

FINANCIAL CRISIS, STATE AND LEGAL REGULARIZATION

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ABSTRACT

THE PRESENT DISCUSSES THE SUBJECT OF THE FINANCIAL CRISIS AND YOUR EFFECTS IN THE STATE AND JURIDICAL SPHERE, STARTING FROM JOSÉ EDUARDO FARIA ARTICLE (2009). PARA THIS AUTHOR, THE FINANCIAL CRISIS PLACES SUBJECTS THEY BE DISCUSSED HER THAT POSSESS RESONANCE IN THE STATE AND JURIDICAL SPHERE AND THIS PRODUCES A SITUATION OF "FEW CERTAINTIES AND A LOT OF DOUBTS", AND FIVE POINTED POSSIBILITIES WOULD EXIST FOR SOME ANALYSTS. THE ANALYSIS EXPOSED PART OF ANOTHER INTERPRETATION OF THE FINANCIAL CRISIS AND, CONSEQUENTLY, OF YOUR SOCIAL CONSEQUENCES, AS WELL AS IT PRESENTS OTHER TENDENCIES AND EFFECTS OF THESE ON THE RIGHT, PRESENTING AN ALTERNATIVE CONCEPTION TO THE THAT THIS AUTHOR PRESENTS.

KEYWORDS

INTEGRAL ACCUMULATION; CAPITALISM; FINANCIAL CRISIS; RIGHT; JURIDICAL SPHERE.

This paper discusses the issue of financial crisis and its effects in the state and legal areas, based on José Eduardo Faria's article (2009). For this author, the financial crisis raises issues for discussion that have resonance in state and legal areas, which produces a situation of "few certainties and many doubts", and there are five possibilities pointed out by some analysts. Based on these thoughts, we will conceptualize this relationship as a starting point for the discussion introduced by Faria (2009).

Faria's statements would be part of the discussion between two positions: Keynesian, favorable to state intervention; and Schumpeterian, supporting a self-regulating market. According to Faria, the analyses inspired by these viewpoints are often given a more "ideological" than "analytical" character. The reductionism of this approach lays a shadow on the complexity of the issue based on the financial crisis. The starting point is the financial crisis started in 2008, but we start from another analysis of the financial crisis and, after briefly explaining our perspective, we will return to Faria's text and discuss the effects of the crisis in state and legal areas.

The explanations for the financial crisis are varied. For some, the increase in interest rates to fight inflation would have started the process that triggered the crisis. Others say it was the State was absent or that the State's presence was excessive. For others, this would be a crisis of over-accumulation, or another stage within capitalism cycles. However, we believe these analyses are rather challenging, since some of them are only circumstantial while others are based solely on structural elements. However, structural and circumstantial aspects are actually not separate and for that reason, we are conducting another analysis of the process that triggered the financial crisis of 2008. Capitalism is characterized by the production of surplus value, i.e., a specific form of commodity production that is sustained by exploiting workers that produce new goods and add value to them, besides passing on the value contained in the means of production, including the cost of their own workforce. This new value added to goods makes exploitation possible, since the capitalist has taken possession of the value, accumulating capital: this is the process of reproducing capital, which leads to concentration and centralization. In this context, there is a trend of decline of the average profit rate, due to fact that there is more and more technology available and fewer jobs, and this is what adds value to the goods. Hence, workers' struggles are another problem in the capitalism reproduction process, because it is difficult to deepen exploitation, and these two common aspects are tackled through joint actions of large capitalist corporations and the State. In summary, the average rate of profit tends to fall and get lower and lower with the historical development of capitalism. On the other hand, capitalism creates countertendencies to slow down this process (VIANA, 2003; VIANA, 2009).

Government intervention, the constant pursuit of increase in productivity, the attempt to increase international exploitation and the process of expanding the mass of profit are the main strategies to tackle the deepening and acceleration of the crisis. The resistance and struggles of worker and other sectors nationwide are the main obstacles to implementing these counter-tendencies. The history of capitalism is marked by a succession of regimes of accumulation, which crystallizes a particular kind of State, international relations and organization of the work process, which characterizes and shows how to fight the decline in average profit rates (VIANA, 2009).

