Is it Greek or déjà vu all over again?: Neoliberalism and Winners and Losers of International Debt Crises

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The global financial meltdown and the Great Recession of 2007–2009 have brought into sharp relief the uneven distribution of gain and pain during economic crises. The 2009–2010 debt crisis in Greece resulted in a windfall for financial institutions at the expense of taxpayers, a rollback of welfare systems, and the impoverishment of the working classes. This outcome is consistent with the pattern that has emerged in the international debt crises of the last three decades, including the Latin American crisis during the 1980s and the Asian crisis during the 1990s. The recurrent international debt crises of the last three decades and the resulting transfers of wealth from the poor to the rich are the products of the neoliberal restructuring of economies that aims to rollback the gains made by the working classes under the Keynesian welfare compromise and to establish the hegemony of finance capital. These neoliberal objectives have been facilitated by an extensive refashioning of the U.S. and international regulatory regimes resulting in financialization of the global economy and unbridled international mobility of finance capital. Global financial institutions channeled excess global liquidity in ways that created unsustainable international debts, which consistently resulted in international debt crises. These crises were then managed to further advance neoliberal prescriptions for global finance and national economies. The end result of this refashioning of regulatory regime is the transfer of wealth from the poor to the rich, further impoverishment of working classes, and

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enhanced power of finance capital. A collective moratorium on debt servicing by the Global South is a viable path towards a new global financial order that is sustainable and gives human beings priority over capital.

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"Rule one: Never allow a crisis to go to waste. They are opportunities to do big things."

– Rahm Emanuel, Former White House Chief of Staff[1]

"Bankers have a bad habit of making economic cycles worse. They are notorious for lending people umbrellas when the sun is shining and asking for them back when rain starts to fall."

– *The Economist*[2]

"We live again in a two-superpower world. There is the U.S. and there is Moody's. The U.S. can destroy a country by leveling it with bombs; Moody's can destroy a country by downgrading its bonds."

– Thomas Friedman[3]

I. INTRODUCTION

The world is awash with money,[4] but two-fifths of humanity remains without access to a bank account, much less a line of credit.[5] While captains of finance capital bemoan an Asian "savings glut"[6] and "liquidity glut,"[7] nearly three billion people struggle to survive on less

1. Jeff Zeleny, *Obama Reviewing Bush's Use of Executive Powers*, N.Y. TIMES, Nov. 9, 2008, at A19 (quoting Rahm Emanuel in an interview regarding the crisis in the U.S. auto industry).

2. *Joseph and the Amazing Technicalities*, ECONOMIST, Apr. 26, 2008, at 18.

3. Thomas L. Friedman, *Don't Mess with Moody's*, N.Y. TIMES, Feb. 22, 1995, at A19.

4. In April 2010, the global foreign exchange market had a daily turnover of USD 4 trillion. *Global Foreign-Exchange Market*, ECONOMIST (Sept. 2, 2010), http://www.economist.com/node/16945118?story_id=16945118&fsrc=rss (last visited Feb. 6, 2011). The total daily global financial transactions increased from USD 2.3 billion in 1983 to USD 130 billion in 2001. This USD 40 trillion annual turnover compares with USD 800 billion needed to support international trade and productive investment flows. *See* PETER DICKEN, GLOBAL SHIFT: RESHAPING THE GLOBAL ECONOMIC MAP IN THE 21ST CENTURY 32–82 (4th ed. 2003). In 2006, on the eve of the global financial meltdown and the Great Recession of 2007–2009, while the entire world output was USD 47 trillion, market capitalization was USD 51 trillion, total international banking assets were USD 29 trillion, and domestic and international bonds were USD 68 trillion. NIALL FERGUSON, THE ASCENT OF MONEY: A FINANCIAL HISTORY OF THE WORLD 4–5, 62 (2008). In December 2007, the face value of all over-the-counter derivatives was over USD 596 trillion, with a market value of USD 14.5 trillion. *Id.* at 228. Nearly 90 percent of international financial flows represent speculative and hedging behavior. L. Randall Wray, *Monetary Theory and Policy for the Twenty-first Century*, *in* POLITICAL ECONOMY FOR THE 21ST CENTURY: CONTEMPORARY VIEWS ON THE TRENDS OF ECONOMICS 125, 139 (Charles J. Whalen ed., 1996).

