In a recent article in the Review, Jonathan Landers attempts an ambitious rethinking of legal policy toward the creditors of affiliated corporations.¹ He organizes his discussion around three specific questions:

(1) The parent company has advanced funds to its subsidiary in the form of a loan; if the subsidiary does not have enough assets to satisfy all of its creditors, should the parent be treated differently from other creditors?

(2) If a subsidiary is unable to satisfy a creditor's claim out of its own assets, should the creditor be entitled to satisfy his claim out of the assets of the corporate parent (i.e., to "pierce the corporate veil")?

(3) If two affiliated corporations become bankrupt, should the assets of, and the claims against, the two corporations be pooled?

Landers believes that a group of affiliated corporations is a single economic enterprise in reality and should be treated as such by the law. This belief leads him to answer all of the above questions affirmatively.[…]

The basic difference between Landers and me over the question of the limited liability of affiliated corporations is that he thinks that the abuses of limited liability are so prevalent in this context as to warrant a rule dispensing with the need to prove that an abuse occurred. I reject this approach because the principle of limited liability has considerable merits even in the affiliation context, when all relevant costs and benefits are considered.

[…]

The most serious objection to Landers's suggested approach, however, is that it would impair a socially valuable principle, that of limited corporate liability, which I have argued retains much of its importance in the context of affiliated corporations.

[…]

¹ Landers, A Unified Approach to Parent, Subsidiary, and Affiliate Questions in Bankruptcy, 42 U. CHI. L. REV. 589 (1975). Landers limits his analysis and recommendations to the case where the parent corporation owns 100 percent of the stock of each subsidiary so that there are no minority shareholders. Id. at 590 n.4.