

Economic Things, Legal Persons and the Invasive Hybrid Nature of the Business Corporation.

(Very early draft; references and footnotes to be completed)

1. Introduction.

In the standard approach the corporation is seen as a form of centralized market transactions, and/or simply a nexus of contracts. This approach ignores the complexity of the joint (and sometimes contrasting) interests, existing within firms, which require that they must usually become independent fictitious legal persons. Some fictitious legal persons have full-blown rights similar to those held by most citizens of modern societies, including those entailing that they can own things but they cannot be owned or traded as things. By contrast, the modern corporation is a half-legal person that can own things but can be also owned as a thing. Thus, the evolutionary process leading to formation of the modern corporation must be seen in a double perspective: as a centralization of market transaction and as a decentralization of some characteristics of legal personality that used to be a direct or indirect attributes of public and/or non-profit institutions. This original ambiguity of the modern corporation can shed some light on some of the problems that characterize an economy dominated by this organizational form. The paper is structured in the following sections. In the next section we show that fitting the corporation in economic analysis requires a substantial change of the Walrasian and Kelsenian theories that have characterized the prevailing economic and legal approaches. These theories lead to the formulation of Economic and Legal Nirvanas where the existence of the Corporation cannot find any convincing explanation. In the third section, we consider how the fall from Economic and Legal Nirvanas allows us to see the Business Corporation as both a decentralization of the powers of legal persons such as the National States and as a centralization of market transactions. This view requires an integration of the economic analysis, originated by Coase, stressing the importance of the centralization of market transactions with the legal analysis, initiated by Fuller, pointing out the necessity of a decentralized plurality of legal orderings. This integration enlightens a deficiency of economic theory: the

ignorance of the fundamental role of non-human, and in particular, legal persons. Section 4 is deals with the evolution legal persons and with the nature the Business Corporation that is both a thing and a person at the same time, or, in other words, a semi-legal person. Section 5 examines the thing-person tension within the Business Corporation. This tension has expressed itself into different ways in Europe and the United States. In each one of these two cases, some mechanism have saved the Business Corporation from becoming an irresponsible thing, unable to make commitments and generate trust. However, both anti-degenerative mechanisms have recently failed under the increased pressure of financialization. In section 6 we examine the link between financialization and the recent form of intellectual monopoly capitalism that has emerged in the last decades. We argue that, under this new form of capitalism, the Business Corporation has acquired again a monopoly power similar to that it had at the times of the chartered corporation. However in this case, instead of being chartered by National States, the business corporations ends up limiting their choices. Half-legal persons end up conditioning what are supposed to be full legal persons such as National States that should express the political will of their citizens. We conclude observing that this “chartering reversal” may cause economic stagnation and undermine democratic processes.

2. Legal and Economic Nirvanas.

In the late Middle Ages, law and economics were part of a unified field including ethical and religious theories. According Aquinas' Summa Theologica: *“The rational guidance of created things on the part of God, as prince of the universe, has the quality of law.....this we can call the eternal law”* . He defined as “natural law” *“the participation in the eternal law by rational creatures is called natural law”*. The discovery and observance of natural law served to promote the welfare of human kind. Aquinas declared, *“Law must have as its proper object the well-being of the whole community”*. This object would now also be shared by what we define now as Economics. Law and economics were unified under the umbrella of ethics.

The late Middle Ages legal theories were often seen as a simple rediscovery of the Roman legal tradition. However, they were much more than a simple rediscovery of past theories. In his book “Law and Revolution”(p. 9) H. Berman pointed out that the late Middle Ages marked a social and scientific revolution that can be seen as the beginning of modernity.

Roman Law was not aimed at the production of a consistent set of theories. By contrast the late Middle Age Scholars tried to formulate a consistent theory. These scholars were the founders of the Western legal tradition where law is conceived to be a coherent whole. *“The phrase Corpus Juris Romani was not used by the Romans but by the twelfth - and thirteenth - century European canonists.”* *“It was the twelfth-century scholastic technique of reconciling contradictions and deriving*

general concepts from rules and cases that first made it possible to coordinate and integrate the Roman Law of Justinian”.

In the formative era of the Western legal tradition, natural-law theory predominated. It was generally believed that human law derived ultimately from, and was ultimately to be tested by, reason and conscience. This theory had a basis in Christian Theology and in Roman Law that were blended in a coherent whole thanks to Aristotelian philosophy and logic. Its fascinating development was due to the peculiar conditions of the Late Middle Ages, characterized by a plurality of legal persons. These legal persons were jealous of their jurisdictions and did often fight to enlarge their boundaries. However, they recognized the existence and the legitimacy of other jurisdictions. The struggle between ecclesiastical and secular authorities was the most visible expression of these conflicts among over-lapping jurisdictions. However, legal pluralism was a common legal order containing numerous struggling legal systems (church vs. crown, crown vs. town, town vs. lord, lord vs. merchant). These struggles required sophisticated compromises. They could be only settled by independent bodies, adjudicating disputes related to questions such as: Which Court had jurisdiction? Which law was applicable? How were different legal differences going to be reconciled?

The disputes, arising from legal pluralism, created a demand for new independent institutions. It is not a case that institutions, like Universities, where different approaches could co-exist, were founded in that age. Academies, where only one ideological approach dominated (or even worse feudal courts where intellectuals were dependent on generosity of their lords), could not be the appropriate institutions for solving these disputes and offer reasonable compromises for the different competing jurisdictions. An open debate, nourished by the legacy of Roman law and by Aristotelian logics, could only take place in new independent institutions that were themselves autonomous legal persons. Universities – a typical institution produced by the late Middle Ages – provided this environment. They trained students to advance in their investigations by a system that embodied some of the fundamental ingredients of scientific research. This method was extended from law to medicine and, later to other disciplines. Legal Pluralism was not only a source of freedom and of legal sophistication. It was also a decisive factor in the foundation of Universities and the origin of Western Science.

The collapse of feudal society and of the centralization of power in the hands of National States marked the end of legal pluralism. The National State tended to regard itself as the only legitimate Corporation. The search of natural laws, by which the wellbeing of different individuals, belonging to different institutions, could be improved, ceased to be the purpose of legal studies. Laws became a simple expression of the authorities that were running the National State. The law as it promulgated or legal positivism became the dominant approach. In the words of John Austin (1790–1859), “The Province of Jurisprudence Determined”. “Every law and rule ...is a command” and “The science of jurisprudence (or, simply and briefly, jurisprudence) is concerned with positive laws, or with laws strictly so called, as considered without regard to their goodness or badness”.

Legal positivism went through long process of refinement¹ and lead to a separation between law and morality. Economics went through a similar process that made it autonomous from morality. We will concentrate on the to crucial figures that completed these divides: Kelsen and Walras. The purpose of this brief account of these two important authors is to show that the separation of law and economics from ethics involved also a deep divide between these two disciplines. This divide implied that both law and economics had little to say about the plurality of corporate bodies existing in society.

