THE CAPITALISM OF TURBULENCES AND THE OVER-LIMITED LIABILITY OF THE TOO BIG TO FAIL CORPORATIONS: A PROPERTY ECONOMICS NOTE ON THE WORKING OF MORAL HAZARD

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Abstract

In the corporative realm of the organization of firms, endemic to modern capitalist economy, a common allegation is that "limited liability", State historically allowed for political or fiscal reasons, would (though asymmetrically) incite stockholders and managers to overconfidence in their characteristic profit-driven endeavours. It is asserted that the corporative judicial-legal shield absorbs risks and unleashes moral hazard, eroding the genuine market capitalism (gambling, greed, monopolism, wickedness). In this article, we will re-examine the moral hazard around modern corporation, starting from an "institutionally neutral" analysis of the interpersonal asymmetry of knowledge, and shifting over to the domain of "comparative inter-institutional" judgements, opposing two counterfactual mutually exclusive frameworks: the one respecting naturally defined private property rights and the other one hampering them through State-made regulatory interventions. We will add more precision to an old classical debate upon the "illiberalism of corporations", arguing that, along with the factors fuelling the modern boom-bust business cycles by means of easy money and credit, guilty as well for instability in the global markets is some sort of "over-limited responsibility" of corporations (for instance, in finance and banking industry), granted with those "too big to fail" privileges, invoking their "systemic importance" in terms of resource allocation or employment dynamic.

Keywords: Business Corporation, Limited Liability, Private Property, State Interventionism, Moral Hazard

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Argument

The literature devoted to business corporation, this "highly controversial entity" in modern international markets (epithet derived from scrutinizing its internal as well as its external functioning), basically defines it as a legal entity organized usually as a joint stock company, involving a large number of shareholders owning (differently sized) amounts of shares (that is fungible and abstract portions of the property of the corporation's equity, owned undivided by the shareholders, but only during the lifetime of the corporation). The main stake behind this otherwise trivial definition is to understand whether this entity is a historical product of free markets or it spurred out of State privilege granting, a matter in which the recourse to sound law and economics core principles is of utmost importance.

One caveat, for starters. From the precept of methodological individualism (so breaking this idea of a formal entity, some "legal fiction"), we observe that the corporation is composed of several individual characters (epistemologically irreducible entities), that manifest themselves within this framework through a rational set of behaviours, by means of legal contracts (or speculating on the boundaries of contracts); relevant for our analysis are the shareholders and their endowed directors / managers (either cooperating in the "division of corporate labour" or caught in conflicts of interests), filling in this legal entity[1].

[1] Even though common logic allows us to distinguish between such legally personalized entity and a person in the natural

We will not recollect neither the classic debate on the "concession theory" of incorporation for private business purposes (that is by grant of a State privilege) versus the "inherence" counterpart (that is by means of free private contracting), nor the derivation of limited liability and property features from some overrated "entity status"[2].

Our task is to defend the idea that private property (in the definition given by the natural law tradition) is the basis for consistent contract and both represent the very foundations of free markets (as the sole institutional arrangement to epitomise justice and maximize efficiency), that limited liability is consistent with private property and free contract, and that hampering them fuels severe social dis-coordination and unrest (by sponsoring adverse incentives for individuals, i.e. involved in corporations). Our focus is on the relation between the systematic "over-limitation" of liability and modern boom-bust cycles.

By pointing to "over-limitation" of liability / responsibility, we are targeting the moral hazard effect of various public privileges in inciting corporate actors (be they owners, creditors or employed agents, directors or managers) to use much more recklessly resources than in the case these privileges were absent.

This article is built as follows: first, we give a brief account on the problem of moral hazard, emphasizing its property rights dimension, instead of a simple informational issue; then, we argue that limited liable corporations are not moral hazard culprits by their design, the propensity for misbehaviour getting exhibited only when discretionary political privileges are set in; afterwards, we link over limitation of corporate liability to business cycles; finally, we take on two cases, banking sector and automotive industry.

The relevance of this paper resides in shedding some light on few biased allegations that set the trend in both the academic and pop economics of crises: that "boom-bust cycles are free market failures" and that "the (simple) limited liability of business corporations is a State-driven institutional failure".

and physical sense, corporations have for long been treated, without any hesitation, as holders of rights and obligations in selling and purchasing of properties or in other forms of contract (credits, suing or being sued, hiring and firing of employees etc.). Nevertheless, the "legal personhood" can be taken either in the strong, but unrealistic, sense – distinct from any other person involved within it by ownership or by contract –, or in the weak, but realistic, sense – as mere conceptual and verbal expedient, created in order to avoid and economize referring to each and all of the members of the "associative aggregate".

