An Appraisal of Shareholder Proportional Liability

Gordon G. Sollars

ABSTRACT. Shareholders of corporations have their liability for actions of the corporation limited by law. Unlike the equity holder in a partnership or proprietorship, the assets that a shareholder has distinct from her holdings in the enterprise can not be taken to satisfy liabilities arising from actions of the enterprise itself. This paper argues that a reasonable principle of fairness argues for an alternative to limited liability, proportional liability. Proportional liability makes a shareholder liable for the same proportion of a corporation's excess of liabilities over assets that her number of shares bears to the total number of shares outstanding. The key idea is that it is unfair in situations in which explicit agreements can not be reached for shareholders to bear only limited risk when they may receive gains from stock dividends and appreciation that are not limited to any pre-determined amount. Proportional liability has not been much examined in the financial literature. Good utilitarian arguments have been given for limited liability over unlimited liability for corporate shareholders, but these arguments do not clearly support the choice of limited liability over proportional liability.

KEY WORDS: corporate property rights, corporations as moral persons, limited liability, proportional liability, theories of the corporation, unlimited liability

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A standard feature of the corporation today is limited liability for investors. Unlike the equity holder in a partnership or proprietorship, the assets that a shareholder has distinct from her holdings in the enterprise can not be taken to satisfy liabilities arising from actions of the enterprise itself.[1] When a corporation's outstanding debts are in excess of what it can pay, the law allows the corporation to declare bankruptcy as if it were a natural person with no recourse to additional assets that may be in the hands of shareholders. The corporation is in effect treated as an entity separate from the shareholders that have invested in it, even though it has been acting for their benefit. The question arises whether it is morally justifiable for corporate liability to be limited in this way. I will argue that it is not.

In place of limited liability, I suggest proportional liability. Proportional liability and the mechanisms for enforcing it are open to a variety of interpretations. At some points in history, individual creditors have been able to pursue their claims against particular shareholders up to the full amount of their claim. In the version of proportional liability that I support, each shareholder would be liable for the excess of liabilities over the corporation's assets to the extent of the proportion of her shares to the total number of shares outstanding.[2] In addition, such liability of shareholders would only be to the victims of tort or other so-called "involuntary" creditors.[3] In general, I accept the arguments that creditors who interact contractually with the corporation have the opportunity to adjust their terms to compensate them for expected losses.[4] Thus, the liability to which voluntary creditors are exposed can be altered by contract from the legal default. However, I will assume that a corporation must be liable for any wrong that it does,[5] whether or not a contractual relationship is present. Finally, the focus of this discussion will be on wrongs for which the victims are seeking monetary compensation; I will not deal with the issues of corporate criminal liability and the forms of punishment suited to criminal liability.

It is difficult to examine the moral justifications of shareholder liability without touching on an even more difficult area, the nature of the corporation as a moral entity. What is the moral standing of the corporation? A variety of answers have been proposed. At one extreme,[6] the corporation has been taken to a moral agent, capable of directly bearing responsibility and liability. At the other,[7] the corporation is viewed as an aggregate completely resolvable into its component parts, suggesting that ascriptions of liability should not, or perhaps need not, be made to the corporation itself. Various intermediate positions, e.g., where natural persons are retained as the primary bearers of moral standing, while corporate entities are viewed as having a secondary moral role,[8] also have been advanced.

Larry May gives one such intermediate position.[9] May's theory is multifaceted, concerned with a variety of forms of group behavior including mobs and ethnic groups as well as corporations; I make no attempt to fully assess it here. On the one hand, May rejects any form of individualism which claims that social groups do not "really" exist, while on the other hand he opposes any collectivism which asserts that groups "exist in their own right, perhaps as full moral agents".[10] May's view is that social groups are best conceived as "individuals in relationships", stating that:

> It makes sense to refer to individuals in relationships, rather than to individuals conceived apart from their relationships, when there is action or intent that occurs in the group which could not occur outside of the group.[11]

Developing this idea, May rejects French's view of the corporation as a separate moral entity.[12] I accept this portion of May's analysis. Applying it when the "group" in question is a corporation, it makes sense to look at individual persons in their relationships to the corporation. Although May rejects the idea of a corporation as a separate moral entity, his treatment of the question of moral standing of the corporation, specifically as it relates to corporate property rights, touches on the issue of limited liability in an important way.

Although I lean heavily toward the "aggregate" over the "moral person" view, I will not explicitly deal with this issue here. Rather, I will argue on independent grounds for a view of shareholder liability that is consistent with the aggregate view, proportional liability.[13] At the same time, proportional liability provides an answer to a problem raised by May regarding corporate property rights.

§1. A historical sketch of limited liability

The structure of the modern corporation is the result of a long evolutionary process. In particular, the role of limited liability in the development of the modern corporation is complex, and the importance of this role is disputed. The purpose of this section is only to give a high-level summary.

Commercial associations to provide risk sharing appear as early as the 12th century with the Italian "commenda".[14] This was a partnership in which one partner, the "commendator", provided capital while another partner, the "tractator", conducted the actual business of the partnership. The practice of limited liability is also very old, appearing as early as 1408 in a Florentine statute that exempted the commendator from any liability beyond the capital provided.[15] In the addition to its appearance in Italy, the commenda could be found during the Middle Ages in England, Germany, and Scandinavia.[16]

In England, the long common law tradition makes it possible for historians to disagree over exactly when limited liability became the law. The situation is further complicated due to the side-by-side existence of corporations and unincorporated joint-stock companies which were (until 1844)[17] governed by the law of partnerships. In a description of the differences between the law of corporations and of partnerships before the middle of the nineteenth century, Herbert Shannon[18] states that corporations had a number of attributes denied to partnerships, such as a distinct legal persona, perpetual succession, the right to sue and be sued in the corporate name, and also the limitation of the liability of their members to the capital that they had paid in. Yet Oscar and Mary Handlin[19] note that seventeenth and eighteenth century legal authorities Coke, Shepherd, Blackstone, and Kyd all failed to mention limited liability as an essential feature of the corporation. This ambiguity is understandable given that no general statutory method for incorporation existed at the time. Corporations could be created by special acts of Parliament or by the King's charter, and usually contained some grant of monopoly.[20] No consistency was required, and even in the late eighteenth century these charters sometimes specified unlimited liability, while others explicitly granted limited liability.[21] There was no general incorporation legislation until 1844,[22] and the first legislation to establish limited liability for the corporation was not passed until 1855.[23] Before this period corporate charters were difficult to obtain.