The current regime of accumulation - total capital accumulation - which some call "post-Fordism" or "flexible accumulation" - is based on neo-liberalism, neo-imperialism and toyotism. It appeared in the 1980s to halt the process of decline in the profit rate that began in the late 1960s (Harvey, 1992). However, this regime of accumulation was taking shape, becoming generalized and being consolidated from the 1980s and peaked in the 1990s, and started to decline in the 1999, when again that process (of accumulation) could not be halted; that happened in the 1980s and especially in the 1990s, its period of peak. Now, there are indications that the total accumulation regime begins to decline. The increase in the average profit rate in the 1990s has been replaced by its decline after 2000.

This decline in the real average profit rate, in turn, produces increasing inflationary effects. This also ends up having effect on the consumer market, making it difficult to implement

the opposite trend, i.e., increase profit, which means to steadily expand the production of consumer goods. The expanded reproduction of consumer markets in the current phase of capitalism is marked by a decreased consumption by the poorest strata of the population, but with high increase of individual consumption, leading to a hyper-mercantilism (mercantilism of social relations has been a feature of capitalism since its emergence, albeit increasingly broader and deeper) and a growth in consumerism, including compulsory consumption (the purchase of goods that will necessarily cause the need for other goods). The absence of the poorest strata of the population is balanced with the recovery of part of the credit system, although it reaches the other sectors of society. The credit system has been expanded since the end of World War II and was an important element for the expanded reproduction of the consumer market, which was intensified under the new regime of accumulation, allowing consumption by a portion of the population that does not have immediate financial resources.

It is in this context that the U.S. financial crisis occurs. The huge accumulation of capital resulted in an increase of financial and parasitic capital, a volatile capital, i.e., volatile and dissolvable. This ends up promoting capital investment in the sectors of higher profitability. In the late 1990s, there was a shift in investments and rapid growth, focused on the emerging dot-com companies, such as Amazon. An important institution in this context is the Federal Reserve (FED), the U.S. Central Bank, and its Chairman Alan Greenspan. The expectation of high profitability did not come true:

The bubble had clearly become a lot more fragile than Greenspan had realized, and consequently more dependent on their sponsorship and support. At the end 1998, and again at the end of 1999, the FED loosened the credit offer significantly to reverse major declines in the securities market and keep stock prices on the rise. When, instead, Greenspan continued to insist throughout the first half of 2000 that the FED would no longer inflate the bubble, stock prices began to fall, even though the real short-term interest rate had hardly changed. E-businesses experienced a slump in bond prices in the second quarter of 2000. From the end of the mid-year onwards, larger markets started to fall alarmingly. At the end of 2001, the NASDAQ Index dominated by technology and Internet companies - one the headquarters of skyrocketing stocks - had fallen by 60% from its peak in early 2000. S&P 500 was the territory of speculation, falling by more than 20% from its high. Five trillion in assets vanished like smoke (BRENNER, 2003, p. 314-315).

The virtual economy bubble burst. However, the event was followed by a sharp fall in average profit rates and incidental events such as September 11 bombings, which provoked the reaction of the Federal Reserve to reduce interest rates in order to boost the market and resume growth. The FED held other actions, such as fueling the credit system and reducing interest rates, which caused an upturn in real estate prices. The result was an expansion of the real estate industry. That was when the "tracked securities" and the subprime market niche were created. This fact generated the

bubble in the real estate market. The capital then moved to this sector looking for greater profitability. Borrowers had to refinance their mortgages, and began to receive extra money from banks. Banks created mortgage-backed securities that were sold in the market for investors who also resold them, what caused the increase in demand for new mortgages since they had become the source of money, and the subprime became a new market niche targeted at low-income people. It should be noted that the fall in profits from the 2000s and its inflationary pressure was combined with an expanding market niche with a larger degree of default risk. The problem of the consumer market was largely resolved with this process; however, the problem of the falling profit rates and inflation was not; instead it was worsening and, as there was no solution for this case, the inflationary pressure continued to intensify, so the FED raised the interest rates to restrain it. Consequently, there was a downturn in real estate prices. The result was the increase in defaults, mortgage losses, etc. This started a snowball, reaching bank capital and dragging banks into the crisis. This was the origin of the financial crisis, its expansion and consequences, bankruptcy and U.S. government bailout to banks.