[2] For a praxeological and jusnaturalist contractualist perspective on "corporate entity" and on the emergence of its alleged extensions (limited liability and perpetuity), see the Austrian-libertarian response by Block and Huebert (2009) to left-libertarian and socialist critiques as espoused, among others, by Eeghen (2005a; b), and defending, among others, Hessen (1979).

We state from the beginning that, methodologically, we place this analysis under the reign of the Austrian School of economics and political science. There is a fructuous compatibility between "Austrian" value subjectivism and "libertarian" jus naturalism, this being one of the more interesting pairings in modern social science, despite its eccentricity from mainstream academic and policy discourse, following hasty accusation of radicalism in both its analytical methodology ("the arrogance of a priori praxeology") and in its policy recommendations ("evangelising that obsolete free market fundamentalism").

This "paradigm choice" was made due to the analytical comfort of praxeological approach: verbal reasoning in terms of teleological causality, logical inferences of strong theory from basic axioms of human action, needing neither empirical validation nor econometric modelling, but fundamental in decrypting historical events.

Moral hazard: "asymmetric information" or "ill-defined ownership" failure?

Incentives represent the external conditions that once internalized in purposeful human action make people – not "deterministic", but altering the balance of subjective opportunity costs – undertake (or not) certain actions. Given that actions involve, naturaliter, allocation / transformation of owned resources, we can distinguish, depending on how efficiency (or, on the contrary, waste) in their allocation / transformation is favoured, between two basic types of incentives: natural (sound) and, respectively, adverse (perverse). The natural, good incentives leave the costs and benefits of an (consumption or production) action to reflect the game of unrestrained perceptions regarding the scarcity of resources and their value in an inter-subjective framework. Conversely, the adverse, bad ones "artificially" diminish the cost-benefit ratio of an action for some, there being speculated the ignorance or inability of third parties from where resources are transferred (or it is anticipated they will be transferred), reducing costs / increasing the benefits of the action in question. An example of a natural incentive is the widespread, institutional, respect for private property; adverse is to hamper this kind of respect. The current economic crisis brought into the light a standard adverse incentive: moral hazard. We call this a person's stimulus to use more resources than would normally use, because he knows (or he thinks he knows) that another person will provide, short of consent, some (or all) of these resources.

Many economists have expeditiously inferred that moral hazard involves a market failure, a distorted allocation of resources. Mainstream economics explains moral hazard as a consequence of the fact that market participants are not uniformly informed about the economic reality and, also due to

their diverging interests, they are prone to exploit the counter-parties' ignorance in contractual interactions. In other words, moral hazard results from "information asymmetry" and thus it is believed that the theory of moral hazard is part of the economic theory of imperfect information.

Next, we will overview, restating Hülsmann (2006), the conventional moral hazard theory critique, also sketching the alternative which we consider to be superior regarding realism in the following line of thought:

- on the one hand, information asymmetries in markets are just one of the causes for moral hazard; they involve allocative disturbances, expropriation, only accidental and ephemeral, because the "expropriated-to-be" can largely avoid them by improving the anticipatory judgments;
- on the other hand, moral hazard comes likewise, and also "with great deal", from government intervention, by expropriation in a way that cannot be avoided even within contexts imaginable as dealing with "perfect information"; on the contrary, it is all the more knowledgeably boosted.

We begin by briefly taking notice of the conventional definition. Thereby, it cannot be disputed that people act according to different sets of knowledge about the surrounding world. The economist knows other things than the engineer, and the football player, other things than the philosopher. There is no doubt, even having the same specialized training, that people are not uniformly informed about the real world. Some economists have more knowledge about the economic theory and history, about the debates around them, about their application in various circumstances (e.g.: the causes and consequences of the "economic crises") than others. Information asymmetry is a universal aspect of human life; it is both a cause and a result of the division of labour. There is no reason to assume that it is a priori harmful or sign of imperfection. Thus, the conventional theory is pressed to focus on an additional condition in explaining the occurrence of moral hazard: the separation of ownership from control Hülsmann (2006, 37)[3]. Hülsmann further notes the two main situations of moral hazard germination: agency contracts and co-ownership[4].

To support the argument that moral hazard is decisively explained by separating ownership from control and not only by information asymmetry – moreover, systematically appearing in environments where this separation becomes more acute than it would be through voluntary delegation / sharing, being forced without the consent of the resources' owner who is subject to this risk, all of this usually in statist / interventionist climates –, we firstly point to the way to manage it on a free market.