Similarly to Austin, also according to Kelsen “The pure theory of law separates the legal completely from the moral norm and establishes the law as a specific system independent even of moral law”. However, the law is not simply a command and legal studies have a well-defined purpose in establishing the validity of the different rules that must make a consistent whole to offer a guide for human behavior. The pure theory of the law has as its essence the search of the validity of the single norms, which must not contradict each other. It needs some “grundnorm” (founding norm) according to which the consistency and the validity of other rules can be judged. The validity of the rules, and not their real-life enforcement or their morality, is the content of pure law. Pure law is such because it has been depurated from any moral (or real-life) impurity.

From Smith onwards also Political Economy followed a similar path towards separation from ethics. This separation achieved a clear expression with the concept of *Pareto Efficiency*, according to which economic evaluations could be made independently of moral judgments. Pareto’s contribution was grounded in the work of Leon Walras who was his predecessor at the University of Lausanne. Walras’ separation of economics from ethics is particularly interesting because, while he was a supporter of natural law and of its moral implications, he drew a sharp separation between ethics and economics. Walras’ *Pure Economics* preceded Kelsen’s *Pure Theory of Law*, emphasizing the *purity of a field of research, or its independence from other subjects of inquiry*.

Walras believed in two basic principles of natural law, synthesizing the liberal and the socialist views of justice. The first (liberal) principle stated that *Everyone belongs to himself or herself*. The (second) socialist principle required that *All the other natural resources belong to everybody*. These two principles were the essence of distributive justice that according to Walras had to be distinguished from commutative justice. Commutative justice simply required that nobody exploited the other in exchanges or, in other words, that the individuals were trading goods of equal value.

Commutative justice was compatible with all sorts of initial distributions, including very unjust ones. However, it was, according to Walras, a necessary condition for a distributive justice, consistent with the principles of natural law. In a system without commutative justice, the working of the system would have been upset the initial natural just distribution as well as any other initial allocation. If one wanted

¹ “A law may be defined as assemblage of signs declarative of volition conceived or Jeremy Bentham (1748–1832) “Of Laws in General”.

show that economic efficiency and justice were consistent goal, one needed to show the consistency of the former with commutative justice.

Walras's thesis is that in a situation of competitive equilibrium there is a coincidence between the conditions necessary for economic efficiency and those required for commutative justice.

According to Walras production in a market ruled by free competition "*will give the greatest possible satisfaction of wants within the the double condition, that each service and each product have only one price in the market, namely the price at which the quantity supplied equals the quantity demanded and that the selling price of the products be equal to the cost of services employed in making them*". (Walras, Elements of Pure economics)

This double condition, required by efficiency, was also necessary for commutative justice that implied that individuals would not change their wealth because of unjust exchanges. If the achievement of the greatest satisfaction were compatible with commutative justice, it would have sustained any initial distribution of resources, including that consistent with the natural laws of distributive justice.

Thus, Walras pure economics was sharply separated from distributive natural laws but it was used to show that these laws were consistent with the maximization of material welfare. This coincidence was limited to the conditions of competitive equilibrium. It was impossible to obtain the same result in real markets where exchange and production were taking place at non-equilibrium prices. For this reason, Walras' constructed a fictitious ticket economy where individuals sent messages about their trading and production intentions at non-equilibrium prices but they were only implementing their plans in equilibrium. He was aware that this fictitious world was well different from real markets and proposed reforms that could move reality closer to his utopian project. Subsequent economic theories were going to show much less awareness of these crucial institutional differences. The restatement of the same properties under the name of Pareto efficiency, formulated by his successor in Lausanne, was interpreted by the majority of the profession as a proof of the fact that markets were optimal in a sense that could be separated from all sorts of moral judgments.

The separation of both disciplines from ethics went together with the separation between law and economics, which became the two "pure" disciplines identified by Kelsen and Walras. *Pure law* concentrated on the validity of laws, or the internal consistency (equilibrium?) of legal systems, assumed to stem from a single authority or from a single grund-norm. *Pure economics* concentrate on the internal consistency (equilibrium) and "efficiency" of the decentralized decisions of maximizing individuals.

Purity and other formal analogies were the only things that seemed to relate disciplines that, once upon a time, were a single field together with ethics. Otherwise the two disciplines lived in two separate Nirvanas where the only thing that seemed to matter was their internal consistency.

However there are some hidden relations between these two Nirvanas that have make *pure law* and *pure economics* two artificial and strangely interdependent constructions. *Pure Economics* assumes well-defined and complete rights that are exchanged and enforced by a third party. Thus the Economic Nirvana requires a

Legal Nirvana. *Pure Law* assumes that the legal ordering could be completed and made consistent by a single ordering on the basis of a set of basic norms without limitations due to bounded rationality, cognitive ability, failure of collective action and other limits due to the scarcity of resources. In other words the Legal Nirvana requires an Economic Nirvana.

In this situation we have a strange alliance between (*pure*) law and economics, based on the idea is that society is organized by the means of complete markets and a complete centralized legal ordering. Both systems are supposed to work without relevant costs and in any case with zero opportunity institutional costs in the sense that no viable alternative is supposed to exist. The centralized legal system with its well-defined property rights allows complete markets exchange. Institutions, such as firms or corporations, do not make sense in this framework. Their analysis required an abandonment of the two far, but interdependent, Nirvanas in which law and economics had been locked. In these Nirvanas, Corporations cannot find any space. Perfection is already achieved by decentralized markets and by a centralized legal ordering. No room is left for other institutions.

3. Falling from Nirvanas: towards a plurality of costly institutions.

Two authors, Coase and Fuller, were showing the way out of the Nirvanas respectively to economists and to lawyers. Their analysis is interdependent and their joint contribution allows us a foundation to analyze hybrid persons and in particular the Business Corporation.

Coase observed that in the world of *pure economics* all decisions were coordinated by market prices at zero costs. In this world firms would not exist. We would live in what became later known as the world of the “*Coase theorem*”. In *the world of the Coase theorem* all possible externalities, including those related to economies and diseconomies to scale would have been internalized by market transactions. The zero-transaction market costs world included only two possibilities. The first was that other institutions were costly and could not survive. The second was that other institutions were also costless and the institutional mix was irrelevant for economists. Firms, state regulation and other costly arrangements can only appear in a world where no institution, including the market, is a free lunch. In a nutshell, Coase’s message was that all institutions are costly and the market is tautologically Pareto efficient only if the costs of functioning of the market system are ignored.

Coase’s Journey started from the hypothesis of costly market transactions and reached the conclusion the existence of other institutions, such as the business corporation, could be explained by the fact that they decreased overall institutional costs. Many of the costs of running a market system had to do with the fact that they involved a costly use of legal institutions. Defining property rights, enforcing them, the costs of litigations and of adjudicating them in public costs were ignored by the world of pure economics that assumed the existence of a zero-cost efficient public ordering. Fuller tackled directly the costs of running a centralized public ordering. Legal pluralism re-emerged as a way to decrease the costs of centralized monolithic ordering.

