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THE MORALLY HAZARDOUS MODERN CORPORATE WORLD – A FREE MARKET DISTINCTION BETWEEN VICIOUS AND VITIATED CORPORATIONS

ABSTRACT. In the present paper, we identify the corporation in its ultimate, proprietary meaning (as an expression of an aggregate of resources owned by shareholders and used according to their allocating-entrepreneurial vision), homogenizing, in some way, the entrepreneurial-capitalistic-managerial "interests" from within itself and, this time, treating the "shareholders vs. managers" tension as irrelevant. We distinguish, within this simplified framework, situations where corporate actors (the "shareholding-managerial aggregate") gain together social privileges, undue rights on third party resources or, on the contrary, are prejudiced, together, by third parties. Either way, the "key character" is the State, which institutionalizes aggression and incites to free riding. We consider, in this logic, by "vicious-corporation" that which succeeds (while tolerated / encouraged by the public authorities) in acquiring resources from the rest of the society, without the righteous owners' prior consent. It does this either by "material" redistribution – explicit transfer of expropriated resources – or by "virtual" redistribution – implicit rents from dedicated regulations –, internalizing this behaviour (moral hazard) in its day to day routine. We symmetrically define by "vitiated-corporation" that which is expropriated (materially, virtually) by third parties (mainly the rival corporations) which take comfort from this habit, rather than simply serving consumers.

JEL Classification: B53, K20, L20, M20

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Introduction

To condense the logic of the present article it might lead us to the following core statement: there is, ubiquitous within the business corporate environment, a propensity to *moral hazard* that is not in-built in market design, but comes out from the *asymmetric public interventions* that alter the incentives of the corporate actors. Far from being revolutionary, our thesis addresses a widespread misunderstanding regarding the relationship between *corporations* and *capitalism*. It is frequently said that capitalism's genuine vocation has been severely distorted because of the "unchaining" brought by governments to the corporatist enterprise in modern times: the speculative instability increased in markets because the ownership on assets, diffused, is separated from their management, and the authentic responsibility of the "incorporated" actors is resorbed in an impersonal "black hole"; the concentration of economic power in markets also increases, via scale effects and inter-company mergers and acquisitions mechanism, thus "a few" getting to control the most of the resources in world's economies; the managers' obsession to dedicate profit to shareholders, in order to keep the prices of stocks high to avoid being fired after "hostile takeovers", goes rampant and the capitalist ethos becomes too materialistic and lesser and lesser CSR-driven; the temptation to dilute the moral personal sense in corporate entourages increases because, as an old business proverb says, where responsibility is limited, morality tends to follow suit (Jora and Iacob 2011; 2012). Economic crises became corporate by-products as such.

The particularity of our article it that it tries to clarify the differences in positioning of corporate actors in terms of moral hazard, defined as the incentive of an agent to use more resources than would have been used short of certain external motivational inputs. The acquired supplement of resources at the disposal of "morally hazardous" actors ultimately comes from expropriating, directly or indirectly, various third parties. Too often, the manner in which corporate actors get used to interact with the public authorities, the consumers, the competitors or other cohabitants from their jurisdictions was treated sloppily by various pundits or public opinion, and modern corporation was found problematic by its very nature. Therefore, the aim of the present endeavour is to reassemble the picture of the fundamental difference that exists between the corporations that owe their performance to the efficiency of serving customers – and who are sometimes prevented from reaching their maximum potential, due to moral hazard exhibited by fellows from within the "politicized business class" – and those who owe their profits to the privileged links with the public authorities, being granted resources extracted from the taxpayers, or from the general public by the subtle mechanisms of money and credit creation and the subsequent social purchasing-power redistribution – inflation, in the classical meaning – or being able to increase the costs for their competitors, both by lobbying for laws and / or harassing their counterparts in courts. Hereinafter we named the categories: *vicious-corporation* vs. *vitiated-corporation*.

The paper's structure is the following: we start by setting the analytical framework; then we get to the vicious-corporation, studying the issue of banking privileges and capital adequacy; vitiated-corporation comes next, by briefly studying the antitrust policies' weaknesses; finally, we point few conclusions.