On the free market, the combination of information asymmetry with separation of ownership from control is not sufficient to infer the systematic expropriation of the "less informed" entity who does not have control of his property – expropriation to which moral hazard is finally reducible (and incriminated). In other words, moral hazard on an unhampered market does not necessarily lead to expropriation because there are mechanisms the owner can make use of in order to protect himself from this risk, the expropriation being rather "accidental and ephemeral". The argument is based on the understanding of the managing role that rational expectations / predictions play in such situations.

A mention is to be made: we speak in this case of "expropriations" in a "broader" sense – "the employee does not do his best", but respects the written contract regarding what to do, not do, and give to the employer. The idea is that, as far as the expectations related to the risk of expropriation are correct, the employer (the principal) withholds, ex ante, the ex post "expropriated-to-be" part of the employee (agent) as a discount to the marginal value of the labour services he entrepreneurially imputes to him, succeeding not to lose from expropriation; eventually, he could lose, due to entrepreneurially erring the imputation of this employee's contribution value to production; but, if correctly anticipating the "expropriation", he can, basically, get rid of it[5].

[3] Despite the term consecration in the corporation literature beginning with Berle and Means as consequence of modern corporate governance, in our case we refer to a common condition, manifesting when the ownership over a good / resource can be disconnected from the actual operation and control of that good / resource.

[4] In the case of the agency contract, moral hazard can occur when an economic asset is not effectively controlled by its owner (the "principal"), but by another person called the "agent", for example, by an employee. Once again, the "information asymmetry" phenomenon provides moral hazard in combination with this separation of ownership from control. The agent, who is fully informed about his own activities, has the motivation to act in his own material interests, against the material interests of his less informed principal. Consequently, whenever the principal cannot fully monitor the agent's activities, the latter is stimulated to increase his (monetary and physical) income on the principal's account.
In the case of co-ownership, each owner has control over a portion of property, without having exclusive control. Information asymmetry can thus produce moral hazard combined with this separation of ownership from control. For instance, when a co-owner of an estate cannot fully monitor the activities of the other co-owners, the latter are tempted to use the property without (properly) clean, repair, increasing their money / material and / or psychical / subjective revenues on their partner's expense.

[5] For the principals operating on a free market there are more tools available. They can, by contractual design, protect themselves to a large extent, ex ante, from the risk of moral hazard, and from its effects, ex post, once installed. Ex ante, the insurance industry has fair examples: health insurance, exclusions, deductibles, co-payments. In traffic, there are radars or auto black boxes, etc. Ex post, there is the possibility to break the contract when suspecting the agent of conducting violations; the agent's "fear" of being fired is an incentive that watches over the principal's "garden of cucumbers". Both reputation and "black list" have disciplinarian role.

However important the moral hazard emerging from a faulty definition of property rights and bounded rationality in contracting within free markets would be, it cannot be compared with the moral hazard resulting from the "forced separation of ownership from control", Hülsmann (2006, 40) notes. As "forced" separation of ownership from control we understand the separation made against the owner's wish. Although owners can be forced both by the State and by the private entities, government intervention is obviously more important in practice, and not only because of the greater quantitative impact, but also because intervention is, by definition, acknowledged by the law and can therefore be anticipated. Hülsmann (2006) starts from the fact that an interventionist government dictates to other owners to use their resources in a different way than their owners would do. In doing so, the government transforms some persons or group X (i.e., itself) into uninvited co-owners of property of another agent Y. The essence of interventionism is precisely this: institutionalized uninvited co-ownership. The state becomes an uninvited and unwelcomed co-owner each time it levies a tax, inflates currency or imposes regulations and prohibitions.

Once this behaviour is institutionalized, moral hazard gets to an "epic scale". So long as forced separations can be anticipated, they have a systematic impact on behaviour. Individuals tend to join the beneficiaries of the institutionalized forced appropriation and to leave victims' class. This trend manifests itself, i.e., in inflation making and benefiting, in bureaucracy and in "official" (subsidized) unemployment (from the part of those involved in expropriators camp) or, conversely, in avoiding fiat money during hyperinflation, in tax evasion inside black markets, emigration, capital export (for those expropriated). Corporate actors are not immune to the perverted incentives provided by public institutions and policies. Moreover, the corporate format itself is accused of being a "license to misbehaviours" because of the "limited liability" legal shield.

Corporations, limited liability, moral hazard: a disambiguation of critiques

Praxeologically speaking, the large number of shareholders involved in a corporation, combined with the natural problem of the tension that arises from the principal-agent relationship between the shareholders and the managers (because of the incongruity of personal interests and the informational asymmetry between the owner shareholders and the operator managers, which leads to the impossibility of the former to monitor the actions of the latter) lead to the need of limiting the risks and the possible losses by the owner shareholders, who are separated from the day-to-day functioning of the company. This is where their generalized option for limited liability (liability strictly limited to the amount of capital invested) comes from. But there are still many economists, political philosophers, jurists and sociologists claiming that the feature of limited liability is far from being both logical and legitimate freedom to choose the suitable format for contracting in markets; it is, allegedly, nothing but a political privilege granted historically by governments for deriving some fiscal and political rents and something provoking moral hazard.