Fuller rejected the view of law as an inert consistent material and defined it a way that was closer to the late medieval tradition. According to him, law was the enterprise of subjecting to rules human behavior. Its cost could and are in fact decreased by decentralizing its enterprise to a plurality of orderings. Unions, Churches and Universities have their internal orderings. Firms, and in particular Business Corporations, can also have their internal private orderings. All these institutions can contribute to the enterprise of subjecting human behavior to the observance of rules at costs that are often lower than a centralized system because the latter lacks accurate information about the interaction of the individuals in these particular spheres of behavior. There is no given *Legal Nirvana*: completeness, unity and consistency can possibly be the aim of a legal ordering but they cannot be taken for granted. Legal orderings emerge from a complex process, involving the activities of several institutions. The firm, and in particular the Business Corporation, is one of these institutions. According to L. Fuller, even a single employer may find it convenient to have a "*legal system in miniature*" and an internal rule of law that can guide the behavior of her employees. Even if the employer sets the rules in an autocratic way, he is bound to respect its own rules. Otherwise, according to Fuller, "*If the employer disregards his own rule, he may find his system of law disintegrating and without any open revolt, it may cease to produce for him what he thought to obtain from it.*"

Fuller's fall of pure theory from the *Legal Nirvana* is related to Coase's fall Economics from *Nirvana*. Since the two Nirvanas were interdependent, also their disintegration has many overlapping features. Indeed, Fuller's costs of a centralized legal ordering do often coincide with Coasian market transaction costs. Fuller's costs of the public ordering and Coase's costs of decentralized market transactions are strictly related and their existence involves an abandonment of disciplines that were not dealing with real life institutions. The corporation can be seen as both a form of centralization of market transactions or as a form of decentralization of the public ordering to private orderings. Or, better, in a unified Coase-Fuller framework, the Corporation can be seen as a decentralization of the public ordering which allows a centralization of market transactions.

Fuller's and Coase's insights can be better understood by referring to the works of Calabresi and Williamson. Calabresi made significant progresses on the idea of forms of decentralization of public orderings. Williamson analyzed the precise conditions under which market transactions were likely to be centralized within independent private orderings. A joint examination of Calabresi and Williamson can shed additional light on the nature of the corporation.

In a beautiful theoretical construction, which reminded a Cathedral and deserved its name, Calabresi illustrated how law, intended a la Fuller as the enterprise of subjecting human behavior to the observance of rules, changed its nature according to the level of market transaction costs. Property rules and contract law could be applied in a world of low transaction costs. In this world, since property rights are well defined and contracts concerning their exchanges can be clear, in case of litigations it is necessary to refer to the initial contracts. The public ordering can easily apply the rules that follow from the contracts. If transaction costs increase to some intermediate level, we have to switch from property rules to liability rules. The payment of damages, such as those that exist in the case of car accidents, cannot usually be negotiated ex-ante and, in any cases, its ex-ante settling would involve high transaction costs with all the possible people involved in

these interactions. The only way to reduce transaction costs is to re-address the damages after that they have occurred. However, in this case, the transaction undergoes a “fundamental transformation”. Whereas, before the accidents, potential culprits and victims could have dealt with each other in a competitive situation, after the accident they find themselves in a situation of bilateral monopoly. For this reason a deal can only be made under the supervision of courts that apply and enforce liability rules. Within the public ordering, we have to move from centralized ex-ante definitions of property rights and market exchanges to decentralized courts’ activities that redefine ex-post property rights and exchanges among the parties. Finally, when damages have to be prevented, or there are not even ex-post transactions that can re-address them, we move to a situation of high or infinite transaction costs requiring negligence rules and criminal law.

Three columns associated to property, liability and negligence rules, associated to increasing transaction costs, beautifully support Calabresi’s Cathedral. However, one important way of subjecting individuals to the observance of rules, which played a fundamental role in Fuller’s building is still missing: that concerning the private orderings rules. Thanks to which intermediate levels of transaction costs can also be decreased. One column must therefore be added to Calabresi’s construction. Referring to another “fundamental transformation”, analyzed by Oliver Williamson, can reinforce the foundations of the building.

Williamson observes that when individuals make specific investments (that is investments that have lower returns outside their relation) competitive market conditions undergo a fundamental transformation: they become a bi-lateral monopoly where ex-post competition cannot limit opportunism. If the individuals can make binding and complete contracts at the beginning, their ex-post enforcement can still be tamed by their enforcement done by public courts. However, in case that individuals are unable to write such contracts (that should take into account all the possible future events), then opportunism can only be tamed by some form of fair governance of their ex-post relations. This is the rationale of private ordering, which centralize transactions under some form of supervision and explain the existence and the importance of numerous forms of non-public institutions such as the business corporation.

In both Calabresi and Williamson we find fundamental transformations that make monopoly and competition two different stages of the same relation. In the case of Calabresi’s Fundamental Transformation, because of the high number of possible accidents, negotiations occur after individuals have “disinvested” in specific accidents, that is disinvestments that cannot be redeployed in other relations and involve a situation of bilateral monopoly. In the case of Williamson’s Fundamental Transformation, because of the high number of possible future events, negotiations occur after individuals have invested in specific assets. In both cases, there is a demand for ex-post verifiability that cannot be simply made with reference to a pre-existing contract. In Calabresi, this institutional demand is satisfied within the public ordering, which is enriched with the appropriate arrangements. In Williamson, the same institutional demand is satisfied by private orderings such as the system of rules existing within organizations such a Corporation.

We can now re-state, in a particular but richer way, some conditions for the Fuller – Coase emergence of the firm. When specific (dis)investments are frequently made by some individuals, under conditions of ex-ante contractual incompleteness, it can become

convenient to move from a system of adjudicating disputes run by public judges to a system run by private judges sharing the objectives of the frequently individuals and making (second order) specific investments in the understanding their relation. In the case of sporadic interactions, such as those of car accidents considered by Calabresi we still rely on independent agents and the role of centralized public courts. However, when individuals cooperate, for a substantial length of time, in projects involving specific investments the solution of disputes can only come together with the promotion of cooperation and the careful understanding of the relevant human interactions. In this case, a plurality of institutions, including the Business Corporation, can find citizenship in economic and legal theory – a forbidden privilege in the Walrasian and Kelsenian Nirvanas.

The Business Corporation involves a centralization of market transactions and a decentralization of the public ordering. Both processes require the formation of an autonomous legal entity. The main feature of the corporation is not a common property of non-human assets but the existence of an autonomous legal person characterized by a system of common liabilities and by a centralized power, which, inter alia, allows an internalization of a Calabresi-type judicial function.

