CALL FOR RESEARCH: TOWARDS THE RIGHT-SIZING OF REGULATIONS FOR BUSINESS PERFORMANCE

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ABSTRACT

Nobel Prize Laureate Hayek warned the U.S. was susceptible to wrong-sized regulations leading to market failure. We seek to understand where we are relative to Hayek's portention, the effects of regulations on business performance, and how to right-size regulations to establish a healthy business environment. Previous research contains different underlying evidence and methods because they are from diverse, bias, incomplete, or propagandized angles, making productive discourse difficult and increasing epistemological polarity. Thus, this paper is a call for research to quantify the costs and benefits of regulation on business, with specific requests for action on contemporary regulatory dilemmas. The spectrum of business regulation considerations and a historical perspective of regulatory decisions are examined. A set of models and frameworks based on the literature are developed to propose research questions. The U.S. is at a pivotal moment where it is critical to understand the impacts of regulations on business performance and develop appropriate actions. The aim and underling premises of the study, implications, and desire are based on the genuine concern that we may be reaching a state of overregulation that requires correction, but our stance is not political in nature. Rather, it seeks to provide an economic foundation to investigate whether indeed the U.S. has reached a state of overregulation and if so, how to achieve an optimal level of regulation.

Keywords: capitalism, regulations, business performance, socialism, government, Hayek, market failure, economy, regulatory capture, business environment

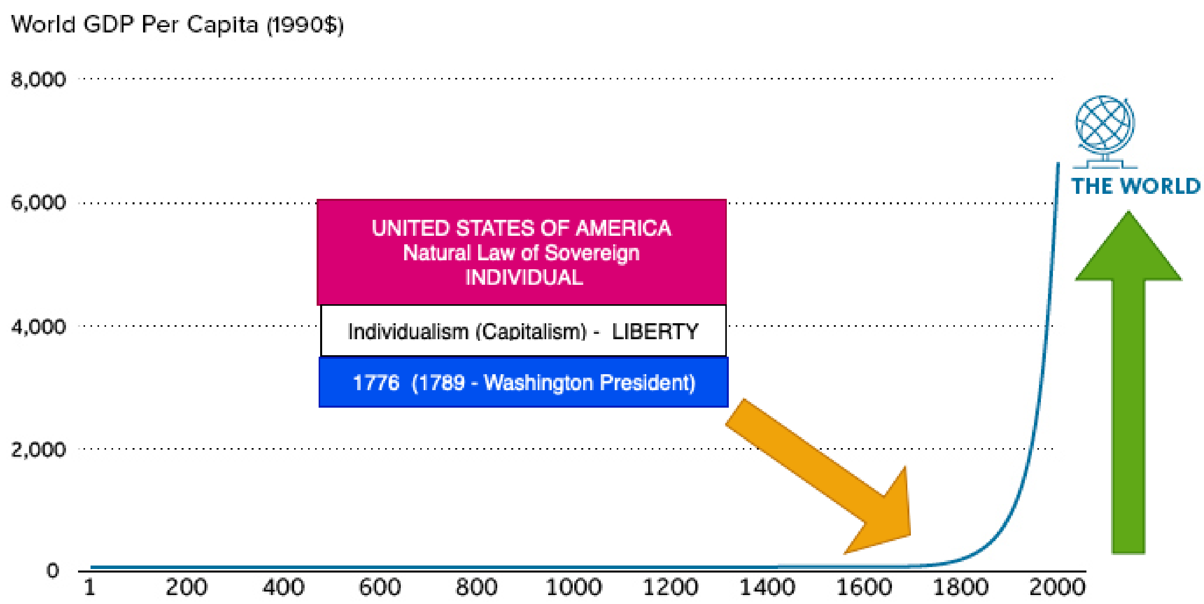
I. Introduction

Some economists and business executives believe that the U.S. is no longer an individualist state due to regulatory encroachment but rather a collectivist state. Hayek (1943, 1960) warned that the U.S. could be undermined by regulations and effectively become an unplanned administrative state. Schumpeter (1942) warned of a similar outcome directionally for the U.S. Several Nobel prize-winning economists have warned or conceded that the U.S. is now a collectivist state. An analysis of current source material and original data collection seem to support face validity to these most ominous prognostications. This paper develops a call for research to understand contemporary regulatory phenomena on a macro basis, seeking to know whether the U.S. is already fundamentally (or on the way to) becoming an unplanned administrative state.

A country's regulatory environment affects firms' overall capacity to generate economic rents to better and optimize business and society. There are two broad binary governmental regulatory models to organize the business environment: collectivism and individualism, aka economic liberty (Hayek, 1943, 1960; Marx & Engels, 1848; Rand et al., 1986; Read, 2018; von Mises, 2015). Collectivism uses central government planning, stakeholder primacy, operating regulations, and reporting requirements to organize business to steer the collective economy and society as a whole (Marx & Engels, 1848; Mitchell, 2019; Soros, 2008; Stiglitz, 2015; Wolff, 2016). Individualism uses shareholder primacy based on the natural law of sovereignty of self-reliance and self-interest for individual shareholders and only the minimum necessary amount of regulation for capital formation, fair markets, and competition (Friedman, 1962, 1970; Hayek, 1943, 1945, 1960; Mitchell, 2020; Read, 2018; Weber, 1922, 1930).

Some scholars argue that individualism is the core of liberty and has created more economic and civil elevations than all other forms of business governance combined (Smith, 1776; Boaz, 2015), which is critical for a healthy business environment. All civil achievements and elevations have one commonality, economic performance (Friedman & Schwartz, 1963). Figure 1 shows the strong correlation between economic liberty on GDP per capita.

Figure 1. Economic Liberty and GDP per Capita



Source. Statistics on World Population, GDP, and Per Capita GDP 1-2008 AD. Groningen, Netherlands: Groningen Growth and Development Centre, University of Groningen.

In this study, any governmentally imposed friction costs on business are considered part of the regulatory phenomena to be examined (Peikoff, 1983, 1993; Strassel, 2019). This study's consideration of regulations includes tax, reporting, assessments, intervention, legal, and subsidies (TRAILS). To avoid the fallacy of composition, the TRAILS ecosystem's totality will be examined (Peikoff, 1983).

The U.S. business environment is better than other countries by some economic measures (Appleby, 2010; Elson et al., 2017; Hannan, 2011, 2013; King & Levine, 1993). But this reality could be a strawman if the U.S. is relatively better off because it is lagging on the path to becoming an administrative state compared to other countries. Perhaps a better comparison is the U.S. business environment today as compared to 1960. In the preponderance of meaningful metrics, the U.S. is worse now than it was in 1960. Examples are the worldwide standard of living per capita in the U.S., which is down 58% (Giridharadas, 2018; Hannan, 2011, 2013; Murray, 2016; Stoller, 2019). Recent research suggests that the U.S. is under or is near financial bankruptcy (Alvaredo et al., 2018; Bandow, 2019; Murray, 2016; Whitehead, 2016, 2019).

On a macro basis, a nation can pretend it does not have problems, but its consequences cannot be ignored. Before you can solve a problem, three predicate steps are required: understand the problem, admit the problem exists, and understand its root, symptomatic, and systemic causes. Then you can investigate solutions. The broad approach pursued in this call for research will be to find critical research areas to right-size TRAILS (Flynn, 1987; Gwartney et al., 2018; Jones, 2015; Vásquez & Porčnik, 2019) by satisfying the three predicate conditions. This call for research focuses on the appropriate philosophy governing antecedents for a healthy business environment. Then, suitable TRAILS believed to manifest that business environment can be understood. Using this structure, gaps in enacted TRAILS and misalignments of TRAILS help identify areas for further research.