The limited liability principle causes a stir, being often identified with the institutional privileges surrounding corporatist phenomenon. The doctrine of "limited liability" within the corporate realm is erroneously perceived as insulating a contract-breacher or a tortfeasor from liability (even if he was negligent), so long as he is a "simple" shareholder, or that it exempts managers and officers of the corporation from liability for debts or torts[6] of others. As Kinsella (2011) notes, "the doctrine merely says that shareholders are not jointly and severally liable for all the debts of the company that they have a share in. If a company that A owns shares in is sued and driven to bankruptcy, A loses the value of his shares but is not personally liable for the lawsuit against the company". According to this principle, shareholders are only liable in a court of law for the capital invested in the corporation (private assets other than the capital invested in the corporation not being here "eligible"). Overall, if a corporation is in debt, limited liability means that debt can only be recovered from the corporation's existing capital (much as it still is). This is true in the limits of "business as usual"-type practices; if it is proven that a particular person from the company's entourage has committed a fraud, limited liability does not in the least protect that person against being lawfully prosecuted for the committed fraud.

The logic of the limited liability principle is utterly clear. If we consider that in a corporation the number of shareholders (partners) and employees (agents) can get very high, the limited liability eliminates / reduces the risk of paying for the negligence or fraud of others, negligence or fraud

Hülsmann (2006, 39) provides illustrations of the moral hazard analogy resolution mechanisms in the co-ownership sphere: the co-owners, aware of the challenges posed by the management of "communes", can avoid the "tragedy" by designing mutual rules for governing the co-owned resources. Similarly to the principal-agent type situations, there is also room for entrepreneurial initiative to develop institutions and organizations to support the stakeholders to minimize the exposure to the moral hazard risk: connoisseurs' organizations, traders' communities, urban design rules, etc. (see Elinor Ostrom, on the "private government of the common goods").

[6] For a discussion on the modern "medievalization" of law by asking and sometimes receiving "vicarious liability" of "stakeholders" (i.e. owners or directors / managers of the corporation) for torts not involving them directly in a utilitarian hunt for "deeper compensation pockets" and in clear violation of "personal and proportional punishment" principle, see Kinsella (2011).

which can get – due to the number of partners and amount of resources – significantly far beyond the possibilities of a single person.

From an "ethics and economics" perspective, limited liability does not raise insurmountable problems. The main problem is of agreement (ethically) and of anticipation (economically). We have to assess whether its operation involves or not "aggression" (unjustifiable initiation of violence) and "waste" (resources misplaced in markets):

- As long as all concerned parties understand what all is about and accept the arrangement in terms of limited liability, the corporation of this type remains a benign phenomenon of the free market, subject like all the other to the rigors of competitive selection of the organization forms. Moreover, it can be said – just like the separation of ownership from control – that limitation of liability is a phenomenon present in many more instances / cases / examples than mere corporations. Any interpersonal exchange involves in a particular manner the limited liability. For who can, by selling something, stipulate what is to be done in any circumstance related to the operation of the sold object in order to "protect" the buyer? Or, given the fact that contracts are all, to a greater or lesser extent, incomplete, to consider them valid involves considering the limited liability as a natural principle for conducting contractual relations (and, hence, commercial relations) in general (Topan 2009, 171). Indeed, sometimes limited liability can be relevant enough to be explicitly "qualified" and "quantified"; but this thing does not make the principle less general. So, coercively prohibiting un-coercing actions (involving limited liability) is, ethically, unarguable (Hoppe) as presupposes societal wealth losses by hampering freedom of contracting, spoiling cooperation (Mises).
- Partners of a corporation with limited liability – and who voluntarily engaged in contracts with it being aware of this thing – (such as suppliers, creditors, clients, etc.) just have to correctly anticipate in what degree, in the future, the partner corporation will be able, within the limits of the undertaken liability (mainly corporatist capital), to honour its debts: payment fees, interest, etc. It might even be said that this is actually always the case, and that the idea of "unlimited liability" is an entirely unrealistic concept (Topan 2009, 171). Even if the principle of unlimited liability is stipulated, from an economic point of view things would not change very much: in the sphere of capital from which debts could be recovered is also included the private property of entrepreneurs (i.e. including tangible resources), an amount that is necessarily limited. A creditor will have to anticipate, in conditions of reasonable transparency, the extent to which he can recover his involved money from this "new whole", the difference from the limited liability principle being only one of degree, and to ask for more protective buffer. Strictly speaking, unlimited liability is not compatible with the world we are living in, because it may in the end appear just like another form of limited liability (but with other "limits") or it may signify the absence of scarcity of resources, something that is, obviously, absurd.

