INTRODUCTION

Foreword to the Ethics of Bailouts and Government Support of Corporations: Public Benefit or Crony Capitalism?

The Georgetown Institute for the Study of Markets and Ethics (GISME) has three missions—to 1) produce high-quality research on matters related to the ethics of markets and the ethical challenges individuals encounter when functioning in the market environment, 2) develop courses and pedagogical tools to advance the teaching of professional ethics and the exploration of the moral foundation of the market society, and 3) create externally oriented programs designed to both educate the broader, non-academic community about ethical issues related to the functioning of markets and bring ethical considerations to bear on policy decisions regarding the regulation of markets. In pursuit of its first, research-oriented mission, GISME sponsors biannual symposia that address ethical issues related to the functioning of markets. For each symposium, GISME selects a topic that has been under-theorized or insufficiently explored by the larger academic community. GISME then recruits twelve top scholars to express their opinions on the topic in essays that are presented at a conference and subsequently published in collection.

On November 30, 2012, GISME held its inaugural symposium on “The Ethics of Bailouts and Government Support of Corporations: Public Benefit or Crony Capitalism?” at Georgetown’s McDonough School of Business. For the symposium, GISME invited twelve of the nation’s leading philosophers and political scientists to consider not merely the economics of government bailouts and support for corporations, but the ethical justification for and implications of such bailouts and support.

This special issue of the Georgetown Journal of Law and Public Policy contains the results those invitations generated. Our aim in publishing this edition of the Journal is to provide one-stop shopping for the highest quality analyses of the ethics of corporate bailouts and government support of corporations. In this issue, readers will find evaluations of bailouts and other forms of corporate support from leading scholars with diverse ideological and disciplinary perspectives. By collecting these essays in one location, we intend to facilitate the side by side comparison of the arguments they contain. Our goal is to provide interested readers with the best thinking on the subject from all perspectives to enable them to draw their own well-informed conclusions.

The essays have been organized around common themes and are presented in four groups that reflect these themes. In the first group of essays, entitled Justice, Rights, and Bailouts, philosophers Ann Cudd, Amy Sepinwall, and Jason Brennan explore the ethical justification for government bailouts or other support for corporations, or the lack thereof. In her essay, A Contractarian
Approach to Corporate Bailouts, Professor Cudd analyzes the moral legitimacy of bailouts from the perspective of mutual advantage contractarianism, which holds that a governmental policy is legitimate if rational persons seeking their own interests would agree to it under conditions in which threats, violence, and fraud are absent. After providing an account of mutual advantage contractarianism, Professor Cudd argues that corporate bailouts can be justified under this approach, but only when they are necessary to prevent massive systemic failure, contain protections against rent-seeking behavior by those receiving the bailouts, are filtered through consumers wherever possible, and would be acceptable to global trading partners as a temporary, emergency measure to preserve the economy. In her essay, Responsibility, Repair and Redistribution in the Wake of the Financial Crisis, Professor Sepinwall argues that responsibility for funding corporate bailouts is not limited to directly culpable parties such as bankers, regulators, lenders and borrowers, and not even to the large portion of the American public that embraced the ethos of easy money that fueled the reckless speculation, but extends to all Americans, who may be made to pay merely in virtue of their shared membership in the polity that permitted the financial crisis to occur. Professor Sepinwall argues that an implication of the theory of shared responsibility that justifies imposing the cost of the bailouts on the American public as a whole is that the bailouts necessitate public efforts to reduce existing inequalities in wealth. Finally, in his essay, The Right to Good Faith: How Crony Capitalism Delegitimizes the Administrative State, Professor Jason Brennan argues that citizens subject to the coercive rule of a state have a fundamental right to a government that exercises its power competently and in good faith. He contends that because governmental policies that permit crony capitalism, bailouts, and rent-seeking violate this right, they cannot be ethically justified, and further, that if the only way to avoid violating this right is to reduce the size and scope of government, doing so is ethically required.

