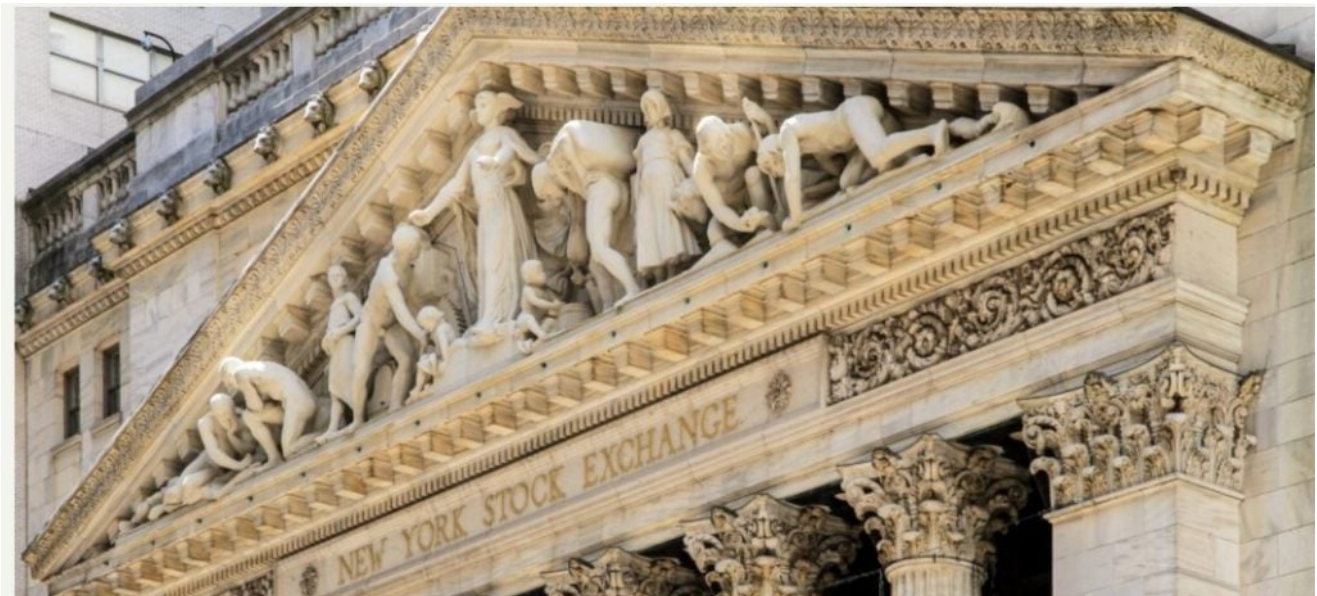


The Erosion of American Capitalism

By Bruce Gilley

In November, Spirit Airlines filed for bankruptcy. Was this because it was a particularly ill-managed company? No, Spirit Airlines went bankrupt because the United States is no longer a truly capitalist country. It is instead a country with a *predatory economy* in which productive capital is formally under the legal ownership of private investors but *de facto* controlled by government and the anti-capitalist social activists it empowers, such as tort lawyers and labor unions. This renders the description of our economy as capitalist untenable.



In Spirit Airlines' case, government attorneys decided they knew more about airline economics than Spirit's capitalist owners and [blocked](#) a merger with JetBlue, which was already bleeding red ink after the government had denied it a limited partnership with American Airlines. But the regulatory assault on Spirit goes back much further. Twice, in 2010 and 2017, its pilot union went on strike, burdening the airline with pay packages that undermined its business model. Pilot strikes

used to be rare, but the 2010 strike was [evidence](#) that bureaucrats and politicians had become fearful of enforcing long-standing rules against such actions. The productive capital of Spirit was whip-sawed by unpredictable government behavior.

There's more. In the five years running up to 2019, Spirit paid 22 percent of its net income to the government in taxes—this in an industry where long-term costs and the risks of sudden downturns in aviation traffic require adequate reserves, and every single government service is already paid for by the airlines through user fees. That's even higher than the 15 percent global minimum tax that social welfare states in Europe think should be levied on corporations.

When that sudden drop off in passengers came, the government stepped in to give with one hand what it had taken with the other, paying Spirit to keep its staff from engaging in productive labor by complying with its illiberal lockdown measures. Rather than a capitalist response to COVID, where companies would have drawn on adequate reserves and banks would have provided bridge loans while passengers made risk choices about whether to fly, the government nationalized the economy—Spirit along with it—a dip from which the airline never recovered.

And guess who benefits from the Spirit bankruptcy? Of course, the big corporations that now dominate most industries because of their rational strategic choice to become part of the predatory economy. They can pay all the compliance costs for nuisance regulations, they can continually cave into unions by passing on the costs to consumers since there is no competition, and they immediately sign up for the latest social justice crusade that the predatory state demands.