The boom-bust business cycle: sponsored errors and moral hazard cynicism

After scrutinizing the microeconomic design of incentives within the modern limited liable corporations, we pass to the other half of our topic: the relation of the (eventually ill incentivized) corporate world with the widespread phenomenon of economic turbulences, epitomized by what is both scholarly and trivially known as the "boom-bust business cycles". The explanation of both the causes and the consequences of the emergence of "turbulences" (prevalent coincidentally or consequentially inside our modern corporate-capitalistic world) is one of the core and (still) intriguing issues in economics. The superficial explanations of boom-bust cycles – periods of production expansion and periods of contraction – usually make appeal in the mainstream economic literature to psychological or exogenous non-human factors, such as weather caprices or technological waves (Rothbard 2000, 80 and ff.). As opposed to other arguments advanced by different – and sometimes conflicting – theoretical accounts, we attempt to interpret it from the angle of natural property rights regime. We argue that the denial of a full private property rights design in monetary and banking fields determines a socialized financial system with fundamentally wrong incentives of operation. Moral hazard is a permanent feature of modern banking system even if it can take different forms of manifestation and obviously it manifests itself in a recurrent manner. Without addressing the fundamental question of how property rights should be defined and enforced in these fields, any solution is just temporary and moves the problem to another level.

Classical and some modern economists argue that money is an economic good which performs the function of medium of exchange. Because of the difficulty to find a double coincidence of wants among the participants in a barter system, some economic goods with particular characteristics will be used by market participants in order to overpass the fundamental limit of a non-monetary economy. Money will always exist in societies where there is private property and freedom of exchange even if there is no central political authority. This natural

perspective on money as a market phenomenon (Hoppe et others 1998, 19 and ff.) considers that the present monetary system is a result of a centuries-long process through which political authority denied the function of medium of exchange to market goods and awarded it to fiat money substitutes issued under a monopolistic license by centralized banking systems (under the reign of central banks). The main function of fiat money is redistribution of purchasing power in society through targeted increases in the money supply[7]. The politically chosen money substitutes cannot survive as media of exchange on a market without the political limitations in the freedom of choice for market participants such as the politically awarded function of legal tender, the monopoly in the production of the fiat money substitutes and the denial in the possibility of emergence of various other media of exchange in contracts between market participants.

Moreover, increases in the money supply could be useless unless they are paired with an artificial reduction in the rate of interest fixed by the central banks. Or, at this point, the monetary manipulation causes huge, society-wide, misallocation of resources. The natural rate of interest is the representation of the social time preference as it is formed on a free credit market by the auctions of participants (Mises 1980, 377 and ff.). The natural rate of interest informs all entrepreneurs about the social ratios they have to pay attention to between present consumption against future consumption as well as the relative length of different production cycles consumers are ready to reward. The rate of interest determines an economy-wide coordination between all production and consumption activities and it could be called the best embodiment of the notorious Adam Smith's metaphor "the invisible hand".

The manipulation of the rate of interest under the contemporary conditions in the monetary system induces shocks in this coordination function. As the fixing by central bankers of the official rate of interest sets it under its natural level, the dis-coordination induced in the economy will work in the direction of discouragement of saving (and investment) in favour of present consumption as well as the encouragement of longer cycles of production, even farther from the consumers that will not meet their demand. As the business cycles theory argues, such a short-term expansion of economic activities is fuelled by the misrepresentation from the part of entrepreneurs of the stock of capital in society and cannot last until the consumers return to their natural time preference. Not lastly, the manipulation of the monetary system through the artificial reduction in the rate of interest leads to a higher preference of market participants for external finance. Paradoxically, this aspect aggravates recession as debt, as opposed to equity, limits the producers' freedom of restructuring, as they have to confront periodic fixed payments.

Rounding the relation between economic turbulences and moral hazard spurring from limitation of liability (of corporations), we will recollect some of the previous ideas.

On the market there are no black holes that could melt private responsibility, in the same manner as "enough liability" can't be created ex nihilo. On the other hand, there are situations in which, outside market logic, some economic agents enter the moral hazard spiral, thus becoming institutional beneficiaries of socialised losses. We incriminate the "over-limitation" of responsibility, as degenerating political privilege (through subsidies, State aids, "systemic risk" justified bailout imminence – such as "too big to fail" – or strategic privileges, or by "sponsoring" various product, employment or environment standards, favourable to some, but increasing the cost for the competitors, equivocal antitrust laws, etc.); this is what diminishes responsibility and fuels moral hazard[8].