Given that the joint-stock company was originally a kind of partnership, the liability of its members was unlimited. Nevertheless joint-stock companies began to sell transferable shares, and some companies had widespread share ownership.[24] Joint-stock companies tried to achieve limited liability for their members by using the term "limited" in their names, and by inserting limited liability clauses in their contracts, but the legal issues were never fully settled.[25] It is possible that the difficulties of actually enforcing shareholder liability given the legal procedure of the time greatly reduced the actual exposure of the members.[26]

In the U.S., the former colonies did not show the same reluctance as Parliament to grant charters of incorporation, resulting in over 300 corporations being formed by 1801[27] and over 1000 in New England alone by 1817.[28] As a result, in the U.S. the corporation supplanted the place of the joint-stock company. However this did not immediately imply limited liability for corporate shareholders. Liability was both direct, in which a creditor could sue an individual shareholder, and indirect, in which the corporation could assess its shareholders for additional capital as required.[29] The legal question whether shareholders were directly liable for corporate debts when the charter was silent on the issue of liability was unresolved at the start of the nineteenth century.[30] The law was different in the several states, however, and during the early decades of the nineteenth century various forms of shareholder liability were present.[31] By 1830 the shift toward shareholder limited liability was clear. Nevertheless other forms of liability, in particular double liability for the holders of bank shares and proportional liability in California, survived in some fashion into the twentieth century.[32]

§2. A problem with corporate property rights

May begins with a discussion of property rights, noting that the idea that the right to a thing is a function of ownership and control goes back to Roman times.[33] Corporate property thus becomes problematic for May, since the shareholders do not seem to have "full" control of their property. May invokes the authority of Berle and Means[34] to the effect that before the industrial revolution the "owner-worker" had a united interest in and power over his enterprise, but that modern developments have altered this relation. Whatever the overall merits of the classic work of Berle and Means, it does not serve May well here. As we have seen, the "separation of ownership and control", for example in the form of the Italian commenda, managed to insinuate itself between the ancient Romans and the industrial revolution. The "old concept that was property and the old unity that was private enterprise"[35] was broken considerably in advance of the time frame of Berle and Means's historical analysis. The claim that "full" control is necessary for ownership is not an essential part of the idea of commerce, at least since the Middle Ages.

Nevertheless, corporate property rights seem to be more complicated than the situation of a person owning a toothbrush, and some account of them needs to be given. May notes that one might claim that shareholders own the corporate property, but have explicitly or implicitly relinquished control over the corporate assets in favor of management. In this way, May allows that shareholders could still be said to own the corporate property. However, May disputes this claim of relinquishment for two reasons: (1) individual shareholders can not initiate or enforce a given policy; and (2) shareholders do not have a right to exercise control unless they combine to form a majority. It is the second reason that is the more important for May, since "[t]here is a significant difference between owning a thing and owning a share of a thing".[36] The idea is that an owner of individual property can enforce policies with regard to that property directly, while a shareholder needs a decision procedure of some complexity.

These reasons seem to simply describe what shareholding is all about. They certainly pose no problem for the standard legal view in which the corporation owns the property, and each shareholder owns and (fully) controls some number of shares in the corporation. However, May, as a moderate between the extremes of the aggregate and moral person views, finds this standard characterization to be an insupportable example of the latter view, arguing that corporate property rights should not be taken as distinct from the claims of individual human beings.[37] I agree with May in this contention. Yet, another characterization would be that each shareholder holds title to the corporate property in common with all other shareholders, and, in addition, has the right to vote for who will control the corporation. There is, currently, no manifestation of such a common title, but this is because under the present legal system there is no need for any; a stock certificate indicating the right to vote and receive dividends is enough. However, moral heorists have never been shy about suggesting how the law might be improved. It is no doubt simpler for the law to take the view that it does, and I suspect that that is why it does. However, if this view leads to infelicities in our understanding of the moral basis of corporate property, it would seem open to this point as to what we should change. If, as I am claiming, the language of the law is compatible with a moral theory of common ownership by the shareholders, then no real change is required.

May seems to attack this joint ownership characterization by claiming that it is "most reasonable" to hold that ownership should be ascribed to those who control and benefit from the use of a thing.[38] Since shareholders do not individually control corporate property, corporate property can not be reduced to the claims of the shareholders alone. This argument ignores the central agreements made at the time of incorporation. One powerful mark of control over something is to be able to give (or trade) it away. Current shareholders do not have the mark of control that May expects to find because the initial shareholders have given it away – an instance of their control. Subsequent shareholders have purchased the shares with full knowledge of the nature of the control they are receiving. I suspect that the historical connection of the idea of the corporation with early political bodies in the common law[39] can make the rationale for this "self-defeating" exercise of control difficult for some to understand. Nevertheless, the rationale of the commenda, or the joint-stock company with shareholders, makes it clear that some parties to such agreements do not want control.

Of course, from a moral point of view we need to ask if this sort of agreement is one that the parties are justified in making. Here, May makes his best argument,[40] starting with a definition of common property due to Hoffman and Fisher:

> x is the common property of S1, S2, etc., if and only if S1, S2, etc., together have the right to exclude all others from the use or benefit of x, and S1, S2, etc., each has the right not to be excluded from the use or benefit of x; BUT not the right to be excluded from liability for the maleficence of x.[41]

In the case of corporate common property, shareholders do have at least a partial right to be excluded from such liability. May argues:

> It may be morally justifiable for each member to have his or her liability limited only to a share in

> the corporation . . . if it is also true that the sum total of the individual liabilities adds up to full responsibility spread throughout the group. But if the sum total of individual liabilities does not add up to full liability, as seems to happen when individual stockholder liability is set only at the value of investment, then the collectivity is relieved of full liability.[42]

The idea here is that *total* liability can not be limited in any simple way. Two (or more) parties can make an agreement about how liability is to be shared, but some additional argument is needed to explain how liability could be limited with regard to outside parties. As we shall see, some financial and legal theorists argue for shareholder limited liability on utilitarian grounds. May does not deny that there is any justification for limited liability, but instead argues that the existence of limited liability creates a situation in which corporate property rights can not be reduced to an aggregate of the property rights of individual shareholders.