Some (Methodo) logical underpinings: on the praxeology of corporate moral hazard

With respect to the methodological approach, we want to make it clear from the outset: our analysis is purposely *mainly theoretical*, *a priori*, *qualitative*, and *institutional*, in the *Austrian School* tradition; although this is not spectacular in data gathering and modelling, it answers the commandment of being straight and simple. The judgments we use are *praxeological*, not of empiric-type, and the historical examples *illustrate*, not verify, the proposed theoretical analysis. In sharp contrast to the natural sciences, *praxeology*, developed by Ludwig von Mises as the legitimate way of studying human actions in a time-and-place-invariant basis, is not enrooted in observation or in any other type of information collected through human senses, but in insights on specific structural features of human action – i.e., that people make choices or use their chosen means to achieve their chosen goals etc. Consequently, the validity of economic theory does not hold and falls with empirical investigations. On the contrary, economic laws are *a priori* laws which cannot be confirmed or denied by prevalent methods in the natural sciences. They are independent of particular historical conditions of time and place, and the social scientist gets to know them through purely deductive reasoning starting from an axiomatic background. They can be verified or rejected only by discursive reasoning which in turn is based on our reflective knowledge of what human action is (Mises [1949], 1998). Human behaviour (i.e. moral hazard) in corporate world is just another realm suitable for praxeological analysis.

Fair is also to say that, armed with this "ultrarationalist" methodology, the *Austrian School of economics and political philosophy* consecrated itself, by the positions held in its epistemological and ideological dialogues under the auspices of modern social sciences, as maybe the strongest *laissez faire* / *free market* stream of thought. The implicit "welfare criterion" as refined by "Austrian" social scientists, on which we rely in our analysis upon the corporate realities, is composed by a "twin" *ethical-economical praxeological test*: *the non-aggression principle*, stating that initiation of violence cannot ever be consistently argued as legitimate – i.e. Rothbard (1982), Hoppe (1993) –, along with *the economic calculation argument* – i.e. Mises (1920), Hayek (1935) –, arguing that coercively distorting market pricing (as the sole way to interpersonally centralizing the social information emerging from subjective valuations) hampers individuals' and firms' proper insertion in the division of labour and thus waists scarce resources. In this light we qualify the types of corporations situated on one side or the other of moral hazard.

A brief note on the *praxeology of moral hazard*. It is common sensical that human decisions involve calculating the costs and benefits of satisfying a need. The satisfaction gives the benefit; the sacrifice gives the (opportunity) cost. The market is (also) an interplay of incentives, where, in the cooperative division of labour, people try to incite each other to provide what is useful for their living. Incentives, understood as impulses to undertake an action (instead of another), can be divided, according to how they cultivate efficiency or waste in the allocation / transformation of scarce resource, into "natural / healthy" incentives and, respectively, "adverse / perverse" ones. Natural incentives leave the costs and benefits of human actions to freely reflect the game of perceptions regarding the resources' scarcity as well as their value in an inter-subjective context, while adverse incentives forcedly reduce the cost-benefit ratio of human actions. In this later case, some speculate on the ignorance or the failure of third parties, from where resources are expropriated / transferred or are anticipated to be transferred, this reducing the costs relative to benefits for the "immoral" action done. The present economic crisis brought into attention the standard adverse incentive: *moral hazard*. As previously said, the mundane definition is that moral hazard is the incentive to use more resources than otherwise, because someone knows (or thinks he knows) that a third party will provide (without consent) much, or all, of these resources.

The moral hazard is not a simple problem of *uneven access to information* between agents with divergent interests, but fundamentally a problem of *faulty definition of and abuse on private property rights*. The latter change the relative costs between beneficiaries and losers of the intrusive public regulations.

"Property" economists, as opposed to those who focus on "information", say the market can offer satisfactory precautions to situations of opportunism: on the free market, rational and unfettered individuals apply an implicit discount (not disclosed as such, but still present in the evaluation) to the price paid for the services rendered by third parties who operate or share their property with. The employer bids for a salary, from which he extracts the cost of monitoring or of losing due to unnoticeable "fraud" (for frauds, there are Courts of Law). The same logic to firm's partners, shareholders' mutual monitoring and contracting.

For moral hazard to arise, the distinctive feature is not informational asymmetries, that are both omnipresent and addressable by market design mechanism as indicated above, but the situation, with respect to certain resource, where there is a separation of the *property* in it (that is the legitimate right of a person to exclusively control that resource) and the current *control* over it (either delegated by the rightful owner or extorted from him by fraud or legal fiat). This is the case of both principal-agent relations and co-ownership arrangements. When separations occur freely, some "moral hazard" may install, but in a certain degree it can be managed satisfactorily. Though this becomes quite difficult when the separation is in fact usurpation and, all the more, when this usurpation gets to be institutionalized by laws that tolerate or encourage it explicitly: favouring redistribution by taxation, regulation and inflation. The unconsented transfer of resources is, thus, the most atrocious favouring factor of moral hazard and the irony is – as observed by "property" economists – that moral hazard is greater with... "transparent information": when the expropriators (or their accomplice beneficiaries) know that they can expropriate without being penalized (or that losses from reckless habits will be "socialized"), they get tempted. The "rest" (victims) will seek to dodge. This dynamics is parasitical, leading to the general wealth implosion (Hülsmann, 2006), whether we speak of moral hazard in the socialism of forced common property, or of the interventionist policies interfering with the corporate capitalist "market order".

