The Boom-Bust Cycles and the Over-Limited Liability of "Too Big to Fail" Corporations: Public Regulations and Private Incentives

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Abstract:
In the corporative realm of the organization of firms, endemic to transnational business, there is no such thing, ipso facto, as an inherently abusive privilege through the "limited liability" feature the State allowed for political or fiscal reasons. A common allegation is that "limitation" would (although asymmetrically) incite stockholders and managers to be overconfident in their profit-oriented endeavours given the corporative judicial-legal shield that absorbs risks and unleashes moral hazard, eroding the market capitalism (speculation, monopoly, immorality, materialism). In this paper, we will re-examine the moral hazard around modern corporation, starting from an area of limited relevance (that of institutionally "neutral" analysis of "interpersonal asymmetry" and "the division of labour and knowledge"), and shifting over to the domain of comparative inter-institutional judgements, opposing two counterfactual mutually exclusive arrangements imaginable: one respecting naturally defined private property rights and the other hampering them through State regulatory interventionism. We will bring more precision to an old classical debate upon the "illiberalism of corporations", arguing that, in addition to 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 the corporations (mainly, in finance and banking, but not only), granted with implicit "too big to fail" privileges.

Key words: business corporation, limited liability, private property, State-granted privileges, praxeological ethics and economics, moral hazard, economic crisis, Austrian School libertarianism

Argument

The literature devoted to business corporation, this "highly controversial entity" in modern markets (epithet derived from scrutinizing its internal as well as its external functioning), defines it as a juridical and 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 of State privileges, a matter in which the recourse to sound law and economics 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 the legal contracts (or speculating on the boundaries of contracts); relevant for our analysis are the shareholders and their endowed directors / managers (cooperating in the "division of corporate labour" or placed in conflicts of interests), populating that legal entity[1].
We will not recollect neither the classic debate on the concession (by grant of a State privilege) versus the inherence (by means of free private contracting) of the corporate format for private business purposes, nor the faulty derivation of limited liability and property features from the 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 market (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. under a corporate shield). Our focus is on the relation between the (systematic) "over-limitation" of liability and the boom-bust cycles.
By pointing to "over-limitation" of liability / responsibility, we're targeting the moral hazard effect of various public privileges in inciting corporate actors (be

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

they owners, creditors or employed agents, directors or managers) to use much more recklessly resources than in the case these privileges were absent.
This paper is built as follows: first, we outline the role of economic analysis in terms of property rights in grasping the nature and consequences of various institutional and legal realms; then, we give a brief account on the problem of moral hazard, emphasizing its property-rights dimension, instead of a simple asymmetric information issue; we argue afterwards that simple "limited-liable" corporations are not moral hazard culprits, this guilt being exhibited only when arbitrary privileges are set in; finally, we link the "over-limitation" problem to boom-bust cycles, and we study two cases: banking and auto industries.
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".
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 unfounded accusation of radicalism in both its analytical methodology ("the arrogance of a priori praxeology") and in its policy recommendations ("evangelising free market fundamentalism").
This "paradigm choice" was made due to the analytical comfort of praxeology: verbal reasoning in terms of teleological causality, logical inferences of theory from basic axioms of human action, needing neither empirical validation nor econometric modelling, but crucial for decrypting historical instances.

The scope of property economics for the analysis of human (inter)action(s)

Understanding the workings of private property in the economics of human action starts from acknowledging some features highly "more elementary" than the subtle problem of economic calculation – the ultimate (though not agreed as such within the heterogeneous economists' community) argument in favour of free market (capitalism) pricing system, and against (socialist) central planning, as stated by Mises and Hayek in the first half of the 20th century.
For instance, it is a trivial fact that people act in this world, either in isolation, or inside society. We have in mind both the extreme cases – "Crusoe society" vs. presence in the global division of labour – and the mixed cases, where, for various reasons, with respect to science or ability, some people choose to engage in an economic operation in conditions of autarky, as in other situation they find the interactions with their peers as being more advantageous.
Society, not by a long shot readable as a simple summum of people or as an entity essentially superior to the persons composing it, represents, effectively, a nexus of relationships; exchange relationships. And not goods tale quale are exchanged in it, but the property rights on them.