Alone, limited liability cannot provide a causal explanation for "economic crisis", ubiquitous in human actions. Economic crises arise from allocation mistakes of some pure "error-makers", monetarily bribed by easy credits and combined with the system(at)ic moral hazard of the "wrongdoers" who anticipate to "fall on their feet". Some of them, of course, may err, as it was the case with the iconic Lehman Brothers' crush. The excessive speculation is motivated by political over-limitation of liability, and not by the limited liability itself: the modern fiat money speed of movement (dependent on the speed of banking emission / multiplication) increases the tendency towards "purely speculative", "non-productive" activities, exacerbated by the political guarantees. As simple market actors, corporations do not carry the virus of capitalism's turbulences: consequently, the banking system incite to malinvestments and redistributive speculations, not because it is corporatist, but "due" to the system(at)ic protection it benefits from the lender of last resort and the public guarantor of deposits. The business corporations are not blameable for their misdeeds (being beneficiaries of inflated credit and capitalization through over-trading on stock

[7] While the main beneficiary of any increase in the money supply has been historically the State – each time the central bank and the banking sector, the suppliers of "new" money, buy government debt –, there have been also other institutions that benefited from such a process: first among them, the banking institutions – whose businesses are artificially expanded – and second of all, all economic agents that get immediate access to credit from the newly increased money supply – until the moment when the entire society will discount the purchasing power of the monetary unit after the increase in the supply, they will benefit from an initially overvalued currency as compared to reality – or benefit from a later devalued currency – like exporters or debtors. All these constituencies will always pressure monetary administrators for further increases in the money supply.

[8] And, again, moral hazard is worse with… transparent information: when some know that profits are enhanced (or losses socialized) by the expropriation of others, they'll dismally waste basically others' resources.

exchange) and the societal consequences of their actions (such as the boom-bust economic turbulences), simply for they are corporations, but for they have been accustomed (encouraged by the governmental setup) to self-consider and accordingly act as "too big to fail", superior societal characters.

Corporations and "too big to fail" dogma: banking and automotive sectors

The manipulation of a monetary system based on fiat money has been traditionally paired with a particular form of the organization of the banking activities. This is the "fractional reserve banking"[9]. For economists with no opinion on the legitimacy of the regime of property rights, fractional reserve banking cannot be qualified as aggressive. It is just a form of financial intermediation through which private banks increase the money supply at their turn through the use of capital which is deposited by surplus saving units in on demand accounts. For economists more alert to the nature of the private property rights and obligations, such a banking activity violates the property rights of depositors as they are promised a full availability of capital from the on demand accounts while, in reality, a ratio of this capital is loaned to the debtors of the bank. Such a financial intermediation generates by its nature a so-called "maturity mismatch" between the assets of the banks (long term, illiquid) and the liabilities of the same banks (short term, allegedly liquid). Fractional reserve banking is institutionally illiquid and all institutional mechanisms designed to hedge this liquidity gap – like the one which is emergence of the function of central banks as lenders of last resort and the secondary ones such as deposit insurance, caps in cash withdrawals, the formation of industry wide pools of liquidity accessible to all the depository institutions – are weak.

Moral hazard is always an outcome of a legal system which protects the aggressors against the private property rights while preventing the natural owners from controlling their resources (Hülsmann 2006, 36). The contemporary monetary and banking system generates different forms of apparently irrational behaviour that could be best explained by the faulty premises of the property rights system. It is a fact usually forgotten that any type of State intervention does not only reallocate existing property rights and wealth in society. Any public intervention reveals to all market participants the rules under which their future behaviour will be regulated. An act of public intervention that prevents the failure of an economic agent will provide to all other economic agents the insurance that, in case they qualify for such public support, they will also receive it. Public interventionism, despite its complexity and inner inconsistencies, cannot be purely random so the market participants can "read" and understand the logic of reallocation of resources in society. They will always bet on the type of future State interventions and they will alter their behaviour accordingly. The usual explanation of "herd behaviour" which is considered a type of irrational behaviour from the part of market participants – and a "market failure" – is, in fact, usually associated with such modifications of the behaviour of market participants in anticipation of institutional changes in the regime of property rights. Market failures, if we adopt a coherent perspective based on a regime of natural property rights, are nothing but outcomes of institutionalized aggression against private property rights. Hülsmann (1998, 1) calls them "clusters of entrepreneurial errors"; and they are, in some sense, "institutionally sponsored" clusters.