So we have in the Spirit bankruptcy a perfect miniature of the argument for why the United States is no longer a capitalist country. The regulatory tools that the predatory state

deploys—interventions in market decisions, interventions in labor markets, excessive taxation, and all sorts of price controls, and much else that has nothing to do with making markets fairer or products and services safer but is merely the plunder of capital—render description of our economy as capitalist untenable.

Regulating Business to Death

Your federal predatory government is hard at work destroying capitalists and the value of their capital in other sectors as well. The FTC [blocked](#) the merger of Kroger and Albertsons because the combined grocery store chain would have a combined market share of—wait for it—14 percent. This is capricious and dominating behavior, the opposite of a rules-based market economy.

In October, the FTC's rejection of another merger between two struggling companies was [upheld](#) by a New York court on the grounds of the critical nature of the sector. What could it be, you ask: high-speed Internet infrastructure? Defense technology? No: cheap female handbags! Yes, your government is hard at work doing battle with the capitalists of the down-market female handbag sector.

One of the last Trump administration's attempts to reduce compliance costs to help small business was the so-called "off ramp" in the Financial CHOICE Act of 2017 that would have allowed small banks that held sufficient capital to simply not comply with the voluminous Dodd-Frank and Basel III regulations. Big banks shot down the off ramp because their ability to pay compliance (and litigation) costs is now part of their competitive business model.

The Justice Department is now [proposing](#) to break up one of the most successful American companies of the last quarter century, Google, without any economic logic other than "it is really big."

David Brooks has [described](#) the cumulative effects of this regulatory assault and the resulting teams of compliance officers, lawyers, human resources managers, and ESG consultants as “death by a thousand paper cuts.” It is a big reason why productivity growth in the American economy is so sluggish. When I was growing up, aspiring business leaders all read the Tom Peters & Robert Waterman book of 1982 *In Search of Excellence*. Today they are probably all reading a book called *In Search of Lawyers and Compliance Officers*. Even without a violent revolution seizing the means of production, American capitalism has been humbled before predatory statisticians and their excessive regulations.

While direct government ownership of capital is limited, there are large sectors of the American economy that *have* been de facto nationalized. Government health plans accounted for 53 percent of health spending in the US in 2022, [according](#) to the OECD, not much lower than the 71 percent in our socialized northern neighbor. Government schemes [purchased](#) 81 percent of all conventional residential home loans originated in 2023, and the Biden administration proposed rules to push that even higher. American agriculture, to take another example, is a nationalized industry because of the pervasive role of input and output subsidies, which boost farm revenues by 10 percent a year, according to OECD [data](#). Water supply is also almost entirely a state industry in the United States, one area where our nationalized economy is even less capitalist than in Europe. Passenger rail, meanwhile, has failed repeatedly under state ownership, not just Amtrak but also state initiatives in California and New Jersey. That’s why we are slowly [privatizing](#) it, as in Florida, Nevada, and Texas.

While the growing share of the American economy run by government is alarming, it is the unpredictable and consequential attacks on private business that make the predatory state a refutation of capitalism. The Marxists and progressive academics should stop talking about “late

capitalism." The show is already over.

It is true that if you look at comparative rankings, capitalism is less repressed in the United States than in many comparable countries. We still rank high in the Economic Freedom Index, for example. But this is purely comparative. Predatory states have taken over capitalism in most advanced industrial countries, and we perhaps have merely been spared the worst, which is why capitalists continue to park their capital here. But saying this makes us a capitalist country is like saying that the former Yugoslavia was a capitalist country because it had more market mechanisms in place than other Soviet bloc economies. We are living in a predatory economy with some incentive pay allowed by the over-weening state. That's all.

The predatory economy operates not only through direct government control of capital, but also by empowering social actors who tie down capital with their own forms of extortion. Do you know that you will soon be unable to get a taxi or an Uber in New York City? That is according to a [recent report](#) by the New York State Department of Financial Services. Why? Because the state enacted a no-fault auto accident policy that was a boon for litigation lawyers. Stage or find a bicyclist who runs a red light and crashes into a taxi, then bring on your litigation lawyer who bilks the taxi company for millions based on nothing but fraud. Last year, Florida had to enact limits on litigation to prevent a complete collapse of the property and casualty insurance markets.

The various assaults on capitalism have been justified as efforts to save the little guy from the plutocrats. But they have instead empowered the plutocrats and the statist.

All these billboards with trial lawyers touting the millions they extract from honest companies over so-called injury claims? They are frauds, shysters, an out-in-the-open

criminalized economy that liberals do nothing about because those lawyers fund them.

Litigation based on junk claims and junk science now makes it impossible for small companies to survive in many sectors and imposes a de facto lien on the owners of capital because a part of their due returns goes to paying for protection money in the form of insurance, virtue-signaling ESG statements, and teams of compliance officers. The near-bankruptcy of Bayer after it inherited the Roundup litigation costs from Monsanto will go down in history as the most egregious attack on [capitalism](#), [science](#), and [fair regulation](#) of the twentieth century.