The view of the corporation stemming from the Fuller-Coase contribution differs from a relevant part of the literature, which sees the reason for the existence and growth of firms in common ownership of machines and plants. According to this view, the purpose of common property is to avoid hold-up problems. A typical example, considered in this literature, is the GM take-over of Fisher Body. The standard account is that Fisher-Body was holding-up GM which wanted to expand production facilities and this led to a take-over of Fisher-Body by GM. There is little evidence that this hold-up was taking place and indeed that it was possible strategy because at that time Fisher-Body owned already a majority of shares of GM. According to this version of the story, Fisher-Body increased its short-term profits by refusing to make the investments required by GM in a plant located near GM production facilities in Flint (Michigan). Acquiring the ownership of Fisher's plants was the only way that GM had to overcome the hold-up.

However, an alternative view of the take-over emerges from Alfred's Sloan memories. It is consistent with the idea that the main advantage of the Corporation lies in the internalization of the judicial function. This judicial function had been already developed before the acquisition of Fisher Body as an outcome of the fierce disputes that characterized the early life of General Motors. One of them involved Kettering who was the most important inventor of GM. While the production department had smoothly engineered other Kettering's inventions, his innovative copper-cooled invention turned out to be a production failure. Many Chevrolets with burning engines had to be called back by G. M to be fixed and these circumstances provoked a fierce fight between the research and the production departments. Since the heads of both departments were members of the top management board the adjudications of responsibilities proved to be a nasty, and almost impossible, task. For this reason, Sloan re-organized the company in such a way that top-management was separated from the management of the divisions. In this way, it could play a "judicial" function in case that something went wrong in the co-specific investments of the two departments.

At the time of the Chevrolet problems, Fisher Body was still a formally independent company. It had moved to the car bodies industry from the horse carriages business. We

have got used to the idea that the same maker produces both the body and the engine of cars. However, at that time the two businesses were separated much in the same way in which the production of carriages was separated from the business of raising horses. Even now in the airplane and in the ship building industries the makers of engines and bodies of airplanes and ships are different.

What precipitated these types of merges in the car industry?

The change was due to the transition from open body to closed body cars. With advent of closed body cars their weight increased and their barycenter became higher. In order to make the car stable, it was necessary to design and fit the engine properly. Unlike for the cases of ships and airplanes the design of the engine became co-specific to the body of the car. No precise contract about these co-specific designs was possible and problems, including disputes, had to be addressed later. A fundamental transformation had occurred and it involved a shift from decentralized markets and a centralized judiciary to centralized transactions and a decentralized private judiciary operating within a single organization. An independent unified legal person would be liable for the stability of the cars towards customers and would settle the numerous problems that could arise among the different production, sales and research departments. Subjecting behavior to the observance of rules could not be confined to the public ordering. It had to be extended to independent legal persons and to their private jurisdictions. No costless institutions existed outside Nirvanas; a plurality of costly institutions was bound to exist in reality.

4. The Evolution of Non-Human Persons

Not all humans are legal persons endowed with the faculty to own properties and sign contracts. On the other hand, some legal persons are not humans. States, churches, unions, universities business corporations etc., have the faculty to own property and to stipulate contracts. For all these transactions, non-human persons have still to rely on some humans, acting on their behalf and according to their interests but there is often incongruence between the goals of non-human legal persons and the goals of their representatives people. However, before considering this incongruence, which has been much discussed by the law and economic literature, we must consider how humans have evolved the capabilities of acting, sometimes even with heroic self-sacrifice, in the interests of non-human persons.

A naive view of evolution, paralleling the utility maximizing individual of neoclassical theory, focuses only the role of the selfish gene. This view is unable to explain the evolutionary emergence of commitment to others and the esteem for committed individuals. Since the dawn of human (pre-)history, this commitment has been particularly strong towards non-human beings: the totem, the gods or spirits of the ancestors have often commanded more commitment than physical individuals. Even now Gods and Nations are (non-human) persons for whom individuals are ready to die and to kill.

A satisfactory account of human evolution should explain the reasons why humans have developed such a strong attitude do commit themselves to these non-human persons.

At a first level, an explanation can rely on the fact that the human brain hyper-

development is due to sexual selection. It is geared more to explain social behavior, and in particular to devise successful reproduction strategies, than to understand the impersonal laws of nature. This has involved a marked tendency to explain nature as if it had human motivations and to attribute to some human beings the capability to understand the ways by which we can gain the grace or at least tame the irritation of natural forces. In this way some communities may have started to believe that there was a special relation between a God and their people.

A second level of explanation can then rely on the hypothesis that the communities, that share these beliefs, can do better in war than other communities. The belief that an eternal happiness is given to the individuals who die for their God is even now a sadly strong incentive to self-sacrifice and to kill other individuals. The esteem for individuals showing commitment to super-human entities has marked many of the most important achievements and of the most tragic failures of our species². Individuals feel like being part of a single organism, and often in a special relation with a super-natural entity. Cultural diversity and cultural evolution make groups real selection units in the sense that cultural barriers limit the flow from one group to the other. Selection favors groups with ideologies esteeming individuals according to their commitment to the group and the Gods or the other symbols (such as flags, songs etc.) representing its continuity. The group is treated as an independent entity characterized by a super-human personality, pre-existing and going beyond individual lives. The personality of the group and the nature of its “fiduciaries” change from group to group but a selection process favors the features that may be beneficial for the survival of a group.

Even if group behavior is likely to be influenced by some forces beneficial for its survival, it may damage the population including all the fighting groups. Group fitness may involve an amazing loss of lives and wealth. It can moreover lead to terrible atrocities. When Cortes went to Mexico, different ethnic groups were ready to die in war to capture people to sacrifice to their super-human entities, dictating their cruel laws.

Human sacrifices of the enemies were supposed to placate the Gods. This belief was widespread among all the fighting tribes. It is not surprising that this terrible credence had infected so many tribes: the believers were more ready to sacrifice themselves in war and decimate their enemies during their rites. Enemies would either disappear or would adopt a similar ideology to match their enemies. Deviating from that ideology became an impossible. Pre-Cortez Mexican tribes found themselves in a horrible, but also stable, sort of Nash equilibrium. Even supposing that individuals could choose their ideologies, for each tribe it was an optimal strategy to believe in the salvific role of scarifying enemies, given that all the other tribe shared that ideology.

However, even in terms of group fitness, these ideologies had a weakness: if some groups had been able to grow sufficiently strong in terms of military power and develop a credible ideology by which it could offer alliances to the succumbing tribes, they could

² **Commitment** (Colin Mayer) and **Esteem** (Pettit) are two aspects of human nature that are relevant to understand all sorts of human institutions and organizations.

Human evolution involves that commitment and esteem play a central role in human affairs. Moreover, the esteem derived from the **commitment to non-human persons** is likely to be a universal outcome of the evolution of our species.

have become stronger than its rivals. While the nasty equilibrium could not be overcome by each one of the Mexican tribes it offered a great opportunity for outsiders. Cortez With only 300 hundred men Cortez could use his superior arms together with the soft power stemming for the Christian religion that did not require human sacrifices and made it possible to make alliances. He could promise to follow (even if only sometimes followed) rules that were supposed to be obeyed by the winners and could become quickly appealing for the losers.