Purpose of the Paper

This research seeks to expose gaps to be filled in studying the impact of regulations on business performance. Pro-regulation and anti-regulation studies have materially different underlying evidence and methods because they come from diverse and often biased angles (Delsol et al., 2017; Wheelan, 2013, 2019). Unreconciled underlying evidence and facts portend any productive discourse to be fruitless. Thus, this paper proposes directions to quantify the costs and benefits of regulation on business, with specific requests for action on contemporary regulatory dilemmas. The call for research is motivated by the magnitude of the problem and by the need to infuse economic perspectives into policy debates.

The call for research will allow the regulatory debate to be elevated to the practical level to advance toward realistic and actionable research and solutions. This common-sense approach will ideally reduce the extreme epistemic polarity of the current general understanding of the TRAILS phenomena (D’Amato, 2018), in order to propose a research agenda that can lead to a better business environment. In doing so, we make sure that competing analyses do not fall prey to unmoored rhetoric or fallacy of concrete arguments, and instead would seek baseline agreement to represent the business world accurately.

The epistemic polarity in the U.S. political debate has resulted in factional splits. The all-encompassing polarity is not merely between collectivists vs. individualists or based on political affiliation or self-interest groups. But instead, importantly, there exists a division of two realities. One side trusts experts from academia, media, entertainment, governmental institutions, unaccountable world organizations, foundations, non-governmental organizations, activists' organizations, and even celebrities. The other has a deep mistrust and complete skepticism of these same experts and notables. From a business standpoint, due to TRAILS, the country is at a pivotal moment in which the two groups face but one unattractive consequence if appropriate TRAILS actions and inactions are not adopted. Given the present juncture with the global COVID-19 economic crisis, it is crucial to bridge the two sides to right-size TRAILS for business performance.

II. Literature Review

Hayek (1943, 1960, 1979, 2013) predicted the defeated 'devil' of collectivism would gradually and discreetly destroy the state through TRAILS (Carpenter, 2019). Collectivist propagandists would divert blame to capitalism and business people and manipulate citizens to demand regulation to control capitalism, resulting in tyranny (Boyack, 2014; Caldwell, 2008; Crewdson & Treaster, 1977; Reisman, 1979 & 2012).

Regulatory usurpation of individualism can occur at the national, firm, or operational level and are not mutually exclusive (Bainbridge, 1993, 2019; Hoggett, 2006; Lipton, 2017; Lipton & Podolsky, 2019). Literature on regulatory usurpation suggests that every TRAILS action has consequences, beneficial or ruinous, intended or unintended, if not immediately in the future, and they can be compounding and esoteric (Edwards, 2014; Edwards & Kaeding, 2015; Schuck, 2014; Wilson, 1989). Thus, it is the essence of the regulatory ecosystem that any government TRAILS action will asymmetrically impact human activity and, therefore, business activity (Low & MacMillan, 1988; von Mises, 2016; Wilson, 1989; Wilson et al., 2017).

The regulatory capture can go far beyond observable costs. It includes creating anti-competitive markets by enforcing or not enforcing appropriate TRAILS, all of which lead to wrong-sized TRAILS. They include public and private partnerships that eliminate competition, government investment in private companies that increase monopolies, bailouts, unfair trade deals, and tax breaks for selected entities. These can result in unintended consequences on the business environment and can potentially stifle commerce by advertently or inadvertently having the government pick winners and losers (Allison, 2012, 2014; Bastiat, 2007; Blumenthal, 1984; Blumenthal & Newman, 2015; Cudenec, 2020; Dharapala et al., 2019; Friedman, 1957, 1962, 1970; Hockerts & Wüstenhagen, 2010; Hargadon & Kenney; 2012; LaVecchia & Mitchell, 2016; Levy & Reynolds, 2000; Miron, 2010; Rothbard, 1959, 2002a, 2002b, 2007, 2009; Schuck, 2014; Strassel, 2019; von Mises, 2015, 2016). The unseen adverse consequences of regulations are far reaching and compounding as Bastiat (1850) first noted and expanded upon in a study on how business executives see the impact of contemporary regulations (Mulligan, 2021). The consequences of wrong-sized regulations purportedly with good intentions to assist or incentivize an industry or the economy, including public-private partnerships, subsidies, and tax breaks, have little or no impact on a company's risk adjusted actions (Mitchell & Farren, 2019; Taleb, 2007, 2012 & 2020).

How does the path to a regulatory state develop? The vast bulk of TRAILS and related direct and indirect costs can grow by individual regulatory actions, leading to an increase in reporting requirements, judicial activism, unaccountable and less competent legislative body, sanctioned activism, creation of oversight agencies, sanctioned oversight, enforcement of self-regulatory bodies, the unelected world governing bodies, and uneven application and enforcement of regulations (Bainbridge, 2019; Cogan, 2017; Kadlec, 2011; Palmer, 2013, 2014; Shlaes, 2009; Stigler, 1983; Strassel, 2019; Stoller, 2019). Therefore, in this call for research, the inquiry areas get back to the basics of natural law, economic liberty, free markets, entrepreneurial innovation, and competition as foundations to advance theory and research on how to right-size TRAILS for business performance.

Evidence on the Path to an Administrative State

Some argue that wrong-sized TRAILS could drive government debt, relative to economic growth, at the Federal, state, municipal, and U.N. systems level to unsustainable ratios (Cogen, 2017; Hayek, 1943, 1960, 1988; Hazlitt, 1959, 1988; Hoppe, 2002, 2019; Rothbard, 1990, 2007; Schumpeter, 1942; von Mises, 1940, 1957, 1961, 1981, 2005, 2007). Gattuso and Katz (2016a, 2016b) noted that from 2010 to 2015 alone, the federal government added nearly 50,000 new rules to the Federal Registry, and that excluded states, agencies, and self-regulatory organizations.

There are statistics on the impact of TRAILS that raise the flag and signal the importance of addressing the issue in a non-partisan, empirical manner (Table 1). Dawson and Seater (2013), using the percentage ratio of TRAILS to GDP in 1948 vs. the reported proportion of TRAILS to GDP through 2012, calculated TRAILS current and cumulative impact on GDP. In 2012, the difference was $38 trillion, or $150 thousand per adult per annum. The estimated cost was $421 trillion over the last 50 years.

Table 1. Annual TRAILS Cost Estimates for Federal, State, Municipal, and U.N. Systems

Impact of TRAILS measures				
Category			***Impact***	***Notes***
Journal of Economic Growth, Dawson & Seater (2013)				
Opportunity Cost Per Year Using Impairment of Growth			**$38 Trillion**	6,7
Per Capita			**$150 Thousand**	h, 5, 6,7
Estimated aggregrate since 1970 - using reported measurements			**$421 Trillion**	(h*50)/2
Estimated aggregrate since 1970 - using consistent measurement			**$571 Trillion**	
Research triangulation TRAILS GDP growth rates drag (Beige Book, https://www.macrotrends.net, BEA)				
GDP growth rate 1960 to 1969		4.65%		10
GDP growth rate 1970 to 2020		2.61%		10
Real GDP in 1969		$4.94 Trillion		10
Opportunitity costs per year			**$ 37 Trillion**	(k*(i-j)^50)- 2020 GDP

Note. Sources: Dawson and Seater (2013), Williams (2021), Beige Book, https://www.macrotrends.net, BEA

The Dawson and Seater (2013) research was triangulated by a calculation using GDP growth rates, which slowed as TRAILS grew exponentially starting in the 1960s. The results support Dawson and Seater (2013). The calculation was performed using the government's Beige Book statistics, which changed the GDP calculation methodology upward in 1990. Had GDP been calculated consistently, the growth rate from 1990 to 2020 would have gone from 2.47% to zero, implying a cumulative adverse unseen differential of $571 trillion (Williams, 2021). Cato estimates that wrong sized TRAILS will result in an addition $600 trillion reduction in GDP over the following 80 years. (Bailey, & Tupy, 2020).