Property must be understood starting from the person's goals or preferences, in a world of scarcity. "It represents, on a physical basis, the scarce means of an individual's teleological manifestations" (Spiridon 2005, 34). Property is therefore a logical, natural – efficient and orderly – response / consequence of scarcity; it is both fact and value; innate detail of everyone's life and right opposable to others. History is a long story of accepting and denying the natural way of property creation (by selfownership, homesteading, productive work, free exchange contrary to theft and usurpation).

The acting person finds few things in the outside world in the final desired shape, being "forced" to engage in acts of production. These acts of production are acts creating property, creating means employed in a teleological context. The universe provides to people anything but objects. Transforming these objects into goods, into means for needs satisfaction implies acts of production such as their transport, their physical transformation in forms suitable for consumption, a person's movement in a given physical area, tangible objects collection, etc.

"The production structure is not just a physical structure, but a structure of property, of means employed in a teleological context. The property is a concrete manifestation of the person in the outside world, her extension into the world. There is a teleological unity between the individual's corporal resources and outer parts of the universe that form the property; the personal will similarly manifests itself on them both and other person's intention to violently acquire sources is identically perceived, even if regarding bodily property or non-bodily property" (Spiridon 2005, 34).

Only for the sake of saving words, the discussion about the economic reality can be elliptical regarding property-related assessments. But economics qua science cannot systematically make savings of true and necessary ideas if wanting to fully explain things. We shall see why, staying loyal to the exigency of searching for simple truths about complex reality, formalizing economic explanations in terms of property rights is nodal to provide hard and legitimate (qualitative) assessments about the effects of certain institutional constraints on human actions.

As we shall see, the analysis of the way property acquisition / appropriation is favoured / encouraged (i.e., naturally legitimate or not) is the sole realistic standard to assert the welfare effects and the efficiency claims behind certain economic activities – in a sense that Mises only used as default (A Critique of Interventionism), that Rothbard introduced as a current method (Power and Market), Hoppe brilliantly applied it (A Theory of Socialism and Capitalism) and Hülsmann ("The A Priori of Property Economics") explicitly restored all its praxeological dimensions (Jora 2011, 133 and ff.).

Thus, there is a natural relation between law and economics, a binomial tool to understand institutions, incentives and impacts on how people act. What distinguishes the various systems are the different ways of appropriation or acquisition of resources. There can be only two ways to acquire resources in any society, at any time: voluntary and violent. The relevant dichotomy is so between the economic means (peaceful property acquisitions) and the political

ones (aggressive, illegitimate, be they even formally "legal"). Moreover, these two ways are mutually exclusive: to use one means to exclude the other. This dichotomy covers all alternative choices in the real world, which puts us in a position to compare the implications of this choice in any given context. Alternative modes of acquiring resources represent the basis of the property analysis, comparative analysis of the systematic consequences derived from choosing a way against the other one remaining unrealized, potential. Property analysis or property-based analysis is the cornerstone of individual actions / aggregate structures / societal systems' comparative analysis. As equilibrium analysis, it is of a counterfactual nature, but it compares realistic alternatives, one conducted in action, the other remained at an unfulfilled alternative level (Hülsmann 2004).

The institutional constraints' realistic analytical impact on and of human actions in society – applied, as it is the case with our study, on the specific international business environment – assessed starting from a theory of property, can be a huge gain, inversely proportional to the simplicity of the conclusions. The (implicit) aim of this paper is to recover this analytical simplicity, embodied in the evaluation of the institutional performance of actors or systems in integrum in terms of policies and institutions consistency with the private property principle.

For example, the way in which a means of resources' appropriation is institutionalized / rooted (with respect to the natural propriety or on the contrary), through regulations and resources' fiscal or inflationary socialization, accounts for the accredited behaviour and the performance, in terms of wealth or welfare, of the hosting society. Accordingly, we will be able to discriminate between the most fertile institutional arrangements and the rather sterile ones. And, eventually, to shed light over corporation's problems and over capitalism's anomalies circumstances – "the economic crisis".

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 stimulant is the widespread, institutional, respect for private property; adverse is to hamper this respect. The current economic crisis brought into the light an adverse stimulus standard: moral hazard. We call this a person's stimulus to use more resources than would normally use, because he knows (or thinks he knows) that another person will provide, without consent (!), a part or all of these resources.

Many economists have hastily 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, there being created allocative imbalances, by expropriation, but in a way that cannot be avoided even within contexts with "perfect information"; quite on the contrary, it is all the more knowledgeably enhanced.