In the second group of essays, entitled Bailouts in Context, Professors Michael Huemer, David Ciepley, and David Schmidtz examine the societal context in which the bailouts occur. These essays are designed to help us correctly situate benefits and costs of government support of corporations so as to make a better informed assessment of their ethical quality. In his essay, The True Costs of Government Bailouts, Professor Huemer creates a common sense analog for corporate bailouts by which we can test our analyses of the issues. He employs this analog to argue that bailouts are inherently unjust. He also argues that as an empirical matter, the benefits and costs of the bailouts have been seriously mischaracterized in a way, which, when recognized, undermines the empirical case for the bailouts. Finally, he argues that bailouts unavoidably lead to political corruption, a factor that must be taken into account in evaluating their ethical justification. In his essay, The Corporation Is Always Already Government-Supported, and So Is Bankruptcy, Professor Ciepley argues that it is a mistake to see the choice of whether or not to bailout corporations as a choice between interfering or refraining from interfering with free markets. He
argues that there is no free market option when dealing with failing corporations because the true choice is between bankruptcy and bailout, both of which are state-created departures from free markets. Professor Ciepley argues that corporations should be understood not as a nexus of free market contracts, but as state franchises. Thus, the real question with regard to corporate bailouts is not whether government should support corporations, but in what way it should. Finally, in his essay, Adam Smith on the Dark Side of Capitalism, Professor Schmidtz places the question of government support for corporations in its historical context by examining the insights Adam Smith had about the benefits of capitalism and the risk of cronyism. Professor Schmidtz recounts how Smith saw capitalism as simultaneously liberating the majority of the populace from the fear of starvation and servility and creating the risk of social dominance by the politically favored elite or "cronyism."

In the third group of essays, entitled Bailouts: Cronyism or Public Benefit, Professors Mark Eisner, Marilyn Friedman, and Christopher Morris explore the balance between socially beneficial and socially destructive aspects of the corporate bailouts. In his essay, Before the Third Act: Crony Capitalism and the Origins of the Bailout, Professor Eisner explores the policies of political favoritism that predated the bailouts to suggest that the bailouts were themselves the effect of crony capitalism. His examination of the nature of the bailouts suggests that they are merely a continuation of these past polices of favoritism, and as such, may, despite their short term benefits, be setting the stage for the next financial crisis. In her essay, To Bailout or Not to Bailout: Moral Hazard and Other Ethical Considerations, Professor Friedman examines the pros and cons of the bailouts and concludes that they can constitute both crony capitalism and a public benefit. She emphasizes the role the bailouts played in preserving jobs as an important factor in their favor and distinguishes between bailouts of financial institutions and bailouts of other corporations. Finally, in his essay, Corrupt Capitalism and Institutional Reform: Some Worries, Professor Morris locates the source of “crony,” or what he prefers to call “corrupt,” capitalism in the responsiveness of the federal government to parochial and special interests. His “worry,” however, is that efforts to eliminate or reduce such responsiveness would be incompatible with the effective government of a large polity such as the United States, which requires responsiveness to regional and local interests to resist the pressures for succession.

The final essays explore The Implications of Bailouts. In this group, Professors Michael Munger, Richard Salsman, and Richard Boyd consider the implications of the financial crisis and subsequent bailouts for the future. In their essay, Is “Too Big to Fail” Too Big?, Professors Munger and Salsman set out to answer the question: Is it possible for a government to make a credible commitment not to bail out large firms in the event of a crisis by any means short of breaking up or otherwise restricting all the large firms? They argue that the evidence supplied by the experience of several countries during the recent financial crisis yields a negative answer. In such circumstances, they suggest
that the only alternative is to not allow corporations to become too big to fail in
the first place. In his essay, Bringing the GSE's Back In?: Federal Housing
Policy and the Ethics of Bailouts, Professor Boyd takes issue with the account
of the financial crisis that lays the blame for it at the foot of governmental
policies that forced government-sponsored enterprises such as Fannie Mae and
Freddie Mac to underwrite risky mortgages. He examines the evidence to show
that the failure of the GSEs is not attributable to Congressional affordable
housing mandates, but to the same economic incentives that affected the fully
private segment of the market. Professor Boyd argues that with proper restric-
tions GSEs can play a constructive role in improving the character of the
citizenry.

We believe that this collection of essays will prove useful to all parties
interested in a normative evaluation of government efforts to bailout or other-
wise support private corporations. We offer it in the hope that by collecting the
best arguments on the topic in one place, we can facilitate a better understand-
ing of when it is ethically appropriate for government to employ taxpayer
resources to support private business entities.

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