The existence of a "lender of last resort" which is permanently ready to supply fiat money substitutes against almost any collateral works like an insurance policy for bankers[10]. Their ability to rationally assess and price risk is futile as long as such risk is transferred to the monetary administrators. Moreover, under the pressure to dispose of the new sums of money available after the monetary expansion induced by the central banks, such qualified lenders will be ready to credit any type of potential debtor, irrespective of his financial situation.

Such a moral hazard generated by the precarious institutional setting has been misinterpreted by mainstream economists as the "greed"[11] of the bankers in their quest for profit. It must be stressed again and again that the profit rationale is always legitimate in the correct property rights setting and impossible to block in the ethics of argumentation and the science of praxeology. Not only that profit is rational and natural but it is also the right incentive in the economic activity. It becomes condemnable only in a socialized system of property where the majority formulates (and violently enforces) a particular model of behaviour for all the members of society.

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[9] The essence of this arrangement is that only a fraction of a bank's demand deposits are retained in reserve and available for immediate withdrawal (in the form of cash and other highly liquid assets), the remaining portion being lent out to borrowers (consequently never being actually available for immediate withdrawal to the rightful deposit-holders). The controversial issue stems from the fact that the bank lends out great part of the funds it receives in demand deposits, simultaneously guaranteeing all deposits are available for immediate withdrawal on demand. The fractional reserve arrangement is nowadays both legal and a common practice in current banking.

[10] The guarantee deposit system, supported by the State, intensifies the effects induced by the lender of last resort, the consequence being the banks' tendency to reduce the capital – the major objective is now to maximize the value for the shareholders.

[11] The otherwise hard to define although rather ubiquitous greed (present in different degrees in almost everyone's behaviour) is fundamentally risky only when associated with fraud defined in the natural, property based sense, although sanctioned as legal by modern legislations (such as the possibility to create debt / credit without properly defined savings, by current fractional reserve banking).

A particular form of the function of central banks as "lenders of last resort" is taken when applied to the case of large financial institutions of "systemic scale importance". It is the argument of "too big to fail". According to the logic that the failure of large, allegedly critical, operators in a particular sector with whom all the industry participants are connected through contracts and transactions will determine systemic failures, monetary administrators are ready to perform their function of lenders of last resort particularly in the case of such operators. Besides the wrong incentives induced by the artificial availability of liquidity, financial institutions are induced to consolidate by the extra-premium and less risk they obtain in the case they are qualified as "big". Large institutions with difficulties to assess risk and engage in economic calculation will meet the exact same problems experienced by the Soviet-type planned economies[12].

While the financial industry is the most "special" industry in the economy according to the logic of interventionism, we should also remember that it is not the only one. Different other industries have historically enjoyed a "particular" role in the claim of the State that it can actively promote economic growth and social welfare. They are "strategic" industries, real "engines of growth". Among them, the automotive industry always had a distinct place.

While nobody could deny the quality of the automotive industry as an "assembly industry" that integrates a complex supply chain of producers and suppliers, the right incentives for producers in this industry have been distorted by State interventionism and redistribution. Even if we ignore such dramatic interventions like the nationalization of certain auto producers by their nation States (see France and Renault), the industry experienced atypical State redistributionism. But what is significant is that such government interventionism not only consumed massive financial resources, but distorted the incentives of the producers to be competitive.

One significant case in this respect is the American automotive producer Chrysler. While emerging as an innovative technology intensive producer in the 20s, Chrysler expanded soon in the aftermath. However, it was overwhelmed by State interventionism. During World War Two, nearly all of its production facilities were producing military vehicles. While Chrysler grew afterwards due to some innovative and technology-intensive models of automobiles, it failed to pay attention to the development of the market conditions and consumer tastes. Such a factor could be explained by the dependence of State protectionism in trade affairs as well as costly regulatory requirements. As the smallest of the "Big Three" American auto producers, strict regulations in what regards auto safety put Chrysler in difficulty. Moreover, the American automotive industry experienced another form of moral hazard which was trade unionism. In other words, because of the huge political leverage of the powerful United Automotive Workers, the entire American auto industry experienced huge labour costs and, in consequence, bigger difficulties in restructuring and adapting to new market conditions.

In consequence, the energy crises of the 80s put the final blow to the financial situation of this American producer. Its survival was compromised and the only way of continuing its operations was government funding. The theory of Hülsmann is fully confirmed by historical facts. In consequence, the United States Congress voted the grant of 1,5 billion USD as a co-financing package through Chrysler Corporation Loan Guarantee Act of 1979. The Chief Executive Officer of General Motors at that time, Thomas A. Murphy, considered that the bailout of Chrysler was "a basic challenge to the philosophy of America". Obviously, the direction of government funds to a competitor among three was not only a waste of resources, but also a blow to the welfare of the other two producers. The public support for one competitor ignores – besides the resources allocated against the market process – the possibility that the other competitors could expand their activities. Government interventions are always favouring some producers at the expense of others (besides taxpayers and consumers).