Some research suggests that the U.S. has already become a regulatory state. Gilens and Page (2014) performed a multivariate analysis over two decades of 1,779 key TRAILS. Their research shows that the U.S. is dominated by powerful business elites that can get 50% of TRAILS they want to be enacted. Others have little to no influence on TRAILS, and even when they try to organize to influence policy, they are generally ineffective. The economic elites, oligarchs, inherited wealth, economic-minded think tanks, and major investors know the political policy game, and the majority of others with policies worthy of respect do not share the same access or influence (de La Boetie, 1553; de Tocqueville, 1835; Gilens & Page, 2014). Special interest groups are used to benefit these groups using the veneer of the greater good (Mises, 1981).

Paul (2011) reviewed 50 essential TRAILS that may have turned America into a regulatory state with references to the policy, studies, and economic effects. Bandow (2019) tied significant TRAILS to Congressional Budget Office numbers and determined that the U.S. is a regulatory state and is bankrupt. Dawson and Seater (2013) performed a statistical analysis of TRAILS and economic output and found a straightforward adverse relationship in all macroeconomic measurements. McLaughlin (2013a, 2013b) reviewed 11 quantitative studies and analyzed 57 years of regulation to determine that TRAILS have slowed the economy on a compounded basis and have led to offshoring of business activity.

Goldberg (2008) tracked the start of the individualism impairing TRAILS to the 1913-1921 Woodrow Wilson administration. Wilson inverted the Constitution (meaning Founding Documents - The Declaration of Independence, Bill of Rights, Constitution and Federalist Papers) to interpret The Republic as a democracy. Wilson did so by mixing Hegelian and Darwinian theories to create a living constitution (Goldberg, 2008; Wilson, 1885, 1913). In a democracy, the individual and business serve the government (Goldberg, 2008; Quigley, 1966, 1981; Shlaes, 2009; Wilson, 1885, 1913), which is the opposite intention of the Founding Documents (Yoo, 2020). Wilson accomplished this inversion through the creation of the permanent, unelected administrative class to rule over business and individuals, aka the dual state construct of governance (Blum, 1956; Fraenkel, 1941; Goldberg, 2008; Griffin, 2002; Quigley, 1966, 1981; Shlaes, 2009; Throntveit, 2017; Wilson, 1913). The administrative class is a separate TRAILS vector from elected officials (i.e., political class or normative class) due to a Supreme Court Decision that gave the administrative class primacy over the political class in many TRAILS matters. The administrative class includes over 1,000 departments including the Federal Reserve, Department of Labor, the IRS, and generally all business oversight and intelligence agencies (Crews, 2019; Dentchev et al., 2017). These departments issue over 25 times the number of TRAILS that the political class does (Strassel, 2019; Stoller, 2019).

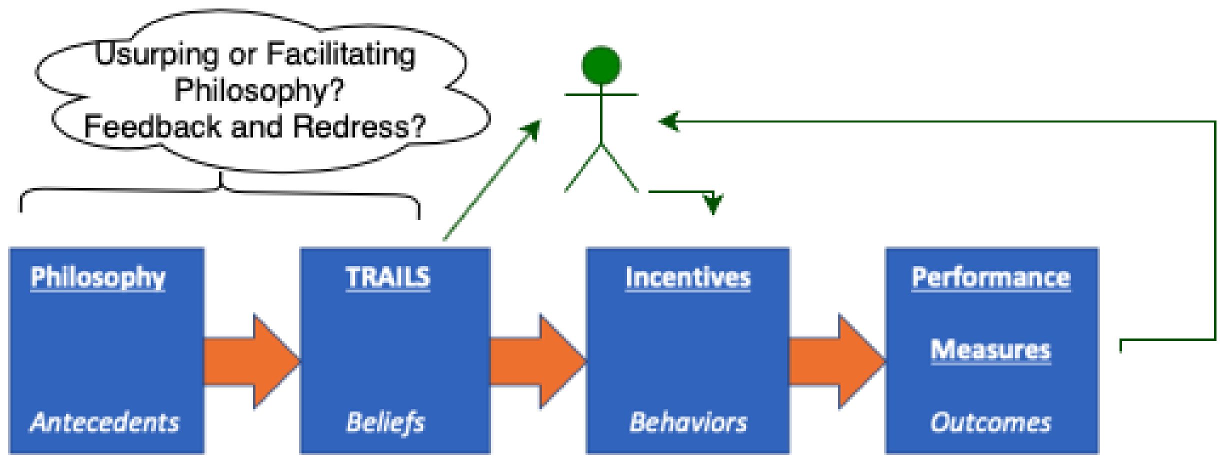
Other researchers contend that the observed dissipating business and economic trends over the last 60 years are due to the nature of individualism having a focus on capital rather than individuals and the solution is more TRAILS to curb that trend (Alvarado et al., 2018; Boushey et al., 2017; Piketty, 2014; Soros, 2008; Marcuse, 1958, 1961,1966, 1969, 2013 &2017). Individualists contend that individuals set the price of capital by pricing in the invisible hand of the market. Thus, the consumer has primacy, not capital nor owners of capital (Read, 2018; Sowell, 2015, 2016). Said differently, capital (assets) only has value if individuals are willing to pay the capital value charge. Capital does not set the price for capital, individuals and markets do. Instead, in collectivism, central planners set the price for capital, using cost-plus pricing and mathematical models for quantity and insert TRAILS to adjust the value of capital to steer society to equal individual outcomes (Delsol et al., 2017). The models may or may not reflect the real world, and individualists would argue that the model would not incorporate Smith's (1776) invisible hand. Further, for collectivism, since the government owns all property there is no way to properly value it as it has no market price. Thus, one of the most material cost inputs cannot properly be evaluated in the sale pricing discovery mechanism (von Mises, 2015)

For collectivists, unequal outcomes are the correlation that proves the causation of injustice. Thus, government regulation must be employed to correct unequal outcomes (Alvardo et al., 2018; Keynes, 1926, 1935; Piketty, 2014; Soros, 2008; van Hees, 1997; Wolff, 2016). One explanation for gaps in outcomes is the collectivist tool of 'sounds plausible is a truth.' Still, there may be many reasons why individual outcomes differ. Attempts to enforce TRAILS to make outcomes equitable can result in the degradation of people into the lowest common economic denominator (Hazelitt, 1959, 1988). In the business environment, this unintended consequence often occurs when governments try to create equality despite different businesses and across industries with different cycles (Schumpeter, 1934, 1939; Taleb, 2016).

The Impact of TRAILS on Business Performance

An adapted framework from the ABBO model (Edmondson, 1999) is the framing for this call for research (see Figure 2). The framework considers both individualism and collectivism as antecedents, a form of governance for a nation. Then, beliefs are understandings of TRAILS at the firm structure or operating level. Beliefs are followed by behaviors driven by TRAILS-induced incentives at the firm level, also referred to as team behaviors, and at the individual level. The individual interprets, evaluates, and internalizes TRAILS, motivating intentional behavior that affects business performance. The change from that calculus manifests results in outcomes (performance measures). At the A (Antecedents-Philosophy), B (Beliefs-TRAILS), and C (Behaviors-Incentives) levels, there are philosophically two dichotomous research positions that are rooted in either individualism or collectivism. Often not explicit in existing research is the function incentives have on behaviors and, thus, outcomes, although it is omnipresent in some form, especially for individualists (De Bottom, 2016; Hayek, 1945, 1948; Weber, 1922, 1930).