May gives an example using private[43] property:

> If a guest falls through the rotting floor boards of my front porch, hitting his head as he falls, and thereby has a lengthy hospital stay . . . , I would normally be liable for the medical bills he incurs. I am not relieved of this liability when the hospital bills exceed the original purchase price of my house or even its current market value. Rather, my liability extends to whatever is necessary to make him "whole."[44]

When such an injury occurs involving corporate property, the liability of the shareholders is limited by the value of the assets currently held by the corporation, and any liability of directors or officers of the corporation is limited by the value of their *own* assets (although corporations typically indemnify their directors).[45] May continues:

> Until the liabilities of stockholders and managers add up to the kind of full liability that real persons bear as property owners, then there should not be the same status given to corporate property as is given to individual property claims. I propose we demote the status of corporate property in our society. . . .[46]

My proposal goes just the other way. I argue that we should recognize corporate property as a form of property that individuals hold in common, with each individual's liability proportional to the number of shares that she holds out of the total number of shares. With this view of shareholder liability, May's objection is satisfied, and corporate property rights are resolvable into individual rights.

In the next section, I introduce a view of the corporation similar to mine, but differing with regard to liability, for comparison. Following this, I will give an argument for proportional liability based upon one kind of fairness (§4). Next, I will explore some of the reasons given by financial and legal theorists in support of limited liability over *unlimited* liability (§5); then I will deal with objections to limited liability (§6). This will lead to an examination of the degree to which such reasons might count against proportional liability as well (§7). Most theorists who support limited liability express at least some concern for its effects on third parties, and some suggest alternative arrangements aimed at solving this problem within a limited liability regime. Therefore, I will contrast the merits of proportional liability with some of the solutions proposed by proponents of limited liability (§8).

§3. Active management

Robert Hessen defends limited liability on the grounds that shareholders as such do not play an "active" role in the management of the corporation:

> The proper principle of liability should be that whoever controls a business, *regardless of its legal form*, should be personally liable for the torts of agents and employees.[47]

As with May's and my own position, Hessen recognizes the difficulty in arbitrarily limiting liability from a moral standpoint. As with my view and unlike May's, Hessen views corporate property rights as straightforward instances of the rights of individuals, not as rights having a different status. Hessen's solution to the liability problem is to analogize the directors and officers of the corporation to the general partners of the limited partnership, and require that their liability be unlimited. Hessen points out that under such an arrangement corporate officers could employ the safeguards of more careful selection and supervision of employees and larger amounts of liability insurance. I believe some insight will be gained by an examination of the strengths and weaknesses of Hessen's approach.

Since Hessen stresses the irrelevance of the legal form of a business, it is open to him to argue as follows. Suppose that in a given business company the financing that was to have been provided by the sale of shares had been replaced, unbeknownst to anyone outside the company, by a bank loan. It seems clear that in this case, should the company become liable for some action, this liability would fall on the officers or "directors" of the company. In the absence of any special knowledge, the bank, which had made the loan, would not be liable. Its only connection with the company is as a supplier of capital, and this connection alone is not enough; many other inputs are supplied to the company, including labor and materials. Liability would seem to rest with those who acted, or could have acted to prevent the action in question, not simply with anyone who might have played a role in the causal chain that created or sustained the company.

There are at least two ways in which the shareholders are not simply suppliers of capital in the sense that a bank, or other debt holder, is. First, the earnings to the shareholders, unlike the interest paid to the bank, are not subject in advance to any arbitrary limit. While only a portion of these earnings may be distributed to shareholders, a market for the corporation's shares provides a way for shareholders to receive the present (estimated) value of these earnings. Second, unlike the suppliers of other inputs, the shareholders have the right to replace the board of directors. I believe that either of these two elements can provide reasons for placing some responsibility on shareholders that would not be legitimate for debt holders. However, the difficulties of coordinating a large group of shareholders, and the problem that some shareholders may be part of a minority that has voted against the current board, weaken the usefulness of the second difference in matters of liability. However, all shareholders benefit from the first difference, in proportion to the amount of their holdings, and this provides a good reason for placing unlimited liability on the shareholders as a group.[48] In what follows I will focus only on the first difference.[49]

§4. A principle of symmetry

To justify this position I appeal to what I will call the principle of the Symmetry of Gains and Losses (SGL):

> Those who have a chance of receiving arbitrary gains resulting from actions deliberately taken in their behalf must also be subject to the possibly of bearing the arbitrary losses that might be associated with such actions.

SGL is based upon a notion of fairness. The idea of SGL is that when a person has the right to receive benefits that might result from actions that are taken in order to benefit him, it is fair that the effect of any harms that might occur from attempts to secure such benefits also be distributed to that person.[50] A person who does not wish to be exposed to the potential harms can protect herself simply by rejecting the right (implicit in shareholding) to the potential benefits. SGL is based upon the acceptance of "Heads, I win; tails, I lose", which seems fair. Rejection of SGL seems to imply an insistence on "Head, I win; tails, I split my losses with others", which seems unfair, at least in the absence of an actual agreement among all those who could be affected. But, as we have seen, any such agreement is constrained to preserve total liability. I will rely upon this intuitive justification for the SGL, rather than try to invoke devices such as Rawls's original position or Scanlon's idea of principles that reasonable persons could not reasonably reject.[51]

One possible objection[52] to SGL is that it confers liability on shareholders without reference to any moral culpability for the actions of the corporation or its employees. Shareholders, except perhaps for some insiders, can reasonably be presumed not to have given informed consent to any actions that harm involuntary creditors. However, shareholders can be presumed to have given informed consent to the holding of shares, and they give this consent in order to benefit from the potentially risky actions taken by management. In states of the world in which these actions produce no (net) harm, benefits accrue to the shareholders in proportion to their holdings, even though they did not give informed consent to the particular actions that benefited them. To truncate the shareholders' exposure to losses from these actions because they did not give consent lacks the symmetry of fairness. In those states of the world in which involuntary creditors are harmed, the (net) loss falls on them, yet, they do not particularly benefit from the "good" states.

Another possible objection to SGL comes from the recognition that persons, both natural and purely legal, are allowed by current legal systems to limit their liabilities by filing for bankruptcy. If we grant that bankruptcy can be morally justified, then some limits to SGL must follow. However, it is possible that bankruptcy is not morally justified. It is no doubt good for the debtor to have available a mechanism for protecting her future earnings, but it is not clear that such a scheme is fair, e.g., that it would be adopted ex ante by everyone who might become a debtor or creditor. The fairness would seem to depend in large measure on the effect of the debt on the rights of creditors (not all of whom may be voluntary), and this is difficult to assess in the abstract, behind a veil of ignorance, where the effect of the harms on both sides is difficult to specify. Nevertheless, bankruptcy has a long history in the law,[53] and general alternatives to bankruptcy seem to involve some form of involuntary servitude. It seems both reasonable and prudent to assume that considerations of utility or autonomy (or both) are sufficient to justify the practice.