Christian religion had made two great innovations. One was the inversion in the sacrifice relations between God and humans. God had sacrificed himself (or a part of the Trinity) for humans and not vice versa. The second involved, since the Ten Commandments, it made an imperative to follow some sacred universal rules. Both gave a great boost to the individuals influenced by these believes and can help to explain together with Greek and Latin heritage the blossoming of Western civilization.

There is a multiplicity of ways in which individuals can start to respect rules and form reliable and wide alliances. An important example is Confucius advocacy of good government rules. In the precocious Chinese tradition, rules did not rely so much on God but on a direct respect for the ancestors and the community. Confucius' work, produced five centuries before Christianity and translated more than two thousand years later into Latin by the Jesuit Matteo Ricci, had a great influence on Western Enlightenment. It was and it still is an important ingredient of Chinese civilization.

Another important example is Socrates' view of the Laws that embody the foundation of society and command respect independently of other religious values. In (Plato Crito) Laws are represented as Persons asking Socrates: "*.....since you were born, nurtured, and educated through our means, can you say, first of all, that you are not both our offspring and our slave, as well you as your ancestors?*" The rule of law requires Socrates to accept the death sentence and not to escape from jail. The laws of the community are seen as an independent corpus whose will must be respected for the welfare of the community.

Even if Athens was a model for future democracies, its Laws have a status similar to Aztec Gods. They are far superior to individual fates. Humans regard the commitment to a superior person expressing the rules of the community as the basis of (self-) esteem. On this evolutionary basis, sophisticated legal systems and also our democracies could be built. If the power of all the individuals, including that of the present ruler, is constrained by the rule of law, the State must be an independent person. It must be able to have powers and liabilities, and rights and duties, transcending the particular person acting on its behalf. The State must be a corporation (an independent corpus), whose potential immortality guarantees the continuity of the laws, allowing the individuals to interact with each other under certain rules.

Numerous monuments, still showing the inscription SPQR, (Senatus Populusque Romanus), remind us that the continuity of the same legal person was the condition for the reliability of the first sophisticated system of rules. Similar conditions characterized other institutions such as Churches Monasteries, Universities etc. . They were all independent legal persons that guarantee the continuity and the development of a certain system of rules. As the Aztec priests, their temporary rulers are supposed to identify with community missions, defining their (legal) personality and shaping the nature of rules that they produce. No civil and economic development could have taken place without

the existence of the commitment to these super-human persons and without the respect for their rules.

Business corporations are the outcomes of historical processes centralizing transactions to non-human persons and decentralizing to them the formulation and enforcement of these rules. They have built on an evolutionary process that has made humans to be ready to abide by the rules of non-human persons. However, neither the terrifying images of the Aztec Gods nor the overwhelming authority of Athens' laws can ensure the commitment to the corporation and to its rules.

At the beginning the authority of the business corporations derived from the National States, which, unlike the multiple authorities of the late Middle Age, attempted to be the only legal person. Only its functionaries were not personally liable for the commitment of the State while the State, whatever were its temporary functionaries, was liable for its decisions. This "legal person monopoly" was extended to the Business Corporations. In this way, Business Corporations were not only given the opportunity to raise large amount of money and monopolize the trade in some area of the world but also a charter specifying purposes and duties, consistent with the interests of their countries. Chartered corporations, such as the East Indian or the Hudson Bay companies emerged from the need to decentralize the orderings of the National States. In distant parts of the Globe, rules could not be efficiently set and enforced by the central state. The Corporations became independent legal persons able to own goods and stipulate contracts. Their assets were separated from the assets of shareholders who were liable for the debts of the corporation only for the amounts that they had invested.

Since a (legal) person cannot contract with itself (or sue itself in court) Chartered Corporations were responsible for settling disputes internal to the corporation and could build a system of internal rules. The first chartered companies had commercial monopolies on enormous territories. Such regulations were later seen as an obstacle to free markets. However the Sovereign and the Company struck a deal involving that the company was paying for the institutional infrastructure necessary to have markets and, in exchange, it could get some monopoly profits. They shared with the Nation the commitment to the expansion of some political power. All the institutions that we have considered had independent personalities justified (directly or indirectly via a charter) by a well-defined mission (defense or conquest of a territory, diffusion of the faith, education). However, the Business Corporation was bound to follow an evolutionary path that could easily erode part of its independent personality as well the commitment of the individuals to its rules.

The Chartered Corporations showed the evident advantages that firms could derive from having an independent legal personality. They paved the way to free incorporation. The limited liability of the shareholders allowed unprecedented funding possibilities. The Corporation, endowed with its assets and its potential immortality, could make lasting contracts with other persons. Moreover, many contracts and litigations could be handled by their internal private ordering. By decentralizing legal personality the State also decentralized the public ordering. Since a legal person cannot contract with or sue itself, the State had to show considerable forbearance for the rules of and internal disputes adjudication mechanisms of the Corporation.

While contemporary capitalism has largely evolved into a corporate economy, (with few exceptions) economists have not tried to understand seriously towards the Business

Corporation that has usually been seen as a degenerate hybrid child of markets and State bureaucracy.

While many economists, such as Demsetz, have accepted that the Corporation is generated by an attempt to decrease market transaction costs, they have regarded the business corporation as degenerate child of the market: its powerful incentives are lost and manager's incentives are not aligned with the goals of shareholders. The remedies that have been proposed take usually the shape of incentives, such as stock options, that have the purpose to re-align managers' incentives with the interests of the "owners" of the corporation. However, this attempt to realign incentives can create new, and even worse, problems. Because of limited liability, shareholders' interests conflict with the interests of other stakeholders such as the creditors of the corporation (Colin Meyer). Thus, there seem to be little hope to eliminate the defects of markets' degenerate child and regain the incentives of the standard textbook profit maximizing firm.

If Demsetz's benchmark has been the one-individual-firm acting on competitive markets, in an interesting paper Posner has used a different benchmark: the public bodies, including the nation states, from which the corporation derived its status as a legal person. Compared to these public bodies, the business corporation has some advantages. The business corporation ended up by having a legal personhood similar to that of other public organizations. However, it had an inner dynamism superior to other organizations whose personalities were restricted to a territory (national states and their bodies) or to a specific mission (universities), or which required faith in particular beliefs (churches).

The business corporation has no territorial limitation, no specific mission, and no faith constraining its opportunities.

In spite of these advantages the Business Corporation can still be regarded as a degenerate child of the public bodies that had granted it legal personality. Territory, mission and faith do not simply constrain personalities; they also define their identities. In case of non-human persons this is very important because it allows the humans, supposed to act on the behalf of the non-human legal persons, to identify with them. People may be ready to die to defend a territory, a mission or a faith but they are unlikely to make heroic sacrifices for the success of a business plan. Posner points out that, when these identification mechanisms are strong, economic incentives may work in a counterintuitive manner. In case of institutions like National Armies, individuals may join for patriotism or for monetary incentives. Paradoxically, lower monetary retributions may involve a selection of more patriotic individuals and raise the quality of the army. By contrast, few individuals are willing to sacrifice themselves for the Exxon or the Coca-Cola Corporations. Hence, in comparison to the original public bodies, the Business Corporation lacks some fundamental intrinsic motivation mechanism and, in this respect, it can be considered their degenerate child.

