Introduction

The 2008 global financial crisis resparked the longstanding debate about state ownership versus privatization. The crisis was preceded by almost three decades of continous privatization that had begun in most Western countries during the 1980s and was motivated by a strong belief in the efficiency of free market forces. The privatization process had promised profit maximazation for companies on the one hand and social economic stablitity on the other hand. However, once major financial and other companies began to collapse, states again took control.

Are we witnessing a "back to the state" trend? If so, will it recreate the state ownership and control that prevailed prior to the privatizations of the 1980s? Can state intervention stop the current financial deterioration and prevent its reoccurrence? Can such intervention avoid the negative consequences of state ownership and control that led to privatization in the first place? What lessons can we learn from past experiences?

Bringing together scholars from different parts of the world and from different disciplines, this collection tackles these questions. The articles reveal a complex picture, in which government involvement in the market takes many forms, including full state ownership, partial state ownership, connections with shareholders, and regulation of managements and boards. The first three articles deal with cases in which governments acquired corporate ownership following a crisis. The fourth article explores the moral hazard problems that are endemic to private ownership. The next three articles, on the other hand, deal with some consequences of state ownership. The last four articles explore a variety of ways for exercising indirect government control over the private market.

The opening article, by Gerard Hertig, focuses on governments' investments in banks during the recent credit crisis. Using case studies from seven countries, Hertig shows that although the objective of governmental bailouts was to restore financial stability, governments behaved like profit-driven investors in distressed assets. In some cases governments profitably exited within a year of their investment. In other cases, they adopted a phased exit approach. In the remaining cases, in which governments still hold companies' shares, they are merely waiting for a profitable exit.

Costanza A. Russo's article introduces the Italian experience with governmental bailouts through the story of the Italian Institute for Industrial Reconstruction (IRI). The IRI was established in 1933, when Italy was struggling with a postwar depression and with destructive interconnections

between banks, industrial companies, and public bodies. Russo analyzes the creation of the IRI and the reorganization of the banking sector. She shows that the IRI led to the recovery of the Italian economy, while gaining profits and refraining from intervention in corporate management. However, the IRI became an entrenched bureaucracy. Although it was established as a short-term solution, it remained in control of the Italian financial market for decades.

Turning to another lesson for governments that bail out distressed corporations, Nina Walton explores executives' incentives. While some expect financial incentives to improve executives' performance, Walton argues that financial incentives may crowd out social preferences, make executives self-interested, and result in lower performance. Moreover, once executives' social preferences are diminished, there is no way back: Taking away the financial incentives causes performance to be lower than if these incentives had not been introduced in the first place. Thus, if the state, as an investor in distressed companies, wishes to improve the performance of financially incentivized executives, it must continue to grant substantial financial incentives.

Further exploring the need for governmental involvement and investment, J. Mark Ramseyer uses the example of Japan's nuclear reactors — specifically the disastrous meltdown of the Fukushima nuclear plant in 2011 — to examine the consequences of private ownership over major power plants. By analyzing the laws and litigation dealing with nuclear reactors' licensing and the damages these reactors caused, he concludes that private ownership over nuclear plants has created a severe moral hazard problem. The reason is that the potential damages for accidents exceed the plants' asset value and so plant owners have insufficient incentives to invest in safety measures or to build the plants in safer — but more expensive — locations. However, Ramseyer claims, government ownership of nuclear plants would probably result in another kind of moral hazard, which is no less destructive.

Contrary to private ownership in Japan, most Chinese corporations were established as state-owned and are still held by the government, fully or partially. Zhaofeng Wang examines the important role that state-owned enterprises (SOEs) play in the Chinese economy. She analyzes their structure, operation, and performance, and discusses their dual goal of profit maximization and promotion of national interests. Wang shows that despite improvement in their performance in recent years, Chinese SOEs still suffer from governance flaws. She suggests several reforms, including addressing conflicts of interest within SOEs; tightening the supervision over the state agency that controls them; increasing their boards' independence; treating their employees as owners; and enhancing their financial transparency.

Moving away from the nature of state ownership to its consequences, Mariana Pargendler criticizes the application of a single legal regime to

private corporations and to state-owned enterprises, drawing on the Brazilian experience. While it is commonly believed that applying a unified legal regime improves the efficiency of state-owned enterprises, Pargendler highlights its negative effects. Specifically, she argues that the state's dual role as a shareholder and as a regulator retards reforms that could improve minority shareholder rights both in state-owned enterprises and in private companies. She concludes that the negative effects of the unified regime — and not only its benefits — should be taken into account by policymakers.

Stravros Gadinis's article revisits the common perception of partial privatization as a scheme that combines the advantages of privatization — efficiency, elimination of political corruption, and profit maximization — with the advancement of social policy goals associated with state ownership. Analyzing three case studies of partial privatization of major Greek companies, Gadinis reveals a contradiction: While partial privatization improved performance and transparency, it did not prevent the preservation of companies' political connections with suppliers and workers' unions. Gadinis explores these connections and notes that investors keep purchasing shares even after these connections are disclosed. He concludes, therefore, that the common view of partial privatization as a tool for abolishing political connections should be reconsidered.

Turning to indirect means of state influence over private companies, Assaf Hamdani and Ehud Kamar use the privatization in the Israeli banking sector as a case study to explore the link between privatization schemes and policymakers' goals. Hamdani and Kamar describe the privatization of Israel's three largest banks in the 1990s. These banks had been privately owned until a financial crisis in 1983 prompted the state to bail them out and acquire controlling blocks of shares of their stock. When the government reprivatized the banks during the 1990s, it chose to sell its shares as a block to controlling shareholders rather than spread them among many shareholders. Using committee reports and media coverage, Hamdani and Kamar show that this enabled the government to continue to influence the banks' managements.

Amir N. Licht suggests another way for the state to intervene in corporate governance without becoming an owner: regulating the composition of the board of directors with a view to promoting national policies that are usually absent from the sphere of corporate objectives. Licht points to the negative effects of direct state ownership or control aimed at promoting such policies and to the disadvantage of using regulation to advance them. He argues that regulating board composition is a better device for promoting social policy goals, since a diverse board entails within it a variety of social values, such as universalism and benevolence, rather than striving mainly — or even only — for power and profit maximization.

James C. Spindler analyzes long-term executive compensation schemes that have been proposed by the U.S. Congress. Spindler examines the rationale of those schemes and the problems they raise. He argues that, although long-term compensation schemes are designed to deter executives from manipulating short-term performance, their actual effect is unclear. Drawing on economic models of executives' behavior, Spindler argues that most long-term plans achieve similar results to those of short-term plans, and that in some cases long-term plans may even have perverse effects, such as inefficient risk aversion or insufficient disclosure. Another mandatory scheme that has been proposed is reclaiming bonuses in the event of failure or misconduct. Spindler argues that these so-called "clawbacks" are difficult to implement and that, like long-term compensation plans, their effect on managers' behavior is the same as that of non-clawback schemes. Thus, Spindler concludes that regulators would be best advised not to impose such schemes.

The last article in this issue, by Ephraim Chalamish, deals with another form of state involvement in financial markets: sovereign wealth funds (SWFs). SWFs have become important players in global markets, especially during financial crises, and are often seen as a threat to states' economic independence and national security. This is why many states use various protective measures to block SWF investments. SWFs and their supporters have responded to these measures by seeking for doctrine-based solutions. However, since these responses are incomplete, Chalamish suggests a different, more comprehensive and effective solution, based on the existing framework of international investment law, that can adequately challenge states' protective measures against SWFs.

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The Associate Editor and Assistant Editors