Int. Tax Rev. 26, 56.

Kerber, W., 1999. Interjurisdictional Competition within the European Union. Fordham Int. Law J. 23, S217.

Kim, I.S., Milner, H.V., 2020. Multinational Corporations and their Influence Through Lobbying on Foreign Policy 37.

King, T.A., 2006. More Than a Numbers Game: A Brief History of Accounting, 1st edition. ed. Wiley, Hoboken, N.J.

Kurki, V.A.J., 2019. Theory of Legal Personhood. Oxford University Press.

Langbein, S.I., Fuss, M.R., 2017. The OECD/G20-BEPS-Project and the Value Creation Paradigm: Economic Reality Disemboguing into the Interpretation of the Arm's Length Standard. Int. Lawyer 51, 259.

Lanz, R., Miroudot, S., 2011. Intra-Firm Trade: Patterns, Determinants and Policy Implications. OECD, Paris. https://doi.org/10.1787/5kg9p39lrwnn-en

Levin, C., PRYOR, M.L., LANDRIEU, M.L., MCCASKILL, C., TESTER, J., BALDWIN, T., HEITKAMP, H., MCCAIN, J., JOHNSON, R., PORTMAN, R., PAUL, R., AYOTTE, K., BEAN, E.J., ROACH, R.L., KATZ, D.H., GOSHORN, D.J., KERNER, H.J., HALL, S., PATOUT, B.M., WITTMAN, S.D., ROBERTSON, M.D., 2013. PERMANENT SUBCOMMITTEE ON INVESTIGATIONS 304.

Lokken, L., 2005. Whatever Happened to Subpart F - U.S. CFC Legislation after the Check-the-Box Regulations. Fla. Tax Rev. 7, 185.

Loomis, S.C., 2011. The Double Irish Sandwich: Reforming Overseas Tax Havens.

Majone, G., 1994. The rise of the regulatory state in Europe. West Eur. Polit. 17, 77–101. https://doi.org/10.1080/01402389408425031

Monroe, J.S., Wicander, R., 2011. The Changing Earth: Exploring Geology and Evolution. Cengage Learning.

Muchlinski, P., 2001. Corporations In International Litigation: Problems of Jurisdiction and the United Kingdom Asbestos Cases. Int. Comp. Law Q. 50, 1–25. https://doi.org/10.1093/iclq/50.1.1

Muse, K.R., 1981. Edmund Husserl's Impact on Max Weber*. Sociol. Inq. 51, 99–104. https://doi.org/10.1111/j.1475-682X.1981.tb01032.x

North, D.C., 1982. Structure and Change in Economic History, unknown edition. ed. W. W. Norton & Company, New York.
Nye, J.S., 1974. Multinational Corporations in World Politics. Foreign Aff. 53, 153–175. https://doi.org/10.2307/20039497
O'Hara, E.A., Ribstein, L.E., 2009. The Law Market. Oxford University Press.
OpenOil, 2018. OpenOil [WWW Document]. OpenOil. URL http://openoil.net/
Pearson, H., 2005. Origins of Law and Economics: The Economists' New Science of Law, 1830-1930. Cambridge University Press.
Penrose, E.T., 2009. The Theory of the Growth of the Firm. Oxford University Press.
Posner, R.A., 1974. Theories of Economic Regulation. Working Paper Series. https://doi.org/10.3386/w0041
Quentin, C., 2020. Corporations, comity and the 'revenue rule': a jurisprudence of offshore. Lond. Rev. Int. Law 8, 399–424. https://doi.org/10.1093/lril/lrab001
Robé, J.-P., 2020. Property, Power and Politics - Why We Need to Rethink the World Power System. Bristol University Press, Bristol.
Robé, J.-P., 2011. The Legal Structure of the Firm. Account. Econ. Law 1. https://doi.org/10.2202/2152-2820.1001
Rose, A.K., Spiegel, M.M., 2007. Offshore Financial Centres: Parasites or Symbionts?*. Econ. J. 117, 1310–1335. https://doi.org/10.1111/j.1468-0297.2007.02084.x
soares, R., 2021. Researching Africa and the Offshore World. Oxf. Martin Programme Afr. Gov. 29.
Sober, E., 1980. Evolution, Population Thinking, and Essentialism. Philos. Sci. 47, 350–383. https://doi.org/10.1086/288942
Stanfield, J.R., 1980. The Institutional Economics of Karl Polanyi. J. Econ. Issues 14, 593–614. https://doi.org/10.1080/00213624.1980.11503767
Stern, 2017. The Corporation in Hisotry, in: The Corporation: A Critical, Multi-Disciplinary Handbook. Oxford U.P., pp. 21–46.
Stigler, G.J., 1971. The Theory of Economic Regulation. Bell J. Econ. Manag. Sci. 2, 3–21. https://doi.org/10.2307/3003160
Tang, R.Y.W., Schultz, T.D., 2017. Country-by-Country Reporting: The New OECD Guidelines and IRS Final Regulations. J. Corp. Account. Finance 28, 38–47. https://doi.org/10.1002/jcaf.22271
Tiebout, C.M., 1956. A Pure Theory of Local Expenditures. J. Polit. Econ. 64, 416–424. https://doi.org/10.1086/257839
United Nations Conference on Trade and Development, 2023. Trade and Development Report 2023, Trade and Development Report.
US Department of the Treasury, 2016. The European Commission's Recent State Aid Investigations of Transfer Pricing Rulings (White Paper). Washington D.C.
Veblen, T., 2017a. The Engineers & the Price System: From the Author of The Theory of the Leisure Class, The Theory of Business Enterprise, Imperial Germany and the Industrial Revolution & The Higher Learning in America. Musaicum Books.
Veblen, T., 2017b. Absentee Ownership : Business Enterprise in Recent Times - The Case of America. Routledge. https://doi.org/10.4324/9781315083148
Veblen, T., 1898. Why is Economics not an Evolutionary Science? Q. J. Econ. 12, 373–397. https://doi.org/10.2307/1882952
Walker, R.L., John R. Wingender, J., Iii, T.J.P., 2022. Tax Reform, Company Value, and Biden Proposals. J. Invest. 31, 110–121. https://doi.org/10.3905/joi.2021.1.200
Walras, L., 1954. Elements of Pure Economics, First Edition edition. ed. Allen & Unwin.
Wilkins, M., 2005. Multinational Enterprise to 1930: Discontinuities and Continuities, in: Chandler, A.D., Mazlish, B. (Eds.), Leviathans: Multinational Corporations and the New Global History. Cambridge University Press.

Williamson, O.E., 2010. Transaction Cost Economics: The Natural Progression. Am. Econ. Rev. 100, 673–690. https://doi.org/10.1257/aer.100.3.673

Wittendorff, J., 2010. Transfer Pricing and the Arm's Length Principle in International Tax Law. Kluwer Law International B.V.

Wright, R.E., 2013. Corporation Nation. University of Pennsylvania Press.

Yablon, C.M., 2006. The Historical Race Competition for Corporate Charters and the Rise and Decline of New Jersey: 1880-1910. J. Corp. Law 32, 323.

Zucman, G., 2014. Taxing across Borders: Tracking Personal Wealth and Corporate Profits. J. Econ. Perspect. 28, 121–148. https://doi.org/10.1257/jep.28.4.121