Figure 2. Framework on Impact of TRAILS on Business Performance



The ABBO model is not static. There is dynamism in business that occurs over time based on new TRAILS. Antecedents or the philosophy of government can change with a new administration and or personnel. Firms are continually evaluating TRAILS, changing and refining their beliefs and behaviors based on observed outcomes. Exogenous and endogenous factors are put into the calculus of prior antecedents, if applicable, and beliefs (intrinsic and extrinsic) are adjusted before determining adjustments to behaviors (incentives) to improve business outcomes.

TRAILS occur at three compounding and interconnected levels: (1) Constitutional level (Bastiat, 2007; Gyford, 1987), (2) Business formation level (Dent, 2014; Hoggett, 2006), and (3) Operating level (Bainbridge, 2002, 2015, 2019; Cioffi, 2004; Hayek, 1945, 1955, 1960; Paul, 2008, 2011, 2012; Rand & Peikoff, 1984, 1993, 1999; Rand et al., 1986).

Constitutional Choice: The antecedent choices in the ABBO model are individualism or collectivism. The philosophical choice will determine economic development and living standards (Hayek, 1943, 1960; Read, 2018; Schumpeter, 1942; Sowell, 2016). Individualists believe equality of outcome before freedom of individual results in neither and freedom of individual before equality gets both (Friedman, 1962, 1972). Collectivists believe equality of outcomes is fairer and provides more freedom. In collectivist philosophy, fairness in equity equals freedom.

Firm-Level Choice: The firm's choice is either shareholder primacy (associated with individualism) or stakeholder primacy (associated with collectivism). For shareholder primacy, Friedman (1962) states the purpose of the firm "is to maximize shareholder value that is fulfilling the firm's purpose because the firm can pay employees, pay taxes, and support charities. Deviating from this is stealing from the shareholder who the laws are to protect" (p. 53). Denis (2016) builds on Friedman’s statement by promoting corporate social responsibility (CSR) or environmental social and corporate governance (ESG) matters by noting the importance of a firm's freedom to be responsive to the communities relevant to the firm.

Using the business form by stakeholder primacy can be leveraged by collectivist governments to attempt to steer society for the good of all (not just the individual), to achieve equal outcomes, and not necessarily maximize total outcome (Berman et al., 2016; Hayek, 1948, 1979, 1982, 1988, 1996; Lipton, 2017; Marz, 1991; Piketty, 2014; Schumpeter, 1942; Sowell, 1993, 2001, 2007, 2011, 2012 & 2015). Further, a key concept of some stakeholder primacy collectivists purports to believe a company should be a sovereign of the world, not just of the company's shareholders, stakeholders, and the nation (Scherer & Palazzo, 2009). Stakeholder theory is consistent with collectivist principles (Soros, 2008; Bainbridge, 2019; Doig, 2011;

Donaldson & Preston, 1995; Dodd & Merrick, 1932; Elson & Goossen, 2017; Ferrell et al., 2016; Wolff, 2016).

Stakeholder primacy typically gains traction in the U.S. with the public and politicos after a significant adverse event as the government correct matters and markets through central planning (Soros, 2008; von Mises, 2007; Wolff, 2016). However, substantial corrections due to government intervention in business and the markets can lead to deferment of small individualism market corrections until the government-created constricted markets implode (Rothbard, 1959, 1990, 2002, 2009; Schumpeter, 1939; Sowell, 2007, 2011a, 2011b, 2015; Taleb, 2005, 2007, 2012, 2016; Tacoma, 2020).

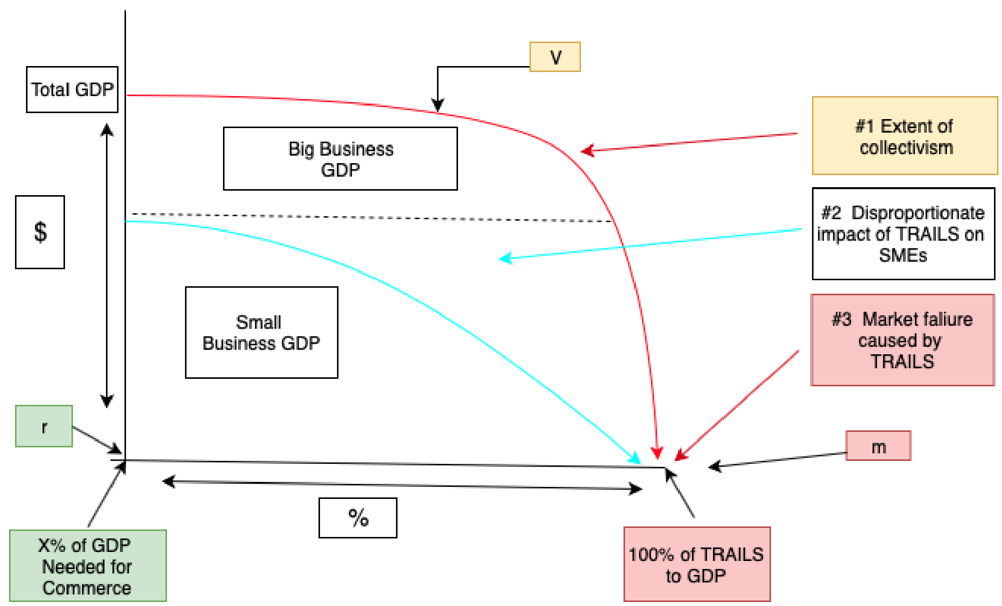
Operational Level: Some TRAILS directly impact industry or business operations. The analysis of the literature suggests that TRAILS requires right-sizing even at this level.

In the following section, 10 propositions emerge from an analytical framework of TRAILS' role on business performance, seeking to understand what the state of the U.S. is today and the implications for TRAILS right-sizing.

III. Frameworks, Propositions, and Research Questions

This call for research seeks to examine the current TRAILS environment and its implications for the business environment. Thus, theoretical frameworks were developed based on a review of existing literature on TRAILS' impact on business performance and preliminary interviews with industry executives. Figure 3 is a theoretical model developed to determine the appropriate role of regulations on business performance. The red line is total GDP, the green line is small business GDP contribution, and big business GDP contribution is between them. The model starts with the thesis that an appropriate government regulation level favors business performance, expressed in TRAILS as a percent of GDP. We define right-sized TRAILS for business performance as the minimum set of rules that level the playing field to enable commerce. These rules are dynamic and may need to change over time as the business environment changes. Unnecessary TRAILS will lead to sub-optimal performance, up until the point of market failure.

Figure 3. TRAILS Right-Sizing Model



Proposition 1: *There is an appropriate level and set of TRAILS (right-sized) needed to enable commerce and that favors business performance (point r in x-axis).*

Proposition 2: *TRAILS beyond level r (henceforth wrong-sized TRAILS) harm business performance.*

Proposition 3: *Larger, more established firms pick up lost business by small firms due to wrong-sized TRAILS.*

The U.S. is at some point on the curve in this model. It depends on how you measure and calculate TRAILS and GDP, including methodologies such as cash basis, accrual basis, or modified accrual, among other factors. The first set of proposed research questions stemming from the model is in the spirit of developing, testing, and refining it.

Research Question 1: What is the most appropriate measurement methodology to determine where the U.S. is (point *v*) relative to right-sized TRAILS (point *r*) and market failure (point *m*)?