Although bankruptcy sets limits to SGL, the moral validity of bankruptcy does not establish the moral validity of shareholder limited liability, unless one is strongly committed to the idea that the corporation is a moral person, distinct from the standpoint of moral responsibility. Even in this case, the present effect of limited liability may be difficult to justify. This is true because, as a moral person, the corporation itself could be held liable. Even if corporations, once created, are moral persons, persons involved in the creation of corporations might not be free to ignore the requirements of the corporation's moral person-hood. Since all moral persons are prima facie liable for their actions, corporations must presumably be created so that they can comply with the requirements of liability to which they will be subject. A corporation created so as to respect the requirements of full liability might have to rely on the power to assess its shareholders for liabilities that consume its entire capital.[54] Of course, bankruptcy among some of the shareholders might limit the amount that could be recovered by creditors, but it is possible that, even accepting a strong form of liability that prohibited bankruptcy, the future earnings of all shareholders could be insufficient to pay a claim. The exact interaction between liability and the corporation considered as a separate moral person remains to be worked out.

For any view of the moral standing of the corporation less than the status of fully autonomous person, bankruptcy sets a limit for SGL at the total wealth of each shareholder, not the amount of her investment. However, the logic of SGL provides a reason to set the limit at an amount potentially much less than the shareholder's total wealth. The idea of symmetry was invoked to justify imposing arbitrary losses on the shareholder because of the potential for arbitrary gains. However, such gains are paid to each shareholder in proportion to her holdings. For symmetry to be maintained, losses should be apportioned in the same manner. This suggests that under SGL shareholders should be subject to proportional liability, i.e. the total of all liability should be apportioned among shareholders according to the proportion of the stock that they hold.

I have indicated that SGL may be violated by agreement as long as total liability is somehow preserved. It is an open question, however, whether the active members of corporations and partnerships would agree to unlimited liability for themselves without any recourse to the value of the assets they control. Hessen allows that such an arrangement would require higher levels of insurance than corporations now obtain, but it is not clear that such insurance would be available. Kenneth Arrow argues that limited liability arose precisely because of the failure of insurance markets.[55] Even if the necessary insurance were available, insurance policies have coverage limits for each insured, even when the aggregate exposure of an insurance company is unlimited. Thus the existence of insurance can not arbitrarily limit the liability of the active members under Hessen's scenario; when insurance limits are reached, any remaining liability is with the active members. Given the legitimacy of personal bankruptcy and the hierarchical structure of corporations, Hessen's approach potentially allows for the concentration of all liability into the hands of a few risk-seeking individuals who may have inadequate resources to pay their liabilities.

These considerations lead me to the conclusion that the better view is that the shareholders should be proportionally liable. Although not well known, proportional liability has received some discussion in the financial and legal literature, and as mentioned above, actually has some history. Before examining proportional liability in detail, however, it will be useful to review other arguments for limited liability beyond those given by Hessen.

§5. Defenses of limited liability

In the contemporary literature of the corporation, limited liability has many supporters on utilitarian or wealth maximizing grounds.[56] The general form of these arguments is to show how limited liability improves the functions of markets and lowers or avoids costs that would otherwise be incurred, typically with unlimited liability as the baseline. Perhaps the most extensive list of reasons in favor of limited liability is given by Easterbrook and Fischel,[57] and I will explore the issues using the reasons given by them as topic headings.

(1) *Limited liability decreases the need for monitoring due to agency problems.*[58] Shareholders will have a greater incentive to monitor the activities of the board of directors and senior officers the more capital they have at risk, yet there must be some point at which the cost of monitoring outweighs the benefits. Limited liability sets a limit to these costs.

(2) *Limited liability reduces the costs of monitoring the wealth of other shareholders.* With unlimited liability, the greater the wealth of a shareholder, the more the incentive to monitor the wealth of other shareholders. Since each shareholder is liable for the total claim, wealthy shareholders must be concerned that other shareholders may transfer their shares to those with less wealth, shifting the burden in the event of a loss. It is interesting to note that John Stuart Mill was fully aware of this argument in 1850 when he remarked "The great value of limitation of responsibility as related to the working classes would not be so much to facilitate the investment of their savings, not so much to enable the poor to lend to the rich, as to enable the rich to lend to the poor."[59]

While this reason focuses on the need for monitoring by other shareholders, creditors also need to monitor the value of the corporation in order to judge the chance of default on their loans. Ex ante, creditors need to estimate the correct premium to charge to compensate for the level of risk that they are taking. Under any liability regime other than limited liability, this premium will depend to some degree on the wealth of the shareholders as well as the value of the corporation itself. Further, under unlimited liability, the wealthy shareholder, even if she holds only a single share, acts to lower the cost of credit for the corporation.[60]

(3) *Limited liability gives managers incentives to act efficiently by promoting the free transfer of shares.* Henry Manne[61] argues that the market for corporate control acts to discipline managers. Limited liability facilitates this process by ensuring the value of the corporation's shares depends only on its future cash flows. With unlimited liability, the value of shares would be a function of cash flows and the wealth of the shareholders who held them (see reason (2)). As a result all shares would not necessarily trade at the same price. This would greatly complicate the trading of such shares in a market and hence

weaken the effectiveness of the market for corporate control.

(4) *Limited liability reduces the costs of determining the "true" value of a share.* Since shares are fungible under limited liability (see reason (3)), all shares have the same value, and most investors can accept the market price without engaging in costly information gathering.

(5) *Limited liability allows more efficient diversification.* With limited liability the amount a shareholder puts at risk in one corporation is defined in advance, allowing for diversification of risk by holding shares in other corporations. With unlimited liability, diversification can increase the risk to the investor, rather than reduce it, since if *any* one corporation in which the investor held shares went bankrupt, the investor could lose all her wealth.