In the following lines, we resort to an "analytical trick": we identify the corporation in its ultimate, teleological meaning (as an expression of an aggregate of resources owned by shareholders and used according to their allocating-entrepreneurial planning). We homogenize the *entrepreneurial-capitalistic-managerial* "interests" from within itself and, this time, treat the "shareholders - managers" tension as irrelevant. We distinguish, with this simplified framework, situations in which the corporative actors (the shareholding-managerial aggregate) gain, side by side, social privileges, that are undue rights on third party resources or, on the contrary, are prejudiced, side by side, by different third parties.

Either way, the "key character" is the State, which institutionalizes such perverting and, respectively, prejudicing behaviour. We understand by *vicious / guilty-corporation* the one which succeeds (while tolerated / encouraged by the public authorities) in acquiring resources from the rest of the society, without the righteous owners' consent. It achieves this either by "material" redistribution – an explicit transfer of expropriated resources – and / or "virtual" redistribution – by implicit rents from "dedicated regulations" – and adds this kind of perverse habits (moral hazard) to their current business routine. We understand by *vitiated / victim-corporation* the corporation which is expropriated (materially, virtually) by third parties, including in most cases rival corporations.

In the *vicious-corporations*' case, the features exhibiting moral hazard and distorting the purely satisfactory vocation of the company's activity in the extensive societal division of labour include, on the one hand, privileges of *material expropriation*, and, on the other hand, *virtual expropriation* privileges. By material expropriation we mean "hard" transfers of resources, by doing businesses with the government (including public-private partnership), subventions, State aids, rescues / bail-outs on "systemic" grounds or not, targeted money creation / credit expansion (banking), public utility socialization (the "eminent domain"), etc. The virtual expropriations include protectionist tariff and non-tariff barriers (levied against foreign competition), territorial or sectorial monopoly privileges (implicitly or explicitly), delaying-intended insolvency and bankruptcy procedures (that prolong, artificially, business lives), harmonizing production / product standards up to prohibitive levels for domestic or foreign competitors, etc. A closer look we take on banking sector privileged design.

Symmetrically, for the *vitiated-corporations*, the features which prejudice them (and which contain the propensity of exhibiting third party moral hazard behaviours in relation with them) are both from *material* and *virtual* expropriation. In the first category, we identify a high and unpredictable fiscal system, inflation and exchange rate volatility, public utility expropriation (the resources being redistributed to politically connected third parties), etc.; in the second category, we refer to protectionist custom duties, monopoly privileges for competitors or providers, encumbering insolvency and bankruptcy procedures for the clients, harmonizing production / product standards up to prohibitive levels etc. For the case of prejudiced corporations, we analyse the pseudo-rationale of anti-monopoly legislation for the corporate climate.

So, we will focus on institutions and policies that distort habits relative to the way of doing business in a free market, pointing to "vicious" banking actors, privileged producers of money and credit, and to "vitiated" customers-serving, competitors-disturbing "trusts".

The vicious-corporation. Case study: the issue of banking privileges and capital adequacy

Many economists, even though they share different nuances in their positions on the matter, agree upon one of the main causes of the world's current financial crisis: *the institutionalized moral hazard within the financial and banking sector*. The banks and other financial companies have, *in certain governmentally created institutional conditions*, the tendency to behave irresponsibly, obviously predisposed to exuberance when it comes to investment decisions, which translates into frequently taking tremendous risks, above the plausible yields connected to the performed "intermediation".

One of the symptoms caused by this forcing of the economic reality is represented by the "capital adequacy ratio" – the percentage of equity within the total capital – see the so much commented Basel I, II, III criteria, the third version dating from 2010 (Dăianu, 2010, Cerna, 2012). Many such institutions had diminished their ratio down to minuscule levels, of under 10%, in the pre-crisis period. Considering the fact that equity is the economic buffer for losses, the more the equity ratio drops, the more vulnerable the financial companies get. Dominant in the markets, these colossuses with… paper-money and derivatives legs expose the economy to systemic risks – since one's debt almost always is another one's asset.