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, 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, as Hülsmann (2006, 37) observed. 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[3].

Hülsmann (2006, 37) also notes the two main situations of moral hazard germination, captured by the classical literature: agency contracts and co-ownership.

[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.

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[4].

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 account.

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 interventionist climates –, we begin by analysing 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

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[4] The standard case of moral hazard with respect to the agency issue is the insurance contract. However, moral hazard is not a problem specific to the insurance industry. It can occur in almost any field of human activity where there is separation of ownership from control. For example: employees can be subject to moral hazard, in that they can reduce effort without suffering a salary reduction; borrowers can be subject to moral hazard, if they believe they can spend money without suffering negative consequences when they are unable to pay them back; some audit firms have been subject to moral hazard, when they sold consulting services to exactly the same companies they had to audit ("Enron"); a central bank can produce moral hazard in the banking community, if commercial bankers consider the central bank as lender of last resort; the IMF can also produce moral hazard among debtor governments; taxpayers are considered to be in moral hazard if they can escape from high taxes regions, the government and the parliament are agents prone to moral hazard, the electorate being the "less informed principal" etc.

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) ex ante withholds the ex post “expropriated-to-be” part by the employee (agent) as 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 “expropriation”, he can, purely and simply, avoid it.
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 conduct violations, and 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.
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 “private government of the common goods”.)
With this discussion, Hülsmann (2006, 40) throws light over another decisive feature. The only meaningful evaluation standard for the effectiveness of mechanisms with inhibitory role for moral hazard (for example, co-payment in insurance or lists of shame in the business) would be their comparison with other instruments available “in this world” and not in a perfect and... absurd Nirvana (the world lacking uncertainty is inconsistent with “the acting living world”)[5]. Out of respect for reality and the meaning of science as its

[5] For some theorists, the elements of institutional design intended to neutralize the moral hazard effects are considered to be “second best”, in relation to the “first best” solutions, emanating from a world populated by people who would enjoy “perfect / symmetrical information”. According to this perception, it is inferred that free competitive markets would be inefficient because of the inherent moral hazard; or, in other way of saying, moral hazard is a ubiquitous failure of free markets (which can be “corrected” by statist intervention – the State being (really!?) superior in distributing on the market the relevant information or in exploiting it directly…). The distinction between these solutions of “first degree superiority” and “second degree superiority” is, nevertheless, a poor frustration against the reality’s structure! It would make sense only if people could choose to live in a world that has perfect knowledge of the future (as an exhaustive sumum of relevant knowledge about the information and the intentions of individuals they are in relations with) and where there would be no need to find institutions

administrator, it would be common sense for any economist to abandon the reference to un(be)li(e)vable worlds.

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

The doctrine of "limited liability" in 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". As simple and natural as that, we say.

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 issue of limiting the risks and the possible losses by the owner shareholders, being 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[7] 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 States (along with the so much

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designed to manage the risks of moral hazard. Only against such a world, ours – with information asymmetrically distributed and latent moral hazard – could be considered ineffective. But there is no such alternative!

[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).

[7] Eeghen (2005b, 40) summarizes the (mistaken!) reasons why Hessen (1979, 19-20), an advocate of inferring the limited responsibility from the mere voluntary contractual option, would be mistaken in his logic. Hessen "errs" in three directions: first of all, he claims that the historical roots of the "concession theory" (seeing incorporation as a concession from the State, a theory he disagrees with) can be found in the perceptual deformation that occurred during the era of absolute monarchies; he believes that the particular features of the incorporated form (the status of conventional entity, the limited liability and the perpetuity) can be acquired by mere contract, without State intervention (this one being the main premise of his preferred "inherence theory"); and, finally, he claims that differences between unincorporated partnerships and corporations are of degree, not of nature.