(6) *Limited liability facilitates the corporation's optimal investment decisions.* Since limited liability supports diversification (see reason (5)), investors will want the corporation to accept any project that has a positive net present value regardless of its (individual) risk. This is not always true of projects that have a high risk of failure even though they have a positive net present value. Yet all projects with a positive net present value are valuable to society as a whole. "The increased availability of funds for projects with positive net values is the real benefit of limited liability."[62]

§6. Objections to limited liability

Nevertheless, many supporters of limited liability grant that there are difficulties. Financial theory suggests that corporate creditors will adjust their terms in order to compensate for the ex ante risk they face due to limited liability.[63] However, the so-called "involuntary creditor" has not had the opportunity to adjust credit terms, and so suffers an uncompensated loss when limited liability is invoked. Advocates of limited liability have proposed bonding[64] or a "duty to notify" in situations of unusually low capitalization[65] to protect the involuntary creditor.

Some disagreement exists over who the involuntary creditor might be. Easterbrook and Fischel[66] give a narrow characterization that excludes employees, consumers, trade creditors, and lenders from the class of involuntary creditors. The idea here is that each of these groups has a contractual relationship in which terms have been, at least implicitly, negotiated. Only the creditor that arises from tort would seem to qualify as involuntary. On the other hand, Blumberg[67] disputes that consumers, workers, and even many trade creditors have necessarily agreed over credit terms, since no explicit negotiation has taken place. Blumberg seems to hold that a person is an involuntary creditor unless some minimum of bargaining formality has been observed. This is too strong, since parties to an agreement may prefer not to negotiate a given question, and they simply cannot negotiate every possible contingency. I believe there are two separate issues here: (1) the conditions for ascribing the status of "voluntary" to these creditors, and (2) whether such groups have failed to explicitly bargain because such negotiation is not worth the effort to them. If such groups have failed to recognize an issue over which it may be in their interest to bargain, then the voluntary nature of these creditors may be questioned. The second issue admits of two interpretations: (2a) explicit negotiation is not worth the effort because it seems certain that it will have no effect, or (2b) these groups do not believe that the effort of explicit negotiation will *on balance* improve their positions.

Since all sides agree that involuntary creditors need special protection under a limited liability regime, each of these possibilities needs to be examined from the standpoint of what happens in bankruptcy where insufficient assets exist to meet the claims of all valid creditors, voluntary or otherwise. First, it should be noted that current bankruptcy law in the U.S. gives priority to a fixed portion of worker's wages left unpaid.[68] Of course, there is never any guaranty that creditors with priority actually receive the full value of their claims, and so in the following discussion I will use workers as a stand-in for any of the groups whose status as voluntary or involuntary creditor is contested.

It seems that an argument that workers are involuntary creditors in (2b) would have to be based upon paternalistic grounds, since they would be receiving as a purported benefit something that they wanted less than something else they did want and actually chose, e.g. higher wages. Similarly, I believe that (1) also requires a paternalistic argument, in the sense that *shareholders* are under no special duty to inform workers that they have failed to recognize a situation in which bargaining would be in their interest, and a general duty would be paternalistic. I will not rehearse the arguments against paternalism here, but simply note that I do not think that treating workers as involuntary creditors is justified in these cases.

The most difficult possibility is (2a). One way of interpreting (2a) is that workers would prefer the greater protection of the status of involuntary creditor, but cannot afford the wage concessions that would be necessary to obtain it by mutual agreement with the corporation. It is unclear whether a rule that mandated involuntary status in this case for workers would actually benefit them, given that corporations might reduce wages anyway in response to the rule. Alternatively, (2a) could be seen as a collective action problem in which all workers would prefer the status, but are blocked from attaining it unless all are willing to hold out for it. Favoring a mandatory rule in this situation in order to overcome the coordination problems of voluntary agreement also seems like an instance of paternalism to me, although some would disagree.[69]

I have tried to show that workers (and, by analogy, Blumberg's other groups) are not involuntary creditors simply because no bargaining formality is observed. The reader who is unconvinced that insisting on such formalities is merely paternalistic, or who supports paternalism, at least in these cases, may continue to follow my analysis with only the caveat that we disagree over membership in the class of involuntary creditors.

Simply ignoring the position of the involuntary creditor seems unfair. Yet the reasons given in the last section indicate why limited liability creates value, and why unlimited liability would seriously impede the creation of such value. It seems at least possible that with unlimited liability the modern corporation would not exist. Given the large role played by the corporation in wealth creation, a utilitarian or societal wealth-maximizing justification of limited liability is clear. The prima facie case for unlimited liability based upon notions of responsibility should be overcome by the benefits of limited liability.

Some would not accept the limitation of liability and the resulting distribution of losses in exchange for the wealth creating benefits. However, it might be possible that even under the radical uncertainly imposed by a Rawlsian veil of ignorance,[70] we could have reason to believe that limited liability would be not simply a *net* gain, but a gain for all concerned. Given the vast wealth creation made possible by the modern corporation, even persons who have suffered serious harms as a result of actions by some corporations acting under limited liability may nevertheless owe their lives initially to the overall level of societal wealth made possible by the limited liability rule. Therefore, it is possible to claim that even those who are the "least advantaged" in that they have been harmed by limited liability corporations would have some reason to accept limited liability.

This claim relies on the no doubt controversial idea that persons who have suffered harms have no complaint if their very existence as persons somehow depends on an event in the chain of causality that has harmed them. Further, advocates of limited liability such as Easterbrook and Fischel[71] and Richard Posner[72] do not suppose that such an ex ante argument alone completely justifies limited liability, since they propose their own modifications to ameliorate the effects of the rule. We have seen that an argument from fairness supports the idea of proportional liability. If proportional liability can preserve many of the important features of limited liability, then it seems reasonable to ignore the complications of the moral justification for limited liability.

§7. Proportional liability

Proportional liability has received some theoretical analysis in the literature.[73] However, most financial treatments assume unlimited liability on the part of each shareholder once limited liability is relaxed, perhaps by analogy with partnerships. Apparently less well known is that a regime of proportional liability was the law for all corporations chartered by or doing business in California from 1849 to 1931.[74] To my knowledge, no economic historian has examined the California situation. However, the existence of a regime of proportional liability for several decades into the twentieth century provides some evidence that such a program can work. In this section, I will review the six reasons given in support of limited liability, and attempt to determine which, if any, would be seriously undermined by a rule of proportional liability.