Therefore, the bankruptcy of a single such institution of large size can trigger a domino effect, causing subsequent bankruptcies. Thereby, the whole financial market gets dissolved. Which is why they are often considered "too big to fail", verdict which has the potential of enhancing the inclination towards hazardous actions, since the perspective of profits is doubled by the socialization of losses, on the ground of avoiding, by any means necessary, the collapse of such "indispensables".

Following Hülsmann (2006; 2008), we find the true cause of the financial sector's moral hazard not in the normal market informational asymmetries, but elsewhere: in their statist-distorted severance of property and control of resources. Banking sector is distinguished in the economy by the privileged way in which it operates in terms of institutionalized "resource creation" compared to the majority of economic agents. One interesting case is the monetary "politics" and the "nature" of the current monetary system based on an extensive chain of inflationary expropriation (see Mises, 1980, Rothbard, 2004). Only secondary is the popular inclination towards uninformed or foolish decisions, based upon greed or imitation ("going with the herd"). What distinguishes the modern monetary and banking system and arguably incites hazardous moral behaviours "downstream" is the very fruit of some institutional details: *the enforcement of the means of payment ("fiduciary currency") by law* and *the commercial banks "fractional reserve" inbuilt regime.*

– *Legal tenders* are defined as the money or monetary certificates which can be used to make payments, despite one of the sides' willingness to use them as such (Hülsmann, 2008, p. 125). The national currencies function in such a regime, amplified by its attribute of *jurisdictional monopoly*, and apart from a few selective exceptions, all transactions operate in this currency. From a property rights' ethic and economic perspective, it is considered that these laws which establish legal tender monopoly are an *a priori* vitiation of the market contracts, as they do not leave room for choosing one of the exchanged goods – the monetary counterpart. The damaging of the market contracts' progress becomes more visible as the logical consequence of this state of affairs becomes patent: the monopolistic currency issuer – the Central Bank and, in addition, the banking system that multiplies the monopolistic currency – together with the early beneficiaries / users of the monetary creation, thereby gains a privilege and abuse (morally hazarded) of it. The fact is manifested through the particular redistributive power of inflation (currency issuance) on the wealth kept in these means of payment: from those economic agents with stickier revenues to those benefitting supplementary incomes, fuelled particularly by currency issuance / expansion. Also, inflation is an impediment in contract making, in that it artificially volatilises the terms of exchange.

– The generalization of the *fractional reserves* principle in modern banking systems follows the establishment of *legal tender monopoly* (Hülsmann, 2008, p. 109). Monetary multiplication (credit expansion) uncovers institutionalized / artificial depreciation through progressive currency inflation. For example, compared to the archaic "thinning" of the quantity of precious metal (debasement) which would have deflating effects through Gresham Law's mechanism, through which, at an arbitrary parity between good currency and "rigged" currency, the latter take the former out of the market, causing a monetary mass contraction that is unwanted by the authorities. The paper money and, furthermore, the scriptural money, are homogenously expandable, and this detail ensures a suppleness of the "expropriation", provided that economic mechanism does not face sudden disruptions, conditioned by the authority's ability to keep the expansion under control and maintain the banking system's credibility of honouring its duties. Putting it as simple as possible: the particularity as well as the fragility of modern banking systems consist of the "prevailing" of mistaking institutional properties of the hard currency (commodities) and its real tenures with the properties of discretionary currency, which is expandable through the issuance of fictitious titles (see the Austrian School literature: Rothbard, Hoppe, Hülsmann, de Soto, etc.).

An illustrative example of moral hazard problems contingent with the property rights system – embodied in money substitutes modern dynamics – can be shown by analysing the effects of recent governmental interventionist solutions for smoothing banking system operations. The case of the recent quasi-consensus regarding banking regulations and, in particular, capital adequacy regulations is clarifying: imposing *minimum capital standards* for financial institutions, by (re)bringing leveraging to safer limits still preserve many moral hazard side-effects.

Dowd (1996; 1997), Benston and Kaufman (1996), Padilla (2002), rejecting the traditional conclusions from the theoretic and policy literature regarding the necessity of an "adequate capital" regulation, offer an institutional, comparative analysis of the banking system. They also show the way that moral hazard problems which require questioning of the "improvement of banks' capital" problem, in terms of State regulations, specifically belong to the interventionist system right from the start and cause further uneasiness.