The 1979 bailout of Chrysler was indeed a valuable lesson for the American automotive industry. One of them was that philosophy does not have too much value in modern times. Second of them, you could maximize, as a businessman, your financial results even by obtaining funds from government redistribution. It is a real challenge for the entire discipline of business ethics that pressures for ethical decisions of businessmen but ignores whether a businessman should accept government funding. What is sure is that Chrysler didn't learn anything from the 1979 bailout except the power of Public Relations and government lobbying. Even if it was argued that Chrysler paid back fully its debt towards the American government (even a 350 million US dollars interest), the alteration of the correct incentives of the other producers was manifest. The latter learned a lot as, for example, General Motors who did not have any philosophical prejudice in pressing for the 2008 wide auto bailout.

Almost three decades later, the bailout of the two of the three American automobile producers (General Motors plus Chrysler) costs more than 20 billion US dollars. Despite the debate whether there was a legal government act or not (the funds were taken from

[12] The special nature of State intervention in the monetary and banking system is supported by a particular discourse on the allegedly special role played by money and banks in an economic activity. Such a particularism explains why rules and interventions that seem unacceptable in the case of other economic goods and activities of production – like, for example, a central authority that fixes prices and decides volumes of production – do not apply to the monetary and banking system.

TARP funds, formally destined to the financial industry), the bailout proved that, essentially, this creates only addicts and not independent market-oriented producers. The survival of big business is too frequently a result of the success of government lobbying and not of the satisfaction of consumers. Principles such as that government should "save" firms from bankruptcy only for an increase in unemployment could be avoided are not only defaulting on logic, but obviously manipulate.

Conclusions

Conventionally, it has been agreed that the "modern global capitalist world" is (also) the institutional result of corporate business productivity in spatial and range expansion. With its / their prons and cons. Corporations are, beyond the idea of "separate entity" that would define them (i.e., legally animated… person), merely, special associative inter-personal structures. The irony is that the detail which explains both the virtues and vices of corporations is the same: the limited liability "privilege". Somehow due to this situation, the obtainable capital base of a corporation becomes superior to that of any other legal associative form: the corporation attracts, through stock exchange, capitalists tempted by unlimited profits, under conditions of limited losses. And the risks, packed in a limited buffer, incite to technological innovations and thus alert the overall economic dynamics.

But, somehow, capitalism's and free market's genuine vocation has been distorted by "unchaining" free corporate enterprise and chaos tends to reign in: speculative instability increases, because ownership of assets is separated from their management, and responsibility is melted into an "impersonal vacuum"; concentration of power increases in markets (through scale effects and inter-firms m&a mechanism), "a few" controlling the scarce resources in economy; the managers obsession to dedicate profit to shareholders paroxysmally increases (in order not to be sanctioned / dismisses after "hostile takeovers"), and the capitalist ethos gets much too materialist and much less CSR oriented; the temptation to lose the personal moral spirit in corporatist entourages rises – where responsibility is limited, morality tends to follow suit. The corporation is the temple of moral hazard.

We emphasized that limited liability as such is not the source of corporative misbehaviour, but the over-limitation of responsibility by means of privileges granted. We spoke about those received in the name of systemic financial stability or systemic employment stability, pointing out that banking sector has by default some features that incite to recklessness, as do some other major employing corporations, such as those operating in "star industries" as car-making one. In financial industry, the iconic corporate sector stuffed with institutional privileges, the way money is issued and put into circulation by the central bank in tandem with the banking system incites to extensive malinvestment behaviours, systemically harmful – economic crises – thanks to the privilege of the latter to be bailed-out on high grounds (such as "too big to fail"); and this kind of excuses is contagious.

Various other corporations are treated as "jobs and votes" suppliers. But their real mission is to supply goods for consumers in order to get profit for their owners. If consumers do not seem to reward a particular business for its products, this does not mean but that business should abandon its operation and leave the room for another business that should fill in the gap. Entrepreneurial failure is a normal event in a free market and should be treated accordingly. The blocking of the "creative destruction process" is a receipt for a path to a planned economy and reveals an inner distrust in capitalism. If the producers do not act under the spectre of possible failure (loss or bankruptcy), incentives to increase efficiency, to innovate, to pay attention to customers' needs are vanished. State "hand" creates the most corrupt, mean and pervasive moral hazard in the economy.

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