There are multiple possible measures to gauge the benefits of a country's regulatory environment, such as financial benefits (Elson et al., 2017), impacts on society (Carter, 2018; Goldin, 1992, 2014), innovation (Tsanova & Havenith, 2019), economy (Hannan, 2011, 2013), environment (Bracket, 2019), and stakeholders (Bainbridge, 1993, 2002, 2015, 2019; Bebchuk & Tallarita, 2020; Cornell & Damodaran, 2020).

Two macro reports provide interesting insights into what could be essential measures of TRAILS impact on business performance. The first was from the 2020 Heritage Foundation Index and IMF, which revealed that economic freedom brings higher business performance. The 2019 Human Freedom Index (HFI), global measurement of personal, civil, and financial freedom, with a focus on legal more than economic, complemented the Heritage Report information, of which the focus is more economical than legal, with virtually the same conclusions (Vásquez & Porčnik, 2019). HFI computes human freedom based on measures that encompass personal, civil, and economic freedom and defines freedom as the absence of coercive TRAILS. HFI views personal, civil, economic, and individual liberties as inseparable and paramount for human progress.

These measures are informative, but they are not directly related to TRAILS' impact on business performance. More research is necessary to identify the key measures that will correctly position countries in the continuum between right-sized TRAILS (point *r*) and the level of TRAILS that lead to market failure (point *m*).

Research Question 2: How can the impact of TRAILS on business performance be empirically derived, tested, and refined?

Once TRAILS measures have been developed, research is needed to derive and refine the relationship between TRAILS and business performance for both large and small businesses. Concerning the model, research is required to establish the functional relationship between TRAILS and business performance, broken down for large businesses and SMEs.

Proposition 4: TRAILS have a disproportionate impact on SMEs.

Beyond a certain level, TRAILS can harm small businesses disproportionately more than big companies. This observation is based on specific TRAILS analysis of Sarbanes-Oxley (Bartlett, 2009; Carter, 2013; Cohen & Zarowin, 2010), Affordable Care Act (Silver & Hyman, 2018), Dodd-Frank Act (Allison, 2012 & 2014), and research such as Stigler's (1964, 1971, 1983) work on how TRAILS create oligarchies. The number of public companies has been more than halved since 2000 possibly due to an increase in TRAILS, so research is necessary to determine the impact of TRAILS on SMEs.

This theoretical proposition is not far-fetched when considering other signals in the U.S. business environment. Mitchell (2014), Fried (2009), and Lavecchia and Mitchell (2016) indicate that wrong-sized TRAILS are bankrupting SMEs and damaging cities of those bankrupt companies. This is based on the anti-competitive practices of companies that have benefited from TRAILS, for example, by acquiring and exerting predatory pricing power. They often use that anti-competitive power to eliminate competition, which lowers the tax base of municipalities. These analyses rely on the registry of new U.S. laws at the Federal, state, and local level of approximately 200,000 new TRAILS a year, the uptake of claims made at each court level, and economics statistics from entities such as the Institute of Local Self Reliance, the Bureau of Labor Statistics, the Bureau of Economic Analysis, the quarterly Beige Book, financial budget reports of government entities, and testimonies under oath at the Federal, state, and municipal levels (Mclaughlin, 2013a, 2013b; The Economist 2013, 2016, 2017). This leads to the following research question:

> **Research Question 3**: What TRAILS impact SMEs disproportionally compared to large businesses?

To illustrate the importance of Research Question 3, a prominent company executive, when asked about the disproportionate impact of TRAILS on small business, used the phrase that if you are not at the table, you are the meal (Mulligan, 2021). The CEO’s company grew to be one of the world's largest in its industry due to his close relationship with every U.S. administration over the last 30 years. The company supported every scientism, technocracy solutionism for more government control, and wealth transfer propaganda of every Presidential administration. The company was a significant beneficiary of TRAILS. The company strategically became best-in-class at exploiting government agencies that accelerated wildly under many administrations (Aitken, 1996 & 2015; Berman, 1989; Bernays, 2005, 2015; Hayward, 2004; Kadlec, 2011).

This anecdotal example is one where TRAILS may advertently disadvantage SMEs. However, there are other cases of possibly inadvertent impact of TRAILS on SMEs. For example, SMEs were hurt significantly more than large businesses during COVID-19, and TRAILS introduced to push the economy forward may have left SMEs relatively worse off. After the pandemic started, within seven months, there was a massive transfer of wealth. The top 22 billionaires increased their net worth from $7.9 trillion in April 2020 to $10.2 trillion in September 2020 (Thubron, 2020). Amazon, Microsoft, Google, Walmart, and Facebook accounted for the bulk of the beneficial transfer (Schwab, 2020; Thubron, 2020). A natural experiment may be occurring in real-time, where there is a major transfer of wealth to big companies at the expense of SMEs. This leads to a question that will be very interesting to examine as the pandemic's economic outcomes transpire (Deist, 2020a, 2020b, 2020c).

> **Research Question 4**: What is the impact and implications of pandemic-induced TRAILS on large businesses vs. SMEs?

Proposition 5. Overregulation can lead to market failure.

At some point, TRAILS reach a position of overregulation and undermine GDP, also known as market failure (Caldwell, 2008; Hayek, 1943, 1960; Murray, 2016; Schumpeter, 1943; Whitehead, 2013, 2016, 2019). There are numerous paths to market failure, including unsound money (Salerno, 1994; Fitts, 2020), regulatory overreach, lack of transparency, loss of property rights, intervention by government, unfair markets, interference with disruptive innovation, unequal opportunities, lack of individual justice, and interference with shareholder primacy (Dunford, 2020). Overregulation or wrong regulations in any one of these areas could contribute to systemic market failure.

> **Research Question 5**: How close is the U.S. business environment to market failure (point *m*)?

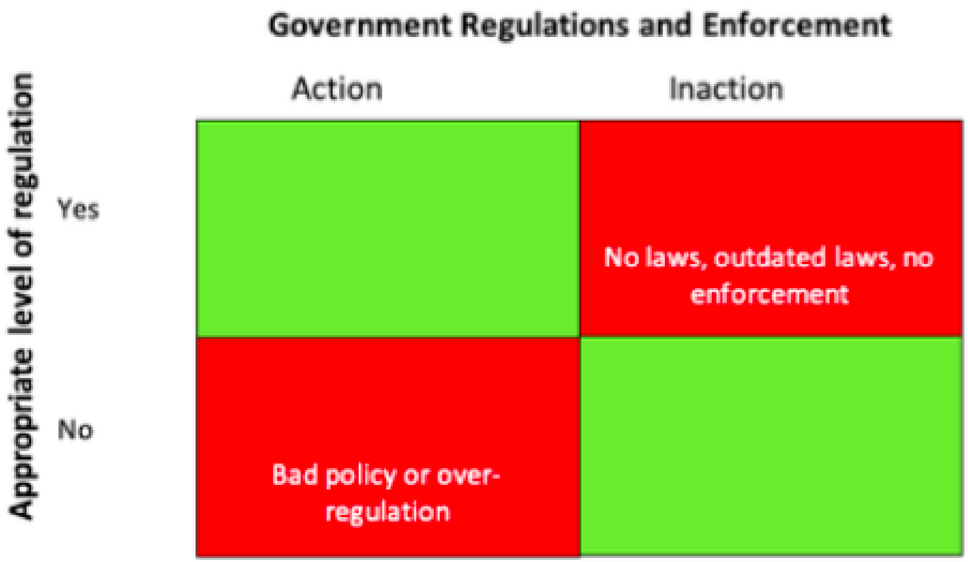
Proposition 6. Non-enforcement of appropriate TRAILS is detrimental to business performance.