Therefore, the main fault of the system, that, unfortunately, is only attacked "symptomatically" by regulating the "capital adequacy ratio", is the confusion maintained between *time deposits* and *demand deposits*. Actually, it is about mixing the *depositing* and *crediting* functions by treating demand deposits *via* the fractional reserve mechanism, as being in double ownership (namely the difference between the deposit and the reserve): in the property (at the disposal) of the depositor and, at the same time, in the property (in use) of the borrower. The *ex nihilo* credit multiplication process ultimately leads to those leverage exacerbations.

Spiridon (2005, p. 101) shows the alteration brought by the perpetuating fiction of making the same amount of money be used concomitantly by two persons. This has: transformed the banks into currency titles issuers, not just intermediaries; destroyed the banking system's health by stimulating commitments beyond reimbursement capacity; transformed the Government into the main influence factor in dimensioning the money supply; stimulated political centralization; fuelled social conflicts and interstate warfare; contributed to the development of the modern extended, corrupt "Welfare State"; allowed for the galloping inflations and exchange rate collapses, massive redistribution and impoverishment of thrifty individuals and individuals with fixed incomes; made the "bizarre" economic boom-bust cycle phenomenon possible.

Coming back to the discussion on moral hazard in banking system regulations and the sterility of "symptomatic therapies" – as we believe to be the targeting of capital adequacy –, we compare the behaviour of a free banking system – theoretically plausible as well as historically proven – with the highly regulated one.

― Dowd (1996, pp. 680-681) shows how a *laissez-faire* banking system, *operating in a monetary regime based on benchmark-commodities (gold standard)*, will work without a lender of last resort and without a State insurance system for deposits, as well as how such a system would also be stable. The banks are not structurally different from the corporations in any other domains and, just like them, are subjected to competition with other banks for winning and keeping the depositors' trust (without which, the long term survival of the bank wouldn't be possible). Naturally, the banks (indistinctly through their managers and shareholders) have the tendency to reduce their banking capital in order to maximize the value for shareholders, because less capital will yield a higher expected profit for each share. But the competition between the banks will moderate this temptation and will make sure that banks resort to the capitalizing level requested by the consumers. The competition will lead to an optimal capitalization ratio that will secure a balance between protecting the depositors and the shareholders' profit. From an empiric perspective, there are many historical evidences that prove the fact that a *laissez-faire* system would maintain a high capitalization level, and that the banks would have a lowered failure probability. It is known that before the Civil War, in 19th century USA, American banks had a capital ratio of over 40% and seemed safer than the ones in present days (Dowd, 1996, p. 681).

― On the other hand, in a system in which the *State intervenes through the Central Bank to act as a lender of last resort and through a State-supported deposit insurance system*, moral hazard issues, repressed in a free banking system, start to emerge. Firstly, the presence of a *lender of last resort* which provides liquidity for banks that, otherwise, wouldn't be able to obtain it, has the effect of protecting the weaker banks against the consequences of their own actions (higher risk and maintenance of weak capital conditions). Moreover, considering the fact that the Central Bank protects the weak banks against failure and is always willing to save them, the good banks no longer have incentives for maintaining their financial health so that they can take over the weaker banks when they fall gaining the tendency to embrace the same strategies, and thereby creating an unstable financial system. *The deposit insurance system*, supported by the State, intensifies the effects induced by the lender of last resort, the consequence being the banks' tendency to reduce capital, the major objective now being the maximization of value for shareholders. In addition, the banks' competition for greater market share will intensify this tendency, forcing good banks to imitate the weak ones, which reduce their capital rate in order to reduce costs and transfer part of the benefices to the depositors, by offering higher interest rates.

The general consequence will be an unstable financial and banking system, which is predisposed to failure. One can definitely conclude that the state's intervention in the banking system generates various moral hazard issues that wouldn't have existed in free-banking systems.

Various analyses have accredited the need for regulating capital adequacy, more specifically the State's imposition of minimal capital standards for financial institutions, allegedly enhancing the safety and solidity of the banking system, this way answering even the moral hazard problems caused by the State's guaranteeing the deposits (i.e., Benston and Kaufman 1996, p. 694). But Dowd (1997, pp. 99-100) shows that, in fact, such a regulation creates another moral hazard problem between the bank – which seeks to maximize its profit – and the regulation authority – whose declared objective is the bank's safety and reducing the risk of bearing the cost for the bank's failure. The consequence of this conflict is that the bank, under the conditions of regulating capital adequacy, will seek alternative strategies to avoid the regulation (i.e., taking off-balance positions, which are harder to control) and to maximize profits. Therefore, the moral hazard issue created by guaranteeing deposits is not reduced, but just redirected and even amplified through regulating capital adequacy ratios.