This had global repercussions, with more or less intensity; its effects have not yet ceased and its proportions are not yet clear. Several social consequences, such as increased unemployment, shortcomings, anti-immigration policies, consumption decline, conflicts, demonstrations, etc. In this context, the financial crisis crossed the boundaries of the financial world and entered other sectors of society.

This is the scenario for the debate between Keynesianism and Neo-Liberalism; the former advocates a stronger state regulation; the latter supports the idea of a "minimal state". This is a very complex process. From these positions, we can also infer the role of Law. According to Faria (2009), in the contemporary world submitted to this context (although his approach and our perception of it are different), there are some problems and scenarios to be considered by the Law. We can summarize the four issues listed by Faria (2009) as follows: (a) Trend towards homogenization and unification of financial legislation and regulation on real estate values on a global scale; (b) Exhaustion of the operational capacity and lack of effectiveness of conventional legal mechanisms of national States, especially with regard to economic and financial control; (c) Contradiction between political power (state regulation) and financial capital (economic self-regulation) And (d) Global interconnection with predominance of financial capital, with a process of unification of financial and banking laws experiencing State increasing difficulties in solving the problems faced, due to lack of resources.

However, these problems can be set aside and others can be listed, or even their explanation and tendencies should be discussed in depth. Actually, the trend for homogenization is only a possibility for tackling many difficulties, and there are no real agents to carry out the task. The problems appear to be subject to the globalization ideology, criticized for its metaphysical-abstract character (VIANA, 2009), which presents reality in a fatalistic, inexorable manner, which is not actually true, with some phenomenal elements being strengthened and others not. Indeed, the financial crisis brings problems to the reproduction of the total accumulation regime, but the solution is not yet clear and first we generally implement small changes to resolve international

relations and the process of appreciation without altering the present State formation, i.e. the regime of accumulation. The tendencies that we deem most likely in the short term do not represent a strengthening of the so-called "globalization" reaching areas such as Law, but a strengthening of national States, which start to feel the need for further intervention both with respect to the financial sector and in relation to the political process, with the State becoming more interventionist and more authoritarian. Government bailout to U.S. banks, which happened later in Europe, was only the start of a new state interventionism in the market, trying to avoid bankruptcy and the expansion of the crisis which could mean the end of the total accumulation regime. The anti-immigration policies and repression to political movements are other faces of State actions. Nevertheless, we must not lose sight that this financial crisis does not occur in a void, but in a context of declining average profit rate and a trend of exhaustion of a regime of total accumulation. The effects on Law and the scenario ahead end up being different from those envisaged by Faria (2009).

Instead of five scenarios, we think that we could think of historical possibilities and consequences for Law starting from each of them. Obviously, this is only a preview of tendencies resulting from complex relationships; therefore, this outline is imperfect and may have left aside other possibilities that can be hardly perceived for now and may become clear in the future.

The first tendency is that the financial crisis will eventually be controlled without major repercussions. Despite being controlled, there will be some effects; but in this case, they would not be as severe as to lead to major changes. This would depend on several factors, from government policies (the U.S. and other countries), actions of the big capital, social and labor movements, financial institutions, national conjuncture, domestic solution of problems and conflicts, etc. If it is favorable as a whole and the popular reaction is mild, then it would be possible to maintain at least in the short term, the current situation and in the medium and long term, try to keep the situation under control, despite its fragility. In this case, from a legal perspective, there would not be major changes, except for a little more regulation in some developed countries; globally, this role would be undertaken by organizations controlled by imperialist countries.

The second tendency would be the unrest caused by the financial crisis along with increasing difficulties for the continued accumulation of capital, which would have social consequences, among them increasing poverty and unemployment, and a worsening of social conflicts. In this case, we could think of an immediate attempt to solve the crisis within the regime of total accumulation, intensifying its repressive character and promoting a stronger state, not only in the financial area, but in others, which could be complemented by its reproduction worldwide, i.e., by deepening international exploitation that would generate claims for stronger control, strengthening conflicts in subordinate capitalist countries to seek relief in imperialist countries. This could be done given the US hegemony and new armed interventions, reheating the U.S. economy through the arms industry. This process would generate greater state interventionism and in the process, stronger legal regulation, both nationally and globally. New issues and problems would arise such as the conflict between resolutions of international organizations and policies of national States.