The framework in this call for research proposes a point *r* (see Figure 3) in the state of TRAILS that is optimal for business performance, for both large firms and SMEs. Proposition 1 states that there is a minimum of TRAILS and rules of the game needed to ensure fair competition, which implies there are points to the left of *r* that leave room for TRAILS to be enacted and enforced. An essential way in which government influences business performance is by inaction, not creating or enforcing right-sized TRAILS. While not as evident as direct investment and proactive legislation, government inaction can be as detrimental for business performance as TRAILS that hurt business performance (Rand et al., 1984).

For example, this inaction is seen in the government not enforcing anti-competitive regulations and enabling Amazon to become a monopoly in several categories by acquisition (LaVecchia & Mitchell, 2016). This lack of enforcement is evidenced by over 500 FAANG (Facebook, Amazon, Apple, Netflix, Google) acquisitions with no antitrust impediments and thousands of filed antitrust complaints with no review or quick review (The Economist, 2017). This lack of enforcement of TRAILS should be explored at the industry level. For example, one could argue that the lack of enforcement of intellectual property protection in media and entertainment is detrimental to business performance for both large businesses and SMEs.

Figure 4 helps illustrate the problem of both action and inaction by the government that impacts business performance, as a visualization of the dynamic and complex phenomena of regulatory action and inaction. The matrix figure shows two ways the government helps business (i.e., green boxes) and how they harm business (i.e., red boxes). On the Y-axis of the diagram is whether the appropriate regulation level in place. On the X-axis is the government creating and enforcing (action) or not (inaction).

Figure 4. Regulatory Action and Inaction and the Impact on Business Performance



TRAILS can harm businesses if there is inappropriate regulation. The government can also harm businesses by not enforcing appropriate regulations or unequal enforcement of applicable laws (Edwards, 2014; LaVecchia & Mitchell, 2016; Strassel, 2019). The universe of possible positive (negative) TRAILS outcomes depends upon the appropriate TRAILS along these dimensions of a favorable business environment:

- Competitive (anti-competitive) markets (LaVecchia & Mitchell, 2016; The Economist, 2017; Shepsle, 1982),
- Commerce to succeed (fail) (Rand & Peikoff, 1984, 1993; Wilson, 1989),
- Equal (unequal) opportunity (Hargadon & Kenney, 2012), and
- High (low) trust between government and commerce, leading to optimal (sub-optimal) business performance (Boaz, 2015; Boettke, 1997; Hayek, 1943,1945, 1955, 1960; Marz, 1991; Roth, 2010).

This analysis leads to the following research question:

> **Research Question 6**: What is the minimum set of TRAILS that can favor business performance?

Proposition 7. TRAILS that foster innovation will favor business performance.

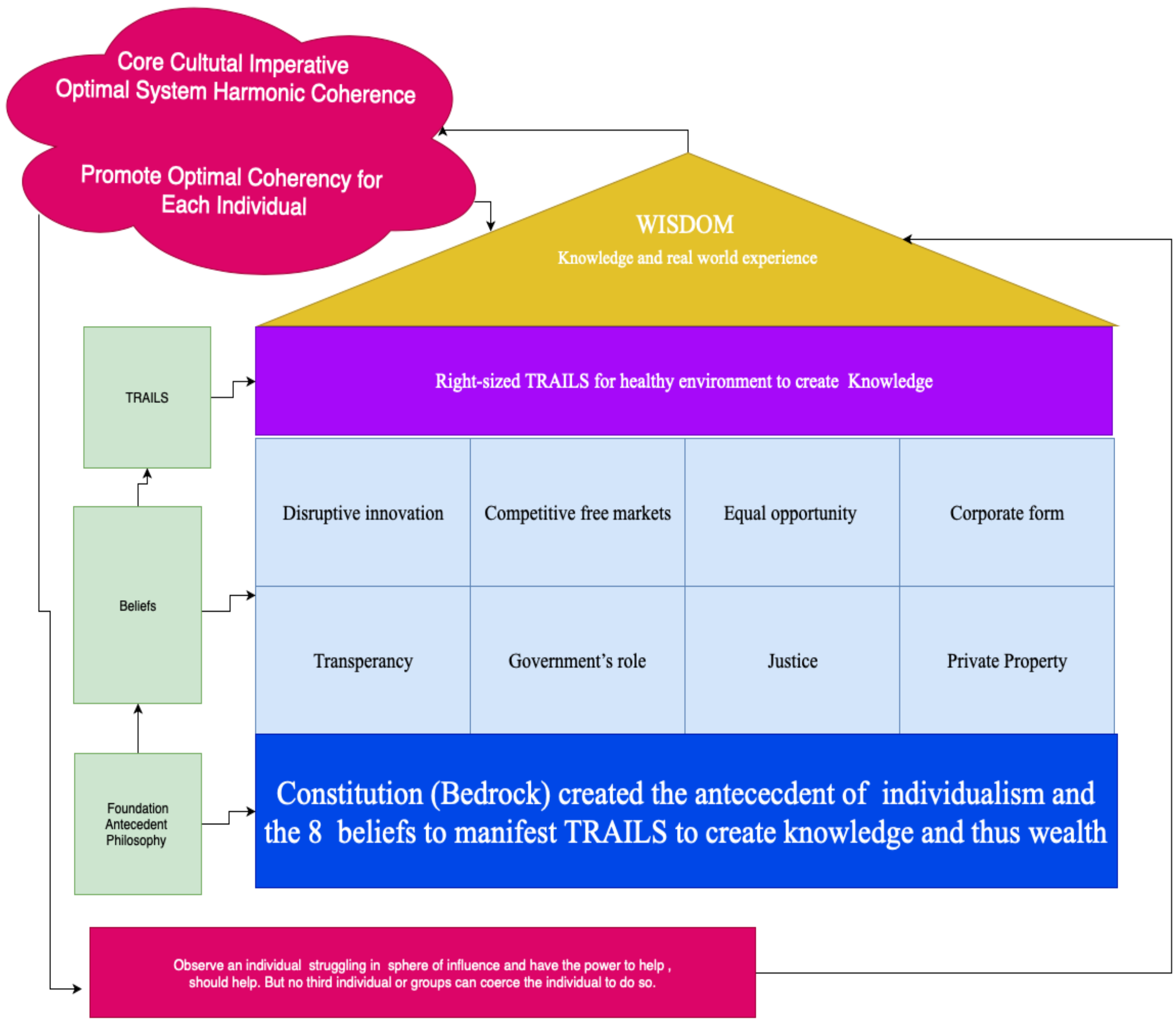
Wrong-sized TRAILS can flatten, straighten, or retard the innovation growth curve (Marz, 1991; Schumpeter, 1939; The Economist, 2017; Tsanova & Havenith, 2019; van dev Berg, 2011). Entrepreneurial innovation is the economic engine of successful economies, based on a business cycle of continuous innovation and creative destruction (Aghion et al., 2016; Birkinshaw et al., 2016; Blokland & Van Weesep, 2006; King & Levine, 1993; Mintzberg, 1990; Schumpeter, 1939; Zenter, 2010). Flattening or flat lining the innovation curve can cause economies to become stagnant, constricted, or collapsed (Aghion et al., 2016; Aghion et al., 2018; Aghion et al., 2019; Chesbrough, 2003; Christensen et al., 2015; Ebeling, 1993; Sweezy, 1943; Shepsle, 1982; Swedberg, 1991; Taleb, 2007, 2012; Tavierne, 2018).