The complexity of the financial sector's moral hazard issue is shown by the answer to the question: who pays for these rescuing liquidity injections, meant to cover the structural holes implied by the banks operating in fractional reserve regime?

In no way do the bank's customers or other financial agents pay, this is the answer. The mentioned groups are more likely net beneficiaries of these policies and they indulge in a government-sponsored moral hazard line. But the true sponsors of these actions are the citizens, by their quality as users of money, this happening in a more dissimulated way, in the virtue of the "silent" expropriation managed by the inflation, as compared to the taxing system.

Ultimately, the economic crises are the by-product of moral hazard in "money and banking industry". Its faulty design incites extensive mal-investing, systemically harmful due to the volumes involved, and banks' privilege of being bailed-out on systemic ground only adds gas into the fire.

The vitiated-corporation. Case study: the false issue of market concentrations (antitrust)

The "comparative" approach in economic theory and its applications in "American business history" – "the geometric locus" for the most paradigmatic case studies referring to the dilemma of real and phony virtues and vices of the capitalist order – contains the famous "antitrust" obsession within its "controversial" subjects. Noticed at the end of the 19th century, along with the birth of large businesses, the large concentration of corporations into economic and legal structures called "trusts", whose aim was to combine several corporations that could act as one, has become the subject of public and analytic debate, epitomized by the naissance of the already "classical", though by no means logically irrefutable "neoclassical monopoly (price) theory".

Many rushed to "observe", on the background of this monopoly theory, that trusts had degenerated into monopolies, to such an extent, that a small number of cartels had been dominating the American economy and robbing the consumers by supplying low quality or even dangerous products. In order to keep them under control, the US Governments initiated antitrust laws throughout 1880, after which, in 1890, the US Congress would issue the federal legislation, popularly known as the *Sherman Antitrust Act*.

This perspective on the way the capitalism had seemed to become monopolistic at the end of the 19th century and on the way that it had been then kept under control by the antitrust regulations is considered by Armentano (1982) or DiLorenzo (2004) as just another major chapter in the American folklore. There has never been any proof that the trusts and "combinations" at the end of the 19th century had hurt consumers in the way the monopolies are reckoned to do – by plotting to restrict production and increase prices, because the monopoly theory itself is unable to "see" the inefficient and / or abusive situations in the "market concentrations", without further institutional specifications.

In the classic debate, known since the laying of economic sciences' foundations somewhere at the end of the 18th century, the monopoly concept had the unequivocal meaning of privilege granted by the Government to a certain company by limiting the market access for its potential competitors. In other words, the monopoly concept was the opposite of free access to the market or freedom of joining the industry. Consequently, while entering the market was not restricted by formal barriers (governmental regulations), it was considered that the free competition terms were met, even if the active supply was with a single economic agent. In this respect, Rothbard's critical monopoly theory (2004, chapter 10), although too less popular, is "dense in logic".

The essence of Rothbard's argument: a monopoly can be defined as (1) a single seller of a commodity or service (2) the beneficiary of a governmental privilege or (3) a business unit which can achieve monopoly prices. The first definition is superficial; anyone can be a monopoly in this respect. The second definition is legitimate and it focuses on the governmental intervention which distorts wellbeing. The third definition is null once we realize there is no "monopoly price" that can be compared with a "competitive price"; there is no way that we can define these concepts, not even in principle. All we can discuss about is the undistorted prices that would occur on the free market and their state induced alterations.

Musetescu (2009, p. 221) states the fact that many authors have come to see "any such natural difficulty that is in the path of accessing an industry for a new competitor situated on the same level with an already established company" as an "entry barrier" imposed by the already existing competitors and, consequently, as a constraint of the free competition. As many others see "the historical costs, the large size of existing production facilities, the high need of capital for starting the production activity, and even the brand name and any product differentiation strategy as monopolistic strategies". Any such view implicitly refers to a utopic state of "perfect competition".

The "barrier to the free competition" concept makes no sense unless it is imposed by the public authorities, the only ones which have the legal ways to implement such a decision at their disposal. The monopoly cannot make any sense (from the human actions point of view), except if viewed as favouritism on the public authorities' behalf, as a privilege of reserving a certain area of production and blocking free access for potential competitors in the same industry. Coming back to the famous Sherman Act concepts, the archetypal antitrust legislative piece, we can say that beyond the *error of principle*, which is latent in the new (institutional and symptomatic) monopolistic theory / perspective, it also suffers from many inconsistencies regarding the *empiric probation* (Letwin, 1965, replied by DiLorenzo, 2004).