However, if there was some room for the evolution of a degenerate child, this is due to the fact that both public orderings and markets had important shortcomings: paradoxically extreme legal centralism and extreme market decentralization were two interdependent phenomena: market transaction costs would often overlap with the State's bureaucratic costs. No institution is a free lunch. Some institutions enjoy a comparative advantage for some types of human interactions. There are no perfect benchmarks to which the Business Corporation should be compared. A rich ecology of different institutions could evolve to decrease the costs of organizing economic activities. This

does not imply that the mix of institutions that has evolved is efficient. However idealizing the virtues of some pure institutions may limit our understanding of history and suggest inadequate policies of institutional change.

5. The Thing-Person Duality of Modern Business Corporation

The hybrid nature of the Business Corporation can be clearly seen in its thing-person duality. Unlike ordinary commodities, and similarly to free individuals or to Nations and to other public bodies, the Business Corporation can own other things and exchange them. However, similarly to ordinary commodities, and unlike free individuals or Nations and other public bodies, the Business Corporation can be owned and exchanged as a thing.

In other words, the Business Corporation is a half-person (and half a thing). This dual nature of Business Corporation is reflected in its limited capability to make commitments. Like a person it can commit itself to rules and to internal orderings, make contracts and enhance its reputation. Indeed, its potential unlimited life makes it superior to physical persons whose commitment is seriously limited by the fact that they are necessarily going to die. However, unlike physical persons and unlike other legal persons, such as Nation-States, Monasteries, Universities etc, it can be treated as a thing to make money and can be bought and sold in the market as a thing. However commodities cannot command the same esteem and commitments of persons and, in turn, they cannot make commitments that real people are going to trust. Thus, if the thingness of the corporation invades all its personality, then some of its most important economic advantages fade away.

Shareholders have long-term advantages from the fact that as a person the corporation can take commitments with other parties. However, they can also gain from selling the corporation as a thing to new owners who do not honor these commitments. For some time two different institutional arrangements could keep the degeneration of the corporate personality into a mere thing under control. One prevailed in the US and the other in Europe.

At the time of the second industrial revolution, thanks to two major revolutionary conflicts (independence war and secession war), the US had already fought successfully against the old European aristocracy and the slave-owning American farmers of the South. The development of large firms happened in the framework of a strong democracy. Large block holdings, present in more than one firm, were seen with suspicion by early antitrust authorities, (Sherman and Clayton acts). F.D. Roosevelt dismantled pyramids by the means of appropriate fiscal policies.

This “exceptional” early dispersion of capitalist interests made it less important to concentrate workers’ interests in strong unions and in social democratic parties. A *dispersed equilibrium* emerged.

The American *dispersed equilibrium* encouraged investment in human skills of professional managers, the diversification of ownership, and the concentration of large amounts of capital in corporations. By contrast, it has provided only very mild incentives

for the human capital of owners and workers. The absence of family control and the extension of managerial hierarchies have allowed the growth of large corporations. Ownership dispersion (and weak unions) and the independence of management have allowed managers to make commitments on behalf of the corporation. In this way the corporation could not be easily treated as thing and could often act as a reliable person.

The European countries (with possible exception of Switzerland) followed a different path: at the time of the second industrial revolution, their societies were hierarchical and still permeated by aristocratic privileges. No democratic authority could limit the concentration of the power of the capitalist dynasties occurring with the second industrial revolution. A social-democratic reaction concentrated also workers' interest. A *concentrated equilibrium* emerged in all these countries.

Thus, the European anti-degenerative medicines relied on stronger incentive for owners (and their heirs) to invest in the human capital necessary to run firms and on their commitment to the corporation. Moreover, employment protection created conditions favorable to firm-specific investments also for some committed workers. In the European case the personality of the Business Corporation was saved from its "thingness" by its identification with the fate of the family's dynasty and by the countervailing powers of the unions. The German codetermination system is perhaps the most prominent example of this type of anti-degenerative medicine.

The growing financialization of the economy involves a failure of the two anti-degenerative medicines of corporate personality that had characterized the U. S. and Europe. Financial pressure makes managers of Anglo-American corporations treating the corporation as a thing from which they have to extract the maximum value for their shareholders and disregard their commitments with other stakeholders. Financial pressure has a similar effect on European family dynasties that cannot often resist the temptation to sell their assets to raiders, even when they gain by breaking their past commitments on behalf of the Corporation. The weakening of Unions facilitates these transactions, which are also helped by a general crisis of the social democratic parties.

The recent development of financial markets has been certainly favored by the removal of the many barriers existing in the world economy. This has increased the power of the most mobile factors, especially financial capital, which can quickly exploit the most profitable opportunities. However, in our view, the growing financialization of modern cannot be separated from the fact that a new form of capitalism has emerged. This new form of capitalism – that we denote "intellectual monopoly capitalism" – has also changed the nature of the Business Corporation. In new forms, it has given back to it some of the monopoly power that it enjoyed at the time of the Chartered Corporations".

6. Finance and Intellectual Monopoly: Shaping the New Modern Corporations.

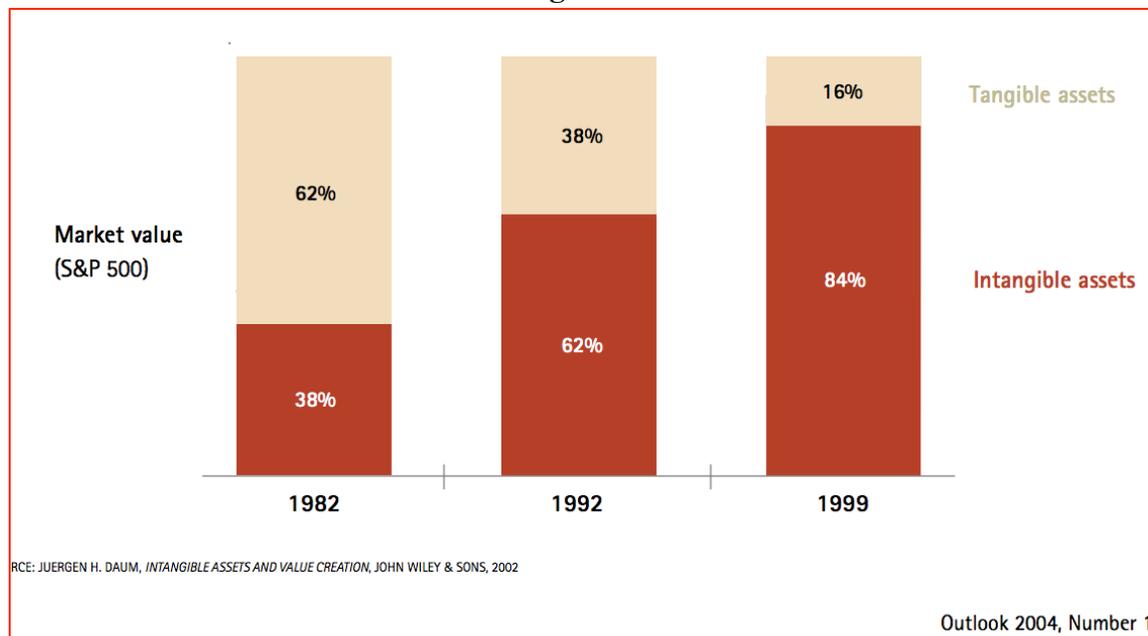
In spite of all its increasing sophistication, finance can only assign some property rights on some valuable assets. An expansion of finance is favored by an extension of assets on which these property rights can be accurately defined and enforced. Absent slavery, human capital cannot be included among these assets. We have therefore to deal with this puzzle. If the much (over-)claimed advent of the knowledge economy had involved a