More recently, after litigation attorneys challenged Tesla's right to award Elon Musk a pay package that now looks wildly cheap, and after shareholders reaffirmed their support for the package, a Delaware judge [rejected](#) the package, [claiming](#) that she should determine what was "fair" and "healthy" pay for Musk. She awarded the lawyers \$345 million in fees (they asked for \$5.6 billion) for defeating the rights of capital owners to pay their managers whatever they see fit—15 percent of the monies they claimed to have saved shareholders. Tesla will now have to pay Musk even more, and lawyers have a green light to challenge every executive compensation package for being "unhealthy."

Capitalism or Laborism?

Unions are the other social actor empowered by the predatory state well beyond their normal role as collective bargaining agents. The most basic idea of "capitalism" as the word implies is that "capital," not labor, runs the show. Labor is given a range of options within this system and its role is to seek the best deal it can. This is a fundamental conceptual point. Everything else derives from it.

Now you might think the opposite of capitalism is "socialism"

or “communism” but those systems sought to eliminate capital itself, which became part of the assets of the state. The real alternative, appropriately enough, was called “Labourism” and was the policy of Britain’s Labour Party well into the 1980s. The basic idea of laborism was that private capital would continue to exist, but it would be labor, not capital, that ran the show. Capital would be given a range of options within this system and its role would be to seek the best deal it could.

So which do we have in the United States right now, capitalism or laborism? In October, the union that controls East Coast and Gulf Coast ports shut down the 36 ports for three days until the Biden administration forced the owners to cave in. This is the union that maintains two workers for every one job on the payroll and whose strikers carried signs with the hilariously Luddite slogan “Fight automation, save jobs.” You’ll be glad that the textiles industry managed to block such sector-wide strikes in the nineteenth century, otherwise the \$40 jeans you are wearing would have cost \$400.

It’s not just unions. The federal government—especially the Equal Employment Opportunities Commission—has used all sorts of regulatory tools to, in effect, force companies to hire and pay people not based on their productive value to the enterprise—which only a company itself is in a position to judge—but based on some ideological fixation. Pay equity for women, for instance, is an [open scam](#). The Biden administration also [sued](#) SpaceX, which is now singlehandedly keeping the US in the space race, for not hiring enough Hispanics. (The company also had to [convince](#) the FAA that one of its falling boosters would not strike a shark, turtle, or whale in the Indian Ocean, a probability so small that the consultant’s model returned only error codes). I could go on about the assault on Space X, but whatever we call it, it is not capitalism, but a kind of mafia-style Sicilian domination of markets complete with shake-down money and intimidation. Musk

has counter-sued many of these agencies. But he is the exception. Most just bow and scrape.

All this reduces employment and reduces the wage share of income. The share of national income goes to “workers” in the form of wages and other compensation since profits get distributed and, in many ways, has not budged in a century—it was 50 percent in 1929, 53 percent in 1950, and 52 percent in 2023. Critics say this shows why we need expansive social programs and interventions in the labor market. But it’s the economic cost of such programs as well as the distortionary effects of misguided labor policies that keep the wage share unchanged.

After tax profits as a share of national income have crept up slightly from around 5 percent after the war to about 8 percent today. But where do those profits go? To shareholders in the form of capital gains and dividends. And who are these shareholders? Wage earners, which is why when you add together wages, social benefits, and investment income, inequality has not widened at all.

What has widened is the role of the state in transferring corporate profits out of the hands of firms to reinvest in a way that would boost wages into social transfers that do nothing to boost wages, indeed repress them. Government spending is now 36 percent of our economy and came close to half during the COVID pandemic. Interest on our federal debt now exceeds defense spending. Predatory socialism is now greater than capitalism.

The flip side to the regulatory taking of capitalist control and profits is the regulatory compensation for many capitalist losses. It used to be that when a company failed, the owners lost their shirts, the lenders their loans, and the workers their jobs. But major business failures today lead to bail-outs and compensation, as if something has gone wrong with capitalism when capitalism does exactly what it is supposed to

do, namely to weed out inefficient firms and reward efficient ones. Big car firms, big banks, big steel companies, big anything can now reliably depend upon government running to the rescue to declare that capitalism has failed when capitalism succeeds in doing precisely what it was intended to do.

All this undermines not just our economy but also our politics. The various assaults on capitalism have been justified as efforts to save the little guy from the plutocrats. But they have instead empowered the plutocrats and the statisticians. As I have [shown](#) elsewhere, when you attack capitalism, you make it more likely that democracy will fail.

Our republic's immune response to this disease was Donald Trump. When he declared in his 2019 State of the Union address that "America will never be a socialist country," he prefaced the sentence that "America was founded on liberty and independence, and not government coercion, domination, and control." Thus, he correctly associated socialism not with state ownership of the means of production, but with state domination of it, even if it remains in private hands. Can we expect a pull-back in the predatory state under Trump Mark II? Probably. But the predatory economy is baked into our governmental system and undoing it will be the work not of one presidential administration, but of generations of freedom-loving Americans.

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