(1) *Limited liability decreases the need for monitoring due to agency problems*. Proportional liability also reduces (over unlimited liability) the need for monitoring, although not to as great a degree. In the case of bankruptcy where there are claims by involuntary creditors, shareholders must pay these claims under proportional liability. Obviously, this amount can not be known in advance. However, each shareholder does know the proportion of the total claim that she will have to pay. Thus, knowledge of the distribution of bankruptcies in the relevant classes of corporations, and the typical sizes of claims, would give shareholders some way to estimate their probable losses. This estimate, in turn, could be used by a potential investor to determine how much to invest in a particular corporation.

Unlimited liability presents a much more difficult picture (especially for the wealthy shareholder), since *each* shareholder is liable for the entire amount of the claim (and recovering from a single wealthy shareholder has lower transactions costs than recovery from a group of the same wealth). As noted in §5 above, Easterbrook and Fischel argue under this heading that at some point the costs of monitoring the board of directors and senior officers by shareholders must outweigh the benefits. I do not dispute this point; I simply note that while it counts strongly against unlimited liability, it must count less against proportional liability. Proportional liability will create a greater incentive for monitoring (I consider this an advantage) than limited liability, but Easterbrook and Fischel do not provide criteria for determining that the incentive under proportional liability would be inefficiently high.

(2) *Limited liability reduces the costs of monitoring the wealth of other shareholders*. Under proportional liability, the wealth of other shareholders is irrelevant to determining the liability of any given shareholder. With regard to creditors, Susan Woodword[75] argues they will have an incentive to invest real resources to gather information about shareholder wealth under any regime other than limited liability. If there are circumstances in which some amount of shareholder wealth could be used to satisfy claims, creditors have an interest in monitoring the level of shareholder wealth available. This additional monitoring is irrelevant to the corporation's productive activities, and therefore is a form of social waste. While this argument may be correct, it does not show that a regime of proportional liability to the *involuntary* creditor is wasteful. By definition, this creditor does not negotiate in advance of harm with the corporation, and so does not consume any resources in monitoring under any system of liability. Since the voluntary creditor can not tap the wealth of shareholders under my version of proportional liability, creditors perform only the monitoring that they would under limited liability.

(3) *Limited liability gives managers incentives to act efficiently by promoting the free transfer of shares*. Proportional liability might adversely affect the market for corporate control. While theory indicates that unlimited liability is highly detrimental to the transferability of shares, proportional liability is meant to retain transferability. However, if shares may be easily transferred, it would be quite difficult to assign liability to just those persons who held shares at the time the liability arose, due both to uncertainties over the timing of this event and to the necessary record keeping that would be involved. A simpler approach would be to assign liability to those who are shareholders when the debt becomes payable. One difficulty with this rule is that it increases the risk to anyone acquiring a corporation that is facing bankruptcy due to claims by involuntary creditors, and would no doubt limit the candidates who might attempt a "turn-around" of an ailing corporation. However, under pro-

portional liability, the equilibrium price of a share could be negative, that is, a potential shareholder would have to be compensated to hold a share.[76] Thus, any person or group attempting a turn-around in a situation potentially close to bankruptcy due to involuntary creditors could expect to be paid for the risk when the shares are first acquired.

(4) *Limited liability reduces the costs of determining the "true" value of a share*. This depends on there being a single share price for the corporation's shares to all buyers and sellers. Easterbrook and Fischel[77] show why this can not be expected in a regime of unlimited liability, and Woodword[78] argues that the difficulty occurs whenever *any* assessment over the original investment is permitted. However, in the case of proportional liability, Halpern et al.[79] disagree:

> The investor would still choose his optimal portfolio based on maximizing his expected utility of end-of-period wealth, and the ability of the shareholder to diversify firm specific risk will still exist. Thus, there will be an equilibrium price for each security and an equilibrium expected return on each security that depends on its non-diversifiable risk.[80]

Thus proportional liability also lowers the cost of valuation by having a single share price to all buyers and sellers, albeit one that could be negative.[81]

(5) *Limited liability allows more efficient diversification*. Proportional liability also supports diversification (see reason (4)). Although any loss would be a related to the amount invested, owning all of the shares in a given corporation would make the risk unlimited. Owning shares in several corporations increases the risk of loss due to a bankruptcy, but diversifying holdings limits the size of any one loss.

(6) *Limited liability facilitates the corporation's optimal investment decisions*. This depends upon diversification so that all projects with positive net present values are accepted. Proportional liability does allow for diversification (see reason (5)), and therefore provides the benefits of this reason as well.

Thus, of the six reasons supporting limited liability, five provide clear support for proportional liability as well. Only the examination of reason (3) reveals a potential weakness in proportional, as compared to limited, liability. However, the argument that the equilibrium price of a share in a corporation under proportional liability can be negative shows that a would-be acquirer could receive compensation for taking the risk of managing a turn-around situation.

§8. Alternatives to proportional liability

I have argued for proportional liability on moral grounds, using intuitive notions of fairness to support the SGL principle. Further, I have argued that proportional liability would not have the detrimental effects on capital markets that theory indicates would result from unlimited liability. In this section I will briefly compare proportional liability with some other modifications of limited liability that have been proposed.

Posner[82] argues that limited liability should be retained with modifications for two cases. With regard to tort liabilities, Posner suggests that companies engaged in dangerous activities "post a bond equal to the highest reasonable estimate of the probable extent of its tort liability".[83] In the second case, Posner is concerned with the voluntary creditors of corporations with affiliates. The existence of affiliated corporations creates the possibility that creditors have been misled into believing that their claims are protected by the assets of the total affiliated group as opposed to only those of the corporation with which they have (unknowingly) explicitly contracted.

In the first case, Easterbrook and Fischel[84] point out that establishing the appropriate degree of bonding has difficult administrative costs; that setting the level too high will limit the entry of new corporations; and that requiring each corporation in an industry to post such a bond creates a situation of massive over-insurance which is also costly. Easterbrook and Fischel discuss mandatory insurance requirements as an alternative to bonding, but note that these too have administrative costs and can act as a barrier to entry. Proportional liability would require that shareholders as a group stand liable for torts that cannot be satisfied from corporate assets. There would be administrative costs associated with collecting from a large group of shareholders, but there is some evidence that the law can evolve to meet such challenges.[85] Regarding Posner's second case, the focus of this paper has been on the involuntary creditor. However, the effect of enforcing proportional liability in the case of affiliated corporations with misrepresentation to voluntary creditors would be to "pierce the veil"[86] of any subsidiary corporations. As shareholders in their subsidiaries, parent companies would be proportionally liable for their subsidiaries' debts, and would be required to satisfy claims from their corporate assets. In extreme cases, of course, shareholders of the parent would in turn be called upon to pay.