high intensity of human capital employed in production, then the basis for the expansion of financial claims should have decreased. This conclusion is puzzling because it seems to go against the evidence of the increasing financialization of the economy that we have witnessed during the last three decades. However, if we take into account that the advent of the knowledge economy has come together a massive privatization of knowledge, we can solve this puzzle.

In the years 1982-1999 we have had great mutation in the nature of the assets used in production. Big corporations have moved from being rich in machines (and numerous skilled workers) to being rich in intellectual monopoly. Patent, copyrights and trademarks make now the lion's share of the big corporations assets. This structure of the corporate assets, which is a distinctive characteristic of a new form of intellectual monopoly capitalism, has greatly increased the assets on which financial claims can be made.

A rough idea of the revolution of the assets' structure that took place in 1980thies and 1990thies can be guessed by the following figure. In less than 20 years the percentage of tangible assets (houses, machines etc.) in the capital of the first 500 Business Corporations decreased dramatically, becoming about ¼ of what it used to be at the beginning of the eighties.

Figure 1



The 1980 Bayth Doyle Act and the 1994 TRIPs agreement (an annex to the institution of the WTO) have allowed a massive privatization of knowledge. Financial claims could now be made (and are increasingly made!) on intangible assets.

Corporations have exploited the huge economies of scale and of scope that arise when knowledge becomes a private input. They have also been able to decentralize production to firms in low labor cost countries without the fear that independent competitors of these countries could use their private knowledge. The non-rival nature of knowledge, which could in principle favor small, and even self-managed, firms, is used to create artificial economies of size which make a cheap acquisition and the defense of property rights

possible only for big business. Absent knowledge privatization, the need to provide incentives to invest in human capital would be an argument favoring the labor-hiring-capital solution.

Because of the monopolization of intellectual capital the knowledge economy can become the most unfriendly environment for small labor-managed firms and an ideal setting for big corporations, giving a partial solution to the anti-commons problem (Deakin) that occur when to push further the technology frontier. The monopolistic ownership of intellectual property encourages investment in the skills necessary to improve the knowledge that one already owns. The skills that are developed make it even more convenient to acquire and produce more private knowledge. Thus, big Business Corporations are more likely to enjoy a virtuous circle between firms' capabilities and their intellectual property. By contrast, other firms may be often trapped in vicious circles of under-investment in human capital where the lack of intellectual property discourages the acquisition of skills and the lack of skills discourages the acquisition of intellectual property.

The increasing commodification of knowledge has greatly expanded the set assets over which one could define and enforce financial claims. The knowledge embodied in human beings and that available as a public goods cannot offer a basis for the growth of financial assets. By contrast, the knowledge that is privatized and transformed into firms intellectual monopolies can make a powerful engine for the expansion of financial assets and allow that the firm to be traded as a valuable thing on financial markets. Observe that the growth of assets that can be included in financial capital can be completely disentangled from the growth of the economy because it is involving a redefinition of rights on assets that could otherwise been part of the human capital of the worker or a collective good of society. By contrast, this change in the nature of the assets may often fetter the development opportunities of society. In some cases, knowledge would have been more productive if it was embodied in the workers or held as a public good instead of a private monopoly. Increased financial wealth may come together with a decrease of the wealth of society and with consequent huge increase in the share of wealth owned by financial capital.

In turn, the financialization of the economy induces companies to commodify their intellectual capital. In an economy in which strong competitive pressure requires that one must be able to attract cheap finance, the company's structure of assets must be adapted for this purpose. The higher is the intensity of private commodified knowledge relatively to other types of knowledge, the easier is to attract cheap finance. Thus financialization and commodification of knowledge reinforce each other leading to a mutation of the Business Corporation coupling pervasive financial control with high intensity of intangible (such as knowledge-based) assets.

The "intangible" corporation has become a thing responsible to financial markets, and otherwise an irresponsible thing. Thanks to strong IPRs, production can be outsourced. Many stakeholders have lost rights in the corporation while they are still dependent on it in highly monopolized markets. Moreover, since its profits derive mainly from intellectual monopoly, the knowledge intensive corporation is also a litigation-intensive thing, ready to find all the possible ways to defend and expand its intellectual monopolies against competing public and private claims.

The main advantage of legal personality lies now on the possibility of assembling large

packages of complementary knowledge under the umbrella of a single non-human owner, partially overcoming the “anti-commons tragedies” of knowledge privatization. However, this partial solution of the anti-commons problem comes together with an even greater monopoly power of the modern corporation. It owns large bundles of complementary pieces of knowledge and, as a result, some future technological paths.

Paradoxically, the monopoly power of the modern corporation shares some characteristics with that of the old chartered corporations, such as the East India or the Hudson Bay companies. Chartered corporations had a monopoly on a limited (but fairly vast) territory. New corporations have a monopoly on a limited (but increasingly large and potentially global) field of knowledge. In some ways, their power is greater than those of the old corporations because now National States find it difficult to regulate their global intellectual monopolies. There is growing asymmetry between the power of the National States, having a monopoly power in many fields but on a restricted territory, and the power of the Business Corporations, which is restricted to few fields but it is not geographically limited.

According to standard economic theory, intellectual monopoly involves always some static inefficiency but this static in may be compensated by the incentives that the acquisition of a monopoly gives to the producers of new knowledge. However, against this positive incentive effect, one should consider the negative effect that intellectual monopoly has on the intellectual investments of other firms, that is particularly strong when innovative investments require complementary knowledge monopolized by other firms.