Disruptive innovation emerges from the optionality of making asymmetrical, usually decentralized, investments that allow individual firms to ideate through trial and error, risk and reward of creativity, search for new innovative spaces, virtuous cycles of knowledge, entrepreneurial activity, and consequent wealth creation (Aghion et al., 2016; Aghion et al., 2018; Aghion et al., 2019; Freedman, 1957; Hayek, 1948, 1982; Marz, 1991; Schumpeter, 1939 & 1943; Taleb, 2012; von Mises, 2006, 2007; Weber, 1922, 1930). A key policy question is the appropriate TRAILS that foster innovation in general and disruptive innovation in particular.

> **Research Question 7**: What is the appropriate role for TRAILS in entrepreneurial innovation?

Propositions 5-7 suggest that over-regulation and under-regulation are sub-optimal for business performance and that there should be appropriate TRAILS that promote innovation. This search for a balance in TRAILS should lead to improved business performance. Research is needed to determine the optimal TRAILS level for business performance that provides equal opportunity for large businesses and SMEs and that at the same time fosters innovation. Ultimately, answering these questions will help direct policy-making and lobbying efforts by firms. One feature of the ABBO model suggests that there should be set beliefs that guide how TRAILS should be enacted to favor business performance. This set of beliefs are reflected in the U.S. Constitution. Therefore, the Founding Documents of Liberty and Individualism are the antecedent foundation and framing supporting and holding the blocks in place to right-size TRAILS (see Figure 5).

Figure 5. Constitution-based and Contemporary TRAILS Paradigm for TRAILS



The framers of the Constitution were scholars who had real-world business experience, so their wisdom is in the Founding Documents. The following list summarizes eight beliefs for individuals to create knowledge (Stigler, 1961) and thus wealth (Gilder, 2013 & 2018).

(1) Transparency (in Appropriations and Statement and Account Clauses of the Constitution, Article I, Section 9, Clause 7 of the Constitution) (Skidmore & Fitts, 2019; Solari, 2019; Skidmore & Kotlikoff, 2019).

(2) Government's role provides for the protection of security and inalienable individual's rights (Bork & Hayek, 1978; Hamilton & Madison, 2018).

(3) Justice (of the smallest minority, the individual) or 'the first duty of society' (Hamilton & Madison, 2018; Jefferson & Yarbrough, 1963).

(4) Private property, the cornerstone of liberty (Hamilton & Madison, 2018; Hinkle, 2014; Jefferson, & Yarbrough, 1963; Sandefur & Sandefur, 2016).

(5) Disruptive innovation (Aghion et al., 2018; Aghion et al., 2019; Hamilton & Madison, 2018; Hayek, 1948, 1982; Jefferson & Yarbrough, 1963; Marz, 1991; Schumpeter, 1939).

(6) Competitive free markets (Boaz, 2015; Bork & Hayek, 1978; Hamilton & Madison, 2018; Hazlitt, 1959, 1988; Jefferson & Yarbrough, 1963).

(7) Equal opportunity (Boaz, 2015; Hamilton & Madison, 2018; Jefferson, & Yarbrough, 1963; Palmer 2011, 2013, 2014).

(8) Business form (Bork & Hayek, 1978; Ebeling, 1993; Friedman, 1962, 1970; Hamilton & Madison, 2018; Jefferson, & Yarbrough, 1963; Mocsary, 2017).

Business form, constitutionally, is contractual and natural law between persons and entities. Governments adjudicate contractual disputes between private parties and negotiate foreign trade tariffs to pay for government cost (Hamilton & Madison, 2018; Jefferson, &

Yarbrough, 1963). This business form-built American business values into what is known as a trust society (Boaz, 2015), and the unique structure made for efficient markets and cohesive and values-driven society (Weber, 1930).

Research Questions 8: What are the appropriate measures and assumptions to right-size TRAILS and to monitor and assess TRAILS right-sizing?

TRAILS right-sizing starts with philosophical dilemmas in the first two boxes of the ABBO model (Antecedents/Philosophy to Beliefs/TRAILS). The last two boxes encompass a social phenomenon (i.e., incentives and behaviors respond to the philosophy and beliefs in the first two boxes, resulting in business performance outcomes). Outcomes, which ultimately are knowledge creation, loopback and are compared for suitableness for propriety with the antecedents, beliefs, and behaviors and modifying, changing, or adapting human action (Hayek, 1945, 1955; Schumpeter, 1909, 1939; von Mises, 1940, 1957, 1990, 2005, 2006, 2015).

To understand incentives and behaviors and how they lead to business outcomes, getting input from business executives is necessary. In essence, as victims and beneficiaries of the incentives, behaviors, and outcomes that follow from TRAILS, business executives' perspectives are essential. Further, executives can also provide substance to the concept formulation of the first two boxes: philosophy and beliefs (Rand, 1990). Business practitioners are not often TRAILS advisors. They are seldom consulted for TRAILS development and primarily ignored when included (Chambers et al., 2019) unless they are lobbyists financed by special interests (Gilens & Page, 2014).

Fully understanding TRAILS impact requires the input of those impacted by the phenomena, which can see both the big and small picture. Business executives can provide completeness to knowledge creation for TRAILS right-sizing. The approach of executive involvement is consistent with the Greek definition of a philosopher: warrior with wisdom of the mind (Salzgeber & Salzgeber, 2019). A philosopher examines their philosophies in the real world to refine them. Moreover, the approach addresses, in part, Hayek's knowledge problem for TRAILS by obtaining deterministic and some indeterministic data from those individuals who are knowledgeable of the effects of TRAILS (Bainbridge, 1993, 2019; Broome et al., 2011; Hayek, 1945, 1955, 1996, 2013; Kiesling, 2015). This leads to the following research question:

> **Research Question 9**: What are the real-world perspectives, insights, clarity, and understanding of business executives that can assist in TRAILS right- sizing?

Proposition 8. All businesses in the same industry should be subject to the same TRAILS applied consistently.

The issue of disparity in business performance for large businesses vs. SMEs has been discussed already. But size is just one dimension of heterogeneity that must be considered when developing and enacting right-sized TRAILS. Another critical measurement is the distinction between private and public companies. With no systemic competitive advantage, private companies out-perform public companies by 6% to 8% per year, implying an annual loss of wealth creation of $1.9 trillion for American business, and research shows private equity has the advantage because they have fewer TRAILS to adhere to compared to public companies (Acharya et al., 2018; Alles, 2007; Bargeron et al., 2008; Bartlett, 2009; Barton et al., 2015; Barton et al., 2017; Barton et al., 2019; Bernstein et al., 2018; Bradshaw & Sloan, 2002; Cochrane, 2004; Leslie & Oyer, 2008; Ljungquvist & Richardson, 2003; Meddaugh, 2017; Mocsary, 2017; Terry et al., 2018; The Economist, 2016).

> **Research Question 10**: What mechanisms can be incorporated into TRAILS processes to ensure that they are implemented equally for all types of businesses, including large vs. SMEs and private vs. public companies?

Proposition 9. The government's intentional stance that leads to overregulation has implications on how to right-size TRAILS.

Bork and Hayek (1978) theorized that the shift to the regulatory state due to TRAILS would be unplanned as people in government gradually introduced TRAILS until over-regulation was reached. Some argue that individuals in government and their corporatist and globalist co-dependents simply care about abnormal rent-seeking and are therefore less concerned about the Founding Documents, liberty, and natural law economics (Buchanan, 1969, 1975, 1992; Buchannan & Musgrave, 1999; Buchanan & Tullock, 1962; Buchanan & Wagner, 1977; Schweizer, 2013, 2019; Whitehead, 2013, 2019).