A third alternative discussed by Easterbrook and Fischel[87] is to increase managerial liability. They note that increased liability for managers has the benefit of reducing overly risky behavior. However, they also argue that managers will be unable to find insurance to protect them against huge but uncertain tort claims, due to the large value of the claims and the monitoring costs faced by insurance companies. Solving the problem by means of increasing managerial liability alone does not seem feasible. However, given that senior officers of a corporation typically hold some of their wealth in the form of shares in the corporation, proportional liability automatically increases managerial liability, and hence monitoring. Since liability is proportional to holdings, the insurance problem faced when managers are solely liable is not an issue. Of course, senior officers could choose to reduce their shareholdings under proportional liability, but public disclosure rules would at least make their choice evident to current and potential investors.

Critics of limited liability[88] have also discussed modifications to limited liability. Landers supports piercing the veil, at least when the corporation has been created with insufficient assets to meet his test of viability. As noted above, proportional liability has the effect of piercing the veil in the case of parent and subsidiary relationships.[89] Blumberg raises the interesting point that the acceptance of the practice of corporations owning stock in other corporations and the acceptance of limited liability were separate events, not logically related. From Blumberg's perspective many of the problems caused by limited liability could be eliminated by applying the limited liability rule only to shareholders who are natural persons, and not to parent corporations. Thus Blumberg seems to support a modified veil piercing in which the final veil between corporations and shareholders who are natural persons is not removed. Yet, Blumberg also seems sympathetic to proportional liability.

§9. Summary and conclusion

I have tried to provide a justification of proportional shareholder liability based upon shared ideas of liability and fairness. In addition, I have tried to show that proportional liability does not suffer from the defects attributable to unlimited liability, especially by those who support a limited liability rule. Against this recommendation, it seems that proportional liability might theoretically impose some inefficiencies when compared with limited liability in the market for corporate control. Nevertheless, history shows that relatively large companies with publicly traded shares were viable even under a rule of unlimited liability.[90] Further, the common modifications to limited liability that have been suggested by its supporters seem to raise difficulties that are avoided by proportional liability.

Proportional liability solves the problem of how persons can legitimately form or take part in a corporation simply by making agreements or promises, while at the same time limiting their liability with regard to third parties who are unable participate in such agreements. The answer is that they can not legitimately do so. According to the Principle of Symmetry of Gains and Losses, it is fair that such persons bear potential losses proportional to their potential gains. With this proviso, agreements culminating in a corporation may be reached that do not disadvantage third parties who are not part of the agreement. No special rights are granted to the incorporators or shareholders, and liabilities of the corporation can be resolved into the liabilities of individuals.

Notes

[1] The shareholder's loss may be "large", even though it is "limited", and can certainly be more than the amount actually invested (due to share price appreciation). However, modern portfolio theory counsels the rational shareholder to diversify her holdings, so that loses due to any one stock are not large relative to the investor's wealth.

[2] For example, for a corporation with assets of \$10 000 and liabilities of \$15 000, a shareholder holding ten percent of the shares of the corporation would be liable for \$500, while a shareholder with one percent of the shares would be liable for \$50. Under proportional liability a shareholder can not be certain ex ante of the amount she places at risk; however, she can limit the *expected value* of the risk (calculated, say, from data on corporate bankruptcies) by controlling the number of shares purchased.

[3] I discuss the difference between voluntary and involuntary creditors in §6.

[4] See, for example, Posner, 1976; Easterbrook and Fischel, 1985. Based on these arguments I assume that there is no good reason to change the default rule of limited liability for shareholders with respect to voluntary creditors. My proposal is for a rule of proportional liability only to involuntary creditors.

[5] Even supporters of limited liability make this assumption; they merely wish to limit, not eliminate, the liability.

[6] French, 1979.

[7] Jensen and Meckling, 1976; Hessen, 1979.

[8] Werhane, 1985.

[9] May, 1987. Other positions are staked out by Donaldson, 1982; Freeman, 1984; Keeley, 1988; Donaldson and Dunfee, 1995; Pfeiffer, 1995; Hartman, 1996. I have chosen to analyze May's work, not because his theory of the corporation is the most developed (it is not – he is primarily concerned with collective responsibility), but because it most clearly highlights the conceptual problem posed by corporate limited liability for any moral theory of the corporation.

[10] May, 1987, p. 5.

[11] May, 1987, p. 5.

[12] See also Pfeiffer, 1995 for an important critique of French's position.

[13] As will become clear, however, the motivation for my argument comes from an objection that can be raised against the aggregate view when it is combined with limited liability.

[14] Mitchell, 1907, p. 183.

[15] Mitchell, 1907, p. 186.

[16] Mitchell, 1907, p. 185.

[17] Hunt, 1936, p. 89.

[18] Shannon, 1931, p. 267.

[19] Handlin and Handlin, 1945, p. 12.

[20] Hunt, 1936, p. 4.

[21] Blumberg, 1986, p. 580.

[22] Hunt, 1936, chapter 5.

[23] Hunt, 1936, chapter 6.

[24] Blumberg, 1986, p. 581.

[25] Blumberg, 1986, p. 582.

[26] Blumberg, 1986, p. 582.

[27] Dodd, 1954, p. 11.

[28] Dodd, 1954, p. 17.

[29] Blumberg, 1986, pp. 588–590.

[30] Blumberg, 1986, p. 591.

[31] Blumberg, 1986, pp. 590–594.

[32] Blumberg, 1986, p. 597.

[33] May, 1987, p. 125. It seems somewhat strange to say that the right to a thing is a function of ownership, when I am as likely to say that I own something because I have a right (am entitled) to it.

[34] Berle and Means, 1968.

[35] May quoting Berle and Means, 1968 at May, 1987, p. 126.

[36] May, 1987, p. 127. May argues that the business judgment rule acts so as to prevent even a majority of shareholders from overruling management governance. My understanding is that the business judgment rule prevents a court from interfering with management Henn, 1970, p. 482. Perhaps May means that even a majority of shareholders can not substitute an arbitrary policy of their choice for a policy of management. Nevertheless, it is still open to any majority of shareholders to replace the current management. Inefficiencies in collective action combined with an active market for shares make it far more likely that such an outcome will result from an outsider purchasing a majority of shares from the current holders, but this is possible only because of the rights that the current shareholders possess.