debated "entity status"[8]) for fiscal and political rents. Various "libertarian" deontological and consequential arguments are being given.
But the logic of private property and free contract is still safe and sound in corporations, even if so many classical liberals and (left)-libertarians stood against it. The a priori proper classical liberal / free market libertarian defence invalidates, afterwards, the biased consequential arguments.
The limited liability is a rational option, in the case of extensive partnerships, from the point of view of risk management as partners and / or delegates. But is it also legitimate?
The key factor lies in the following: as long as all parties involved in a transaction with a multi-personal, limited liability "entity" understand what this entails and they accept this arrangement on these terms (aware that, in case of disputes, they will be able to claim compensation amounting only up to the capitalized value of the corporation), a corporation of this sort remains a benign product of the market, even subject to the rigor of competitive selection[9], like any other form of organization. So, if each party of the contract through which a corporation is created agrees to consider itself as part of a legal fiction (that is, an "entity", in the non-oversaturated sense), then he or she is so. And if the arrangement is presented as sufficiently transparent by its makers (and today anyone understands the meaning of Inc. or Ltd. in the USA, of PLC in the UK, of Gmbh. in Germany, of S.R.L. or S.A. in Romania etc.), then there is no reason to suspect it of deceptive representation or fraud. Moreover, praxeologically[10], the limited liability is, eventually, a ubiquitous fact, a priori assumable by anyone making any transaction. There only needs to be a correct anticipation of the "executable" amount in case of dispute (estimable through the market capitalization of the company).
Let's say a few more things about the idea that the difference between corporations and partnerships[11] is one of degree rather than of nature (Hessen

[8] See footnote 2, for references to a debate on the "fake path" of entity status argument against private corporations: a "natural" feature of State affairs (public goods provision), entity status is criticized when ascribed to private business for private profits; the non-sequitur of the argument, and the error of even focusing on "legal" entities, in Block and Huebert (2009).

[9] "Creditors are, nevertheless, not forced to accept limited liability. As professor Bayless Manning noted, «As part of the negotiation that happens when a corporation has to fall into debt, the creditor can, of course, obtain from the shareholder (or from anyone else who wants to make the lending happen) an additional guarantee agreement, an endorsement or something of the sort, that will make non-corporate assets subject to the creditor's claim on the corporation». This familiar pattern explains why the limited liability might be just a mirage, an illusion for a new, untested business, and can also explain why certain enterprises are not corporations, despite the ease of creating such thing" (Hessen 2002).

[10] Any exchange involves, in a certain degree, the limitation of liability, it's just that in certain cases, for matters of precaution, its range needs to be specified – as the assets of the corporation or those of the partners in an "unlimited liability" arrangement (which is, rigorously, absurd, as there is a limited amount, by means of scarcity itself, to which anyone can be held liable). So, who could, when selling or renting a certain good, stipulate how he will be held responsible in all imaginable situation of its functioning?

[11] The general pattern of modified partnerships involves the existence of partners who barely contribute to the equity ("silent", or "non-managing" partners) who transfer the rights and obligations that come along with the co-ownership (full liability, control over the assets, being

1979, 37-46, (faultily) criticized by Eeghen 2005, 45 and ff.). The legal status of the non-managing partners involved in a partnership is, of course, similar to that of the shareholders of a corporation, in that they are given limited liability, they have given away the control over the assets and they no longer have the right to be consulted regarding the transfers of property rights. For Hessen, this is evidence that there is a continuum that starts with the normal partnership and ends with the corporation, while the unmodified partnership lies between the two[12]. The option for one extreme or the other of the association spectrum, as well as the option for either of the "intermediate stages", is primarily justified by trying to find a balance between "the need to make the process of attracting resources appear as more attractive" (especially when the partners, new in the business, do not have a historically representative reputation in the business so that the creditors would find them attractive enough) and "the need to minimize the personal exposure to the risks".
Finally, this problem also comes down to what is natural (via its voluntary, contractual nature) in the option / non-option for limited liability, and the creation of the premises for anticipating the amount that the liability refers to – by making this "detail" of business simply transparent. Thus no moral hazard is involved, because, in our property-based definition of it, nobody gets entitled to expropriate other people's resources. If worried by the credentials of a limited-liable entity, somebody may ask for supplementary guaranties, otherwise abstaining from contract.

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

We move to the other half of our topic. The explanation of both causes and consequences of the emergence of business cycles (prevalent coincidentally or consequentially in our modern corporate-capitalistic world) is one of the core and (still) intriguing issues in economics. The superficial explanations of such alterations in periods of production expansion and periods of contraction usually make appeal in the mainstream economic literature to psychological (Rothbard 2000, 80 and ff.) or exogenous non-human factors (such as weather caprices or technological waves). 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 private property in monetary and banking fields determines a socialized financial system with fundamentally wrong incentives of operation.