- It is true that some businesses "bribed the legislators", but the bribe was not a consequence of the existence or the size of trusts, but a moral or material weakness of their business management. The elementary evidence against trusts' power: if the trusts would have been that strong, politically speaking, there wouldn't have been any antitrust laws, as they could have easily opposed this.
- Secondly, if the trusts benefited from protectionist taxes, as happened several times, the blame was on the high taxing policy (of Senator Sherman's republican companions). Anyway, some enterprises (ex: Standard Oil) grew, having millions of clients, not because of the protectionist tariff, but because they were efficient enough in cost-cutting and in developing new and better products.
- Thirdly, eliminating competitors through prices is the essence of the competition and an idea that the governmental policy should accept and not blame. A successful free market is one that rewards (with profit) those businesses that can best satisfy the consumers and that penalizes those businesses which fail doing so. The resources of failed businesses (land, work, capital, etc.) can be afterwards acquired by profitable businesses and so put to better use.

— Fourthly, the accusation that trusts "abuse the consumers by raising prices" is a great absurdity, because the trusts' efficiency and economies of scale allow them to rather drop the prices for consumers.

— Fifthly, an equally absurd accusation is the one that they practice "predatory prices" – firstly, lowering the prices below the cost levels for eliminating all the rivals, and then raising prices when the competition is eliminated –, because such a method is counter-intuitive and too risky as a business practice and, in addition, there is no recording of a monopoly ever formed this way.

— And last but not least, if the businesses have defrauded investors, then they should be punished according to the criminal law, laborious regulations or braking trusts not being necessary, considering that a fraud is a fraud, regardless of what organization is in cause – corporations, governments, churches, non-profit organizations etc.

The essence of the classic-liberal support for discernment regarding trusts brings out a cynical truth: this declaratively pro-competition policy was instrumented through attacks against disturbing competitors, subtly manipulating unmatured perceptions. Otherwise, if trusts would have really raised the prices, as monopolies (the great concentrations) are presumed to do, there would have been no complaints on behalf of "honest men" and "legitimate businesses", because the high prices would have brought great benefices to competitors, allowing them either to raise their prices (and profits) or maintain their low prices and, thus, sell more than the trusts.

Undoubtedly, such an image historically incited to "moral hazard". The inefficient companies' reorganization and optimizing production enlargement is demotivated, and along with this, the costs and prices to be reduced. Less efficient players who have higher prices are kept in scene and instead of competing they lobby legislators so that they issue regulations which harm their more efficient rivals. The modern pro-competition laws, the Sherman Act's epigones, protect inefficient businesses and don't really guard the consumers against monopolies, being a blank check – along with the market barriers, the real source of monopolies – for "position rents".

Regarding antitrust lawsuit cases, an overwhelming majority of them are initiated by bitter rivals and only a few being due to genuine government's enthusiasm to protect consumers from the so-called ill-intentioned monopolies. And all this is happening in a twisted environment with respect to what is good or bad in competition.

The case of Microsoft is paramount (McGuire, 1995, Armentano, 1998, DiLorenzo, 2001). It has been acknowledged that the never-ending trial on Microsoft almost invariably sprung by the benevolence of the "conspiratorial competitors" and their political entourage in order to dwindle the competitive pressures. This case wasn't at all intended to insure the consumers' protection, because consumers weren't in need of such protection: they were already satisfied with the offered products, the prices were low and the quality high. Not to mention that there are more harmful monopolies in the government's own back yard, as a result of coercive public goods and services providing, than in the, allegedly, naturally vicious free markets.

Firstly, Microsoft has been blocked by the Justice Department from purchasing Intuit Inc., a personal-finance software manufacturer on the grounds that this operation would enable the company to totally dominate the industry of personal-finance software, having therefore unfair advantage over competitors and the possibility to charge higher prices for fewer than otherwise products. But, as argument against this way of thinking, there is nothing stopping the rivalling software companies to enter the market and offer similar product for a lower price – provided there aren't any coercive, entering-on-the-market, barriers. Again, the economic history doesn't provide us with evidence that the prices are raised and the production is reduced due to monopolies. Then, let's not forget that, by forbidding this purchase, property rights of the Intuit's stockholders are violated by being prevented from freely selling their shares.