Some historical developments suggest that excessive regulations are at least partially planned. President Wilson planned the creation of an administrative class of government in addition to the political class (Blum, 1956; Fraenkel, 1941; Horowitz, 1997, 2013, 2019). Wilson also planned for but did not live long enough to create the United Nations system (Pestritto, 2005). Shivakumar (2007) stated that the U.N. plans and coordinates TRAILS often with corporatists, administrative, and political classes to the detriment of individualism. By the nature of the U.N., TRAILS across countries tend to be collectivist as they seek equality of outcomes for business performance and individuals, despite the different national regulatory, economic, business environments, cultures, skill sets, priorities, and values (De Weaver, 2020; Koire, 2011; Postman, 2011; Wood, 2016, 2018). For example, the U.N. is seeking a global one-world government with a proposal known as 'the great reset' to be run by collectivists, bureaucrats, and technocrats (Charlton, 2018; Schwab, 2016; Schwab & Malleret, 2020).

If there is underlying orchestration to seek similar conditions for business performance, or whether they are the product of conversations and negotiations between independent country representatives, that will lead to different avenues towards TRAILS right-sizing. If cross-country regulations have orchestration and planning, new controls should be embedded into U.N. processes to avoid these kinds of influences. Suppose these projects are the product of independents representatives coming together. In that case, the research proposed in this paper can help inform agreements made to ensure that the appropriate TRAILS are enacted for business performance (DiLorenzo, 2015, 2020).

> **Research Question 11**: What are the implications for TRAILS right-sizing depending on whether wrong-sized TRAILS are unplanned or planned?

Refining Frameworks for Right-sizing TRAILS

Theoretical frameworks were developed to clarify the goal of right-sizing TRAILS. Specifically, the framework contemplates a sweet spot of right-sized TRAILS that maximizes knowledge and fair game for large companies and small ones. The framework also asserts that all else being equal, wrong-sized TRAILS harms small companies disproportionately. Such effect is often unseen in macro-aggregation as the lost business performance of the SME's due to wrong-size TRAILS is subsumed by large companies.

In summary, this call for research is based on the set of propositions and research questions in Table 2.

Table 2. Call for Research: Propositions and Research Questions

Proposition	Related Research Questions	Comments
1. Right-sizing: There is an appropriate level of TRAILS for business performance		Fundamental assumption that drives the call for research and theory building.
2. Wrong-sizing: TRAILS above or below level *r* harm the business environment.		TRAILS beyond government charter harm knowledge, thus growth.
3. Wrong-sized TRAILS favor larger firms over smaller firms.	1. What is the most appropriate measurement methodology to determine where the U.S. is relative to right-sized TRAILS and market failure 2. How can the impact of TRAILS on business performance be empirically derived, tested, and refined?	There is no universal agreement on measurements or propriety, resulting in an inadequate TRAILS phenomena and business environment assessment. Lack of transparency and accountability can lead to market failure.

4. TRAILS have a disproportionate impact on SMEs	3. What TRAILS impact SMEs disproportionally compared to large businesses. 4. What is the impact and implications of pandemic-induced TRAILS on large businesses vs. SMEs?	Right-sizing evaluates the longer-term consequences of TRAILS and links the effects of that policy to all groups, not just the intended beneficiary group. No group should be unfairly harmed for the benefit of others.
5. Overregulation can lead to market failure	5. How close is the U.S. business environment to market failure?	Government cannot create consequential knowledge at some point of TRAILS causes market failure
6. Nonenforcement of appropriate TRAILS will be detrimental to business performance.	6. What is the minimum set of TRAILS that can favor business performance?	Government inaction to create and enforce right-sized TRAILS, can be destructive to the business environment as much as wrong-sized TRAILS.
7. TRAILS that foster innovation will favor business performance.	7. What is the appropriate role for TRAILS in entrepreneurial innovation? 8. What are the appropriate measures and assumptions to right-size TRAILS and to monitor and assess TRAILS right-sizing?	TRAILS disruption causes the "unseen" compounding damage to knowledge; thus, entrepreneurial innovation regresses, and markets are less efficient.
8. All businesses in the same industry should be subject to the same TRAILS applied consistently.	9. What are the real-world perspectives, insights, clarity, and understanding of business executives to assist TRAILS right-sizing? 10. What mechanisms can be incorporated into TRAILS processes to ensure that they are implemented equally for all types of businesses, including large vs. SMEs and private vs. public companies?	Get perspectives of elite executives on TRAILS right-sizing, who have not had a significant voice in the literature. Uneven or noncompetitive application of TRAILS creates sub-optimal markets, thus knowledge disruption, which harms innovation.
9. The Government's intentional stance that leads to over-regulation has implications on how to right-size TRAILS	11. What are the differing implications of whether wrong-sized TRAILS are "unplanned" or "planned"?	Hayek contended regulatory capture would be "unplanned;" others believe it to be proactive.

IV. Conclusions

The broad agenda in this call for research is to understand the impact of TRAILS on business performance and to create knowledge that allows for TRAILS right-sizing for a healthy business environment. First, a model was developed to capture the complexity of this phenomenon (i.e., the ABBO model) from the macro-level philosophies (rooted in individualism and collectivism) and beliefs that influence a regulatory environment and the consequent incentives, behaviors, and outcomes for business performance that tend to follow. The structure of the philosophy of government or antecedent, followed by the resultant TRAILS beliefs at the individual, firm, or operational level, incentivizes the behaviors. Business executives bring the dynamic to the business environment as they interpret, evaluate, and internalize TRAILS, which become incentives that motivate intentional behavior, leading to business outcomes.

The call for research identified 11 research questions that ring-fence the contemporary TRAILS phenomena. Any business executive concerned about the business's regulatory environment's future should benefit from the answers. This research represents a call to examine the impact of TRAILS on business performance, the impact of TRAILS on different types of businesses (e.g., large vs. SMEs, public vs. private), the proper role for the government to right-size TRAILS, a grounding on evidence to right-size TRAILS, the need to understand intended and unintended consequences of TRAILS actions and inactions, TRAILS impact on entrepreneurial innovation, whether the U.S. has reached or not a state of over-regulation, and the extent to which getting to this state has been or is being planned.

The proposal is to answer these questions based on the individual rights reflected in the eight cornerstones for business from the U.S. Constitution. Either way, whether regulators and business executives believe these cornerstones are the right ones or not, they are constraints for TRAILS right-sizing that cannot be ignored because they are sealed in the Constitution. The Constitution calls for a TRAILS system that aims to create a business environment of optimal system coherence for the individual to promote equal opportunity and to develop their talent to maximize their pursuit of happiness. The core cultural imperative is the risk-adjusted, antifragile, maximized pursuit of happiness of the individual that optimizes the business system.

The literature review suggests that the U.S. may have reached a stage of over-regulation that hurts business performance. This concern influences the resulting propositions and research questions. Whether the state is one of overregulation or not, any business executive and policymaker should be interested in the findings from research to answer the questions proposed. The paradigm presented is not about whether the government should play a role in regulating a business environment, but to what extent it should perform that role and what are the analytical methods that will enable regulators to right-size TRAILS based on evidence-based rationale.

Further research should examine all TRAILS outcomes based on fair competition and incentives for innovation. TRAILS right-sizing should seek a healthy business environment that creates fair and free markets for all competitors and a government that works for the people and makes a level-playing field for businesses across industries. We optimistically trust human nature in that most business executives will want this kind of regulatory environment for fairness and the path back to preeminent economic and civil growth for individuals and following generations.

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