[37] May, 1987, p. 132.

[38] May, 1987, p. 127 I would claim that *legal* ownership is "ascribed" to whoever has the better title. May, or anyone, is free to claim that *moral* title to a thing should rest in some place other than its current holder regardless of legal claim, but his language suggests that he wants to be free to redefine existing ownership based upon the current distribution of control without regard to the history of any agreements. I find it difficult to agree to this second kind of freedom since it arbitrarily overturns past agreements. I think this represents a fundamental difference

in outlook that is well captured in Nozick's distinction between "current time-slice" principles and "historical" principles. See Nozick, 1974, pp. 153–155.

[39] See generally Seymour, 1903; Carr, 1907; Mitchell, 1907.

[40] May actually makes two arguments, but I discuss only the one relevant to liability in the text above. The other argument is that a definition of common property (including corporate property) must describe in detail what it means for an aggregate of individuals to "together have the right to exclude all others from the use or benefit" of a thing. Since the way that "members of a corporation . . . exercise control is quite complex", no simple view of "aggregate togetherness" will accurately reflect how corporate property is controlled May, 1987, pp. 129–131. I have already argued that the control structure that exists now within a given corporation does not determine ownership of corporate property, since that would ignore the agreements that were made when the initial control structure was put in force. Again, shareholders may be viewed as owners in common of property who have also agreed to a particular general control method, i.e., a board of directors, for that property.

[41] May, 1987, pp. 129–130.

[42] May, 1987, p. 131.

[43] May's use of "private" is contentious, since he has not established that *common* property, which corporate property undoubtedly is, cannot be private. Private property might better be contrasted with public property, i.e. property owned by a government. May's usage is suggestive of the confusion caused by linking the idea of the corporation as a business enterprise to the early development of the corporation as a political body. For references describing this development see Seymour, 1903; Carr, 1907; Mitchell, 1907.

[44] May, 1987, pp. 132–133 May adds that even if this result forces him into bankruptcy, his future earnings may be claimed. This may be the correct moral view, but I do not believe it represents the current law in the U.S. See 11 U.S.C §523.

[45] Chew, 1996, pp. 230–242.

[46] May, 1987, p. 134.

[47] Hessen, 1979, p. 20.

[48] A reviewer has asked if it is fair for such minority shareholders to bear proportional, as opposed to limited liability, given that their votes have not endorsed the current management and, by extension, its actions. I argue that it is. First, that some shareholders might find themselves in a minority ought to be well known to potential investors. Second, such shareholders continue to benefit from the activities of the corporation even if they would have preferred a different management. Unless such an investor is holding the shares for strategic reasons, such as to function as an "activist" at shareholder meetings, the best reason I can think for continued holding is that the investor expects to do better by holding than by selling.

What can be said to the person who wants to hold shares in order to have the right to attend shareholder meetings rather than to obtain returns from dividends or price appreciation? First, the right to attend meetings can be obtained through the purchase of only a token number of shares, greatly limiting the exposure. Second, shareholder proportional liability might lead to greater monitoring of management by shareholders, reducing to some extent the need for the "strategic" holding of shares.

[49] In so doing, my argument applies to limited partnerships as well as to corporations, but I will not have anything more to say about the former.

[50] In this essay I find it convenient to characterize SGL in terms of fairness. Alternatively, it could be stated in terms of rights and authority: in the absence of specific authority to do so, a person may not impose on others any rights-violating harms that occur as a result of attempts to secure benefits for him. One of the ways of gaining such authority would be via consent.

[51] See Scanlon, 1982. Scanlon's method was pointed out to me by Edwin Hartman. Of course, I believe that reasonable persons can not reasonably reject SGL; that is why I support it. One way for reasonable persons to reject SGL would be if the form of liability it justifies were unworkable. I try to show that it is feasible in §7.

[52] I owe this objection to an anonymous reviewer.

[53] See Baird and Jackson, 1990, pp. 26–36 for a brief summary.

[54] As noted above, Blumberg supports the idea that early corporations had the power to assess their members. Others dispute that the corporation had a general power of assessment. See Dodd, 1954, pp. 369–370.

[55] See Arrow, 1974.

[56] Manne, 1967; Posner, 1976; Halpern, Trebilock et al., 1980; Easterbrook and Fischel, 1985; Woodward, 1985.

[57] Easterbrook and Fischel, 1985.

[58] Also see Jensen and Meckling, 1976.

[59] Quoted in Hunt, 1936, pp. 121–122.

[60] Halpern, Trebilock et al., 1980; Woodward, 1985; Winton, 1993.

[61] Manne, 1965.
[62] Easterbrook and Fischel, 1985, p. 97.
[63] Posner, 1976.
[64] Posner, 1976.
[65] Easterbrook and Fischel, 1985.
[66] Easterbrook and Fischel, 1985, p. 104.
[67] Blumberg, 1986.
[68] 11 U.S.C §507.
[69] See Hardin, 1988, pp. 142–152.
[70] Rawls, 1971.
[71] Easterbrook and Fischel, 1985.
[72] Posner, 1976.
[73] Manne, 1967; Halpern, Trebilock et al., 1980; Stone, 1980; Blumberg, 1986.
[74] Hohfeld, 1909; Blumberg, 1986.
[75] Woodward, 1985.
[76] Halpern, Trebilock et al., 1980.
[77] Easterbrook and Fischel, 1985.
[78] Woodward, 1985.
[79] Halpern, Trebilock et al., 1980.
[80] Halpern, Trebilock et al., 1980, p. 137.
[81] Since buyers would demand to be paid to "buy" a share that carried a risk of a future liability assessment. See Halpern, Trebilock et al., 1980, p. 137.
[82] Posner, 1976.
[83] Posner, 1976, p. 520.
[84] Easterbrook and Fischel, 1985.
[85] See the discussion of the "creditors' bill" Blumberg, 1986, pp. 603–604.
[86] The phrase specifically refers to a court's decision to disregard limited liability in a given case, thus making shareholders' liability unlimited in the case under consideration.
[87] Easterbrook and Fischel, 1985.
[88] Landers, 1975; Blumberg, 1986.
[89] Another form of affiliation occurs when a single shareholder, or small group of shareholders, directly holds shares in a number of companies operating in similar businesses. Proportional liability would not collapse these companies, but it would make the shareholder proportionally liable for the debts of any of the affiliated corporations.
[90] Blumberg, 1986, p. 581.

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