Secondly, it has been accused of an unfair tactic, that competitors think should be declared illegal: the "pre-announcement" of "vapourware" (non-existent software) to discourage competitors from promoting their own products. Besides the fact that there isn't evidence of Microsoft doing so, there isn't any case for the government to intervene. This type of practices will sooner or later backfire and costumers will turn their back on the "mistrusted" companies.

Thirdly, Microsoft has been accused of breaking a 1995 consent decree between the company and the Department of Justice, decree which prohibits "tying agreements" (when PC makers buy the licence for Windows, they are also given Explorer, its Internet browser). In its defence, Microsoft has stated (and obtained a ruling in its favour) that the browser worked is a fully integrated product, and, consequently, no agreement had been violated whatsoever. Not only that Windows with (free) Explorer (integrated or tied) is better than Windows without Explorer or with it at some additional cost, but the company did not have a clause to forbid installation of competitive products, including browsers, on personal computers. As for the argument against tied or integrated products so that trade is thus restrained, the logic is vice versa: trade isn't restrained when some are more successful than others. On the contrary, is enhanced by virtue of this.

The parody-trial known as "Project Sherman" assumed by the US Department of Justice, but "commissioned" by Sun Microsystems and Novell with the support of notable politicians from home states of the rivals (Liebowitz and Margolis, 2001, Heilemann, 2002), was a "masterpiece" in a real theatre of the absurd. Microsoft was accused for: monopoly in markets where, literally, cohabited with thousands of competitors; coercing (!?) its customers so as to buy from it instead from its competitors; harming customers by offering them for free its Web browser; spending annually billions of dollars in innovation; or "potentially harming customers", even if no such present (at the time) prejudices were noticeable, by behaviours "theoretically" possible after the corporation will become large enough (case in which every small and medium enterprise could "now" be found guilty of violating antitrust laws).

The proposed remedies – at least initially, though not enforced after the "partisan" judge firstly appointed, Judge Thomas Penfield Jackson, had been removed from the case for "prejudgment" – were equally blurring: the prohibition for Microsoft to offer terms more favourable (discounts, technical support, license terms, etc.) to its biggest clients from computer manufacturing; the encouragement of employees to act as spies and report "potential violations" of the "forced agreement"; the sharing of computer source with the rivals; the break-up of the corporation in three separate companies.

The moral hazard cultivated by legal possibility to harass competitors is obvious. Instead of trying to find proper ways to cut their own costs and prices and / or to improve their own products and services, weak firms' job tends to move to the tempting area of finding ways to "increase costs for the competitors". We witness a neomercantilist perverted philosophy where, in the name of competition, competitors are sacrificed at the expense of consumers.

Conclusions

Throughout this study, we surveyed two fronts where corporate environment intersects with adverse incentives of moral hazard-type, apart from the inner phenomena of agency problems exhibited (and exacerbated because of the same inappropriate regulatory framework) between the shareholders and their appointed managers and directors. Indistinctly between the shareholders and managers, this time, we have scrutinized the cases of moral hazard that exist among corporate actors, thus trying to discriminate between corporations that owe their results to proper market behaviours and those politically connected; we spoke of *vicious*- and *vitiated*-corporations. This endeavour is sanitary when analysing the policy initiatives and the side-effects rendered for the business environment.

We chose to take a look at the banking "corporations", for they become, thanks to the operational privileges that they benefit from, "guilty" of trans-societal moral hazard. Legal tender monetary regulation and fractionary reserves plus the lender of last resort protection – the Central Bank – and the facility of public guaranteeing of deposits made them to behave much too "relaxed". They start and sponsor actions that either can be translated by a continuous expropriation folly (inflation), both in their own favour and in that of their immediate customers, at the expense of those with relatively rigid incomes. Banks serenely enter the trap of leveraging, by actively sustaining the *credit expansion* phenomenon, thus fuelling malinvestments all over the economy, with some losses redeemed by public *bail-outs*.

Subsequently, we inventoried the reasons why invoking the "anti-monopoly" reasons (*antitrust)* and issuing public policies that support it can bring prejudices to corporations which, through innovation and efficiency, are selected by consumers and brought to dominant market positions. We drew attention towards the perfect competition criteria's inconsistency in invoking monopoly position and monopoly prices. Undistinguishing the decisive cause of market concentration, private performance or, respectively, the public privilege, antitrust rhetoric incites, as has been noticed in history, the inefficient agents to ask for "equal opportunities". The regulations "dedicated" help increase costs for competitors, symmetrically having the effect of discouraging the private, real performances for the latter.

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