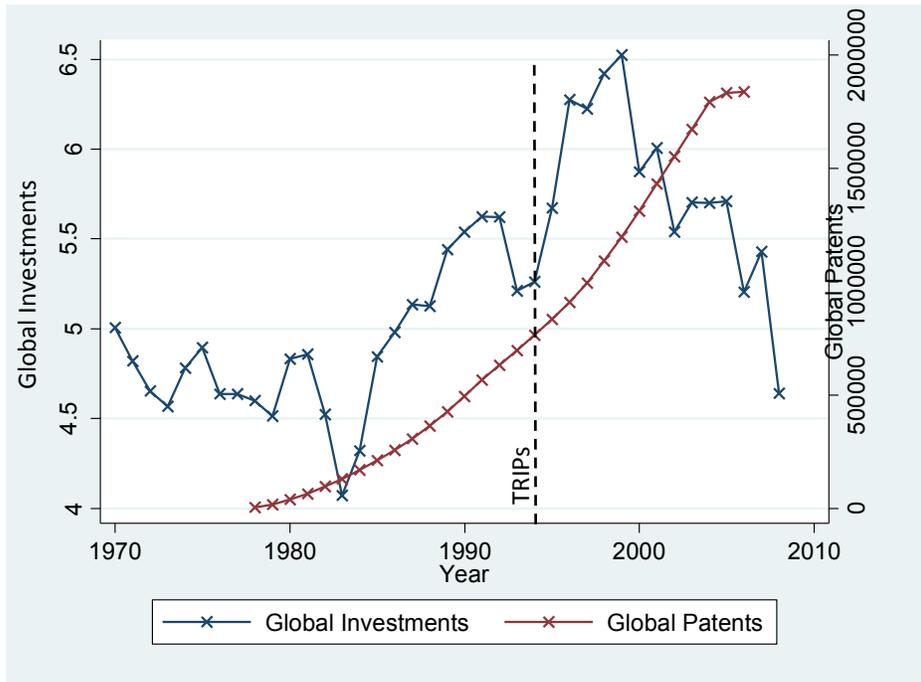
One can argue that Corporations give a partial solution to problems that would arise if their rights on intellectual property were dispersed among different owners. In this case the blockage of new innovations could be even greater. However, the investment blockage arising from their concentrated monopolistic power may still be sufficient to provoke a stagnation of the global economy and should also be compared with a situation where knowledge is supplied by a public authority. Unfortunately, in the global economy, a worldwide public authority is missing and all that the wisest national authorities can do is to create some synergies between national research institutions and their firms.

However, the success of these policies is limited. Government Funds become part of the revenues of the corporations that, acting in different countries, are difficult to tax. Moreover, the more corporations and their national governments co-operate in the production of proprietary knowledge, the more IPRs tend to become similar to global tariffs. A tariff limits the imports of the good in a single country. An IPR involves that the good cannot be produced by other firms and in other countries. The new emerging international division of labor is one in which countries cannot specialize in areas where they do not own IPR.

Countries and firms with substantial packages of IPR do relatively better than those deprived of technology ownership. However, the overall effect is an increasing global famine of innovative investment opportunities, deriving from the blockages of investment opportunities caused by intellectual monopoly restrictions. The reinforcement of IPRs has generated a dynamic process characterized by an initial boom and a subsequent crisis of investment opportunities. New stronger IPR have an immediate incentive effect because firms invest to secure monopoly rents. However, they have later a blocking effect. Each investment becomes more risky in an environment where much complementary private

knowledge may be not available for new innovations. In figure 2 we can observe a dynamics of investments consistent with this initial boom and later investment crisis that is due to a reinforcement of IPR.

Figure 2



Source: Belloc and Pagano (2012).

After the reinforcement of intellectual property rights achieved with the 1994 TRIPs agreement, there was a total world increase of investments for about five years. However, after this initial boom, a continuous decline of global investments started in 1999, culminating with the recent global financial crisis. The roaring nineties were followed by the less glamorous first decade of the new millennium and, eventually, by 2008 financial crisis and the following great depression.

It is a commonly accepted wisdom that the financial crisis was due to an excess of savings with respect to investments. While this situation has been described as a saving glut, the data show that the crisis was more due to a famine of good investment opportunities than to an increase in the propensity to save. The monopolization of the global economy has contributed to this famine of investment opportunities. Unlike the crisis of 30ths, protectionism (in the new form of global IPR tariffs) may have been a cause instead of a consequence of the financial crisis.

A chain of irresponsible things is threatening the health of the World Economy. The corporation acts as a thing in the hands of financial markets. It has been shaped to be the best thing for financial interests: a box empty of workers but full of intellectual

monopolies. It is not responsible to workers or to National States. It exploits workers, who often belong to satellite firms working under its intellectual monopoly. It free rides on the National States, providing the basic knowledge on which private intellectual monopolies are sustained. Intellectual monopoly capitalism decreases investments, fetters innovation and increases inequality.

7. Conclusion.

Business Corporations derived their legal personality from full legal persons. In turn, these full legal persons had evolved for the human tendency to have strong commitment to super-human entities. However, unlike them, the Business Corporation is also a thing that can be owned and sold to make money. By centralizing market transaction, the Business Corporation can build a decentralized private ordering geared to make money for the individuals holding financial claims on the Corporation. This duality of person and thing has some disadvantages. Powerful market incentives are limited and the commitment to the Business Corporation is also well inferior to that that individuals have towards full-blown non-human person such as National States.

The commitment to the Business Corporation, and its own capability to make commitments, has been further decreased by the financialization of the economy. The pressure of financial markets has weakened the two ways in which the Business Corporation could develop a credible personality: the continuity of management (mainly in the U. S.) and family dynasties (mainly in Europe). The corporation has become an “intangible thing” with few workers and much mobile capital exploiting the most profitable global locations.

In the meantime, Business Corporations have regained a new form of monopoly. They started with charters granting them a monopoly on a certain territory. Legal personality was given in exchange of a charter setting a framework to the relations between the Business corporations and the Nation States from which they derived their legal privileges. Later, Corporations were supposed to face competitive conditions and charters were believed to be unnecessary. Free incorporation was allowed for all lawful purposes.

The new intangible-intensive Business Corporations have again substantial global monopolies, which are globally exercised on knowledge and technologies. However, no charter is now limiting their power. They can choose where to produce and where to incorporate. Traded as things in financial markets, their profitability ends up dictating charters to States, specifying what they can and cannot do to compete for their investments. This “chartering reversal” should be stopped. It is undermining the development of the global economy and our democratic institutions.

Big Business Corporations enjoy unchecked global monopoly power in world where political power is dispersed among many Nation States. In this situation the balance between the knowledge that is detained as private property and that that held as a public good is necessarily biased in favor of the former. Internationally protected intellectual private property rights are coupled with the absence of an international authority

supervising the use of knowledge, which has always been one of the most important global common of our species. Nation States can only make unbalanced deals with their own multinationals. They do often free ride with reciprocal damages on the public knowledge supplied by the other States.

The damage goes well beyond its deleterious effects on the global economy. While the dual thing-person nature of the corporation is shifting in the direction of increasing thingness, the “chartering reversal” is transforming also Nations into halved persons. They cannot decide their own policies. When they fail to comply with the implicit charters, imposed by big business and financial markets, they must surrender their sovereignty to the international guardians of permissible economic behavior. They are becoming things that can be bought and sold like business corporations. This undermines democracy, which requires that the State is an independent legal person. Democracies must regain the status of full persons, capable of making and receiving the commitment of their citizens.

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