The third tendency is marked by deeper financial crisis generating a broader crisis, affecting the core of the regime of accumulation. Such crisis would immediately spark increasing social conflicts and, in the short run, there would be an attempt to return to the previous scenario, but in the medium run, there would be a collapse of the regime of total accumulation. From this tendency, several other possibilities may emerge. The first would be the shift to fascist and dictatorial regimes, marked by the possibility of a “war capitalism”, with massive destruction of productive forces and dictatorial conflict-settling; fighting workers’ organizations and social struggles to increase profit rates and create imaginary enemies (VIANA, 2007) to ensure stability in the national State and turning the focus on the conflict towards a war waged on a suspected foreign enemy. According to this possibility, the Law would be undermined at its foundations, because of a constraint on the judiciary, legislative and executive powers. In this case, there would be a crisis in Law, which would be subject to the dictatorial regime at national and international levels, since international conflicts would suspend rulemaking processes in many cases.

Another possibility would be a process of conflicts and crises that would end in a new regime of accumulation, which is difficult to predict, since it would have to be more aggressive and repressive than today, in addition to deepen even more national and international exploitation. In this case, State capitalism, as developed in the Soviet Union as of the Bolshevik revolution would be a more likely scenario. An almost complete nationalization of private property, particularly with a general process of bureaucratization of society and broad repressive State control, giving grounds for even fiercer exploitation. However, the accumulation process would be slowed down due to the fragile competition among corporate oligopolies, which would be nationalized. A permanent and generalized dictatorial regime that would control the downward trend in profit rates, because the reproduction of capital would be slowed down, and in face of a internationalization of this regime, the production of surplus-value would be replaced by another form of exploitation, and capitalism would turn into a bureaucratic mode of production, with social characteristics and processes that cannot be predicted in detail. In the first phase of this process, the Law would be an important element, though subordinate, in the process of building legitimacy for the new form of capitalism. The Law under this regime would be identical to the “Soviet law.” With the internationalization process of this regime, a unified Law would probably be established worldwide. The transition to a bureaucratic mode of production would make Law stronger and more active in everyday life; perhaps the most legitimate social relation, more powerful and internationalized.

Another possibility is the sparking of social revolutions and the establishment of societies based on social ownership or, in other words, communism, as proposed by Marx (1986), Rosa Luxemburg (1991), Anton Pannekoek (1978), Otto Rühle (1975) and many other thinkers, dissenters of the tendency called Marxism-Leninism or Bolshevism. In this case, the proletariat and its allies would carry out a process of abolishing the State and the private property, creating bodies of social ownership, such as councils and communes, which would implement the “self-government of producers” (Marx, 1986). The councils of producers and regional communities would be forms of self-organization in the sphere of production and reproduction of material goods; they would be generalized to accommodate to the array of social relations. In

this context, the legal institution and its related specialist bodies would be abolished and replaced by a number of resolutions made by the people; that would suffice for social reproduction in general.

Accordingly, it appears that the future of Law is intrinsically linked with the unfolding of the evolution of capitalism. For each historical possibility, the Law is called to perform for a specific role, whether strengthened, weakened or abolished. Hence, it is important to understand the role of Law in modern society. Law is socially constituted. It also creates new social relations (VIANA, 2006). Nevertheless, this process of creation occurs only if pushed by prior and superior social forces. As already observed by Erlich (Lopes, 1988), the Law is always delayed in relation to social change. There is no doubt about this assertion, but there are exceptions and the Law itself can cause social change within limits and originating from forces prior to and superior to it.

In summary, the current situation is marked by the unfolding of the financial crisis, which can take several directions, including the opposite. This process will also have consequences in the legal sphere. It is not possible to tell the future of capitalism today, because further information and research would be needed to outline a broader and more realistic framework. Social struggles and tendencies are various and it is not possible to predict the unfolding of the process, because the future is not decided and the people are entitled to decide based on their own point of view and conflicts.

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