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consulted on transfers of property etc.) to the other ("managing") partners, normally in exchange of a smaller share of the profit. The liabilities and risks of the latter become higher, and this limits the size (of the "equity") of this type of partnership.

[12] Eeghen (2005, 46) sees a "fundamental difference between partnerships and corporations": while in the case of modified partnerships the property rights and liabilities are rearranged among the partners who manage and those who do not, these rights and liabilities are partially dissolved for all the corporation's shareholders. The first two would be fine in his view, as some of the partners still hold all the rights and obligations that come with the ownership, so the responsibility towards third parties would not be compromised.

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 problem of how property rights should be defined and enforced in these fields, any solution is only 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 central banks. The main function of fiat money is redistribution of purchasing power in society through targeted increases in the money supply. 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. 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 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 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 freedom of restructuring of the producers as they have to meet periodic fixed payments.

Corporations and "too big to fail" privileges (I): the case of banking sector

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. 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 fundamental one which is emergence of the function of central banks as lenders of last resort but also secondary ones such as deposit insurance, caps in cash withdrawals, the formation of industry wide pools of liquidity accessible to all the depository institutions.
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". They are "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. 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 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" 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 from the part of all the members of society.

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 same problems experienced by the Soviet-type planned economies.
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.

Corporations and "too big to fail" privileges (II): the automotive industry

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 has 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, 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 interventionism is always favouring some producers at the expense of other producers, besides taxpayers.

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 didn’t have any philosophical prejudice in pressing for the 2008 industry wide bailout.

Almost three decades later, the bailout of the two of the three American automobile producers (General Motors plus Chrysler) costed more than 20 billion US dollars. Despite the debate whether there was a legal government intervention or not (the funds were taken from TARP funds, formally destined to the financial industry), the bailout proved that, fundamentally, government protectionism 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. The principle that government should “save” firms from bankruptcy only because an increase in unemployment could be avoided is not only defaulting on logic, but obviously manipulative.

Firms are not enterprises whose function is to supply jobs, but enterprises that 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 the empty place. Entrepreneurial failure is a normal event in a free market and should be treated accordingly. The blocking of the “creative destruction process” is nothing but a receipt for a path to a planned economy and reveals an inner distrust in capitalism. If a producer does not operate under the spectre of possible failure (loss or

bankruptcy), its incentives to increase efficiency, to innovate, to pay attention to customers' needs are vanished. Government "hand" creates the most corrupt, distorted as well as pervasive moral hazard in the economy.

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, thus alerting the overall economic dynamics.

But, somehow, capitalism's and free market's genuine vocation has been distorted by "unchaining" free corporate enterprise and chaos tend 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 increases – where responsibility becomes limited, morality tends to follow suit. "The cost is too big to pay".

And, from such surroundings, the crises are erupting: in the subprime boom of, among other things, "the-limited-liability-corporations", some never-endingly (mal)invested, some "champaigned on a beer budget", some had shamelessly allured, and resources have been massively wasted! Could there be, however, a causal relationship between "limited liability corporatism" and "speculative turbulence capitalism"? This is the fundamental question of our paper's perspective rooted in property rights (yet, a paper aiming not for "hot", but long-lasting, basic findings).

As we have noticed, limited liability, freely agreed as such by incorporated associates and freely accepted as such in transactions with third parties in the market, introduces only a difference of degree regarding the way our mundane economy works by default: if shareholders have limited liability business, they are "unlimitedly" held responsible in the rest of "civil" interpersonal relations; in other words, each of us has limited liability and, simultaneously, is held responsible against all our possessions, in the "sum" of all the teleological contexts in which we all act.

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 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 bail-out 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. And, again, if economists who focus on "information" say that moral hazard (waste of some expropriated resources) emerges from asymmetry of knowledge and of imperfect monitoring between individuals with conflicting interests, "economists of property" assert that moral hazard is worse with… transparent information: when some know that profits will be enhanced (or losses socialized) by the expropriation of others, they will cynical waste (basically others') resources.

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 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 case.

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 corporations are not simply blameable for their misbehave (being beneficiaries of inflated credit and capitalization through over-trading on stock exchange), simply because they are corporations, but because they have accustomed, "encouraged" by their own government, to self-claim "too (be it financially or electorally) big to fail".

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