5. FERGUSON, *supra* note 4, at 281.

6. Ben S. Bernanke, Governor, Fed. Reserve Bd., Homer Jones Lecture: The Global Savings Glut and the U.S. Current Account Deficit (St. Louis, Missouri, Apr. 14, 2005), *available at* http://www.federalreserve.gov/boarddocs/speeches/2005/20050414/default.htm.

7. Alan Greenspan, *The Fed Didn't Cause the Housing Bubble*, WALL ST. J., Mar. 11, 2009, at

than two dollars a day.[8] The global financial crisis of our era may be "a transformative moment in global economic history whose ultimate resolution will likely reshape politics and economics for at least a generation."[9] The magnitude of the crisis and the largest shrinking of world output since the Great Depression lend new urgency to Karl Polanyi's admonition: "Only a madman would have doubted that the international economic system was the axis of the material existence of the human race."[10] The International Labor Organization ("ILO") estimates that the downturn has cost over fifty million lost jobs worldwide,[11] while the United Nations ("UN") measures the share of the "working poor" in the labor force in developing countries to have increased to 64 percent.[12] Up to eighty-four million people will remain poor or fall into extreme poverty due to the crisis.[13]

The global losses in the financial sector alone exceed USD 3.4 trillion,[14] and the bill for public rescue of financial institutions worldwide is USD 20 trillion.[15] The long-term total potential cost of the rescue of finance capital by U.S. taxpayers alone is estimated at USD 23.7 trillion—over 150 percent of U.S. gross domestic product ("GDP").[16] Much more pain may be on its way. The average GDP

A15.

8. *Fast Facts: The Faces of Poverty*, UNITED NATIONS MILLENNIUM PROJECT (2006), http://www.unmillenniumproject.org/resources/fastfacts_e.htm (last visited Mar. 7, 2011).

9. CARMEN M. REINHART & KENNETH S. ROGOFF, THIS TIME IS DIFFERENT: EIGHT CENTURIES OF FINANCIAL FOLLY 208 (2009).

10. KARL POLANYI, THE GREAT TRANSFORMATION: THE POLITICAL AND ECONOMIC ORIGINS OF OUR TIME 18 (Beacon Press 2d ed. 2001) (1944).

11. Nelson D. Schwartz, *Unemployment Surges Around the World, Threatening Stability*, N.Y. TIMES, Feb. 15, 2009, at B1.

12. UNITED NATIONS DEP'T ECON. & SOC. AFFAIRS, WORLD ECONOMIC SITUATION AND PROSPECTS 2010, at v (2010) [hereinafter DESA 2010 REPORT], *available at* http://www.un.org/en/development/desa/policy/wesp/wesp_archive/2010wesp.pdf.

13. *Id.* at vi.

14. INT'L MONETARY FUND [IMF], GLOBAL FINANCIAL STABILITY REPORT: NAVIGATING THE CHALLENGES AHEAD 5 (Oct. 2009), *available at* http://www.imf.org/external/pubs/ft/gfsr/2009/02/pdf/text.pdf.

15. DESA 2010 REPORT, *supra* note 12, at xii–xiii.

16. SIMON JOHNSON & JAMES KWAK, 13 BANKERS, THE WALL STREET TAKEOVER AND THE NEXT FINANCIAL MELTDOWN 174 (2010) (quoting the Special Inspector of the Trouble Asset Relief Program). As of June 2009, the total assets held by the U.S. Federal Reserve were valued at over USD 2 trillion, an increase of 2.3 times over their USD 852 billion value in 2006. While Treasury securities were over 90 percent of the Fed assets in 2006, they were only 29 percent in June 2009, reflecting the unprecedented funding of the financial system. Besides a lack of transparency of these transactions, the adequacy of the collateralization of these positions is suspect, and the "potential risk to the Fed from these positions is substantial." HAL S. SCOTT, THE GLOBAL FINANCIAL CRISIS 31 (2009).

contraction following a severe banking crisis is a stunning 9.3 percent,[17] and, on average, banking crises lead to an 86 percent increase in government debt over three years following a crisis.[18]

We are living through a truly unique period. Historically, developed nations typically provided the capital needed to spur growth in developing nations. However, in "the ultimate role reversal in financial history,"[19] developing economies are now bailing out global finance, and the revival of global economic growth increasingly rests upon capital injections provided by developing countries.[20]

While the developed world is becoming desperately dependent on capital from developing nations for its survival, Wall Street has become stronger as a result of the financial crisis[21] in "*one of the largest redistributions of wealth in such a short period of time in history*."[22] Hiring on Wall Street has picked up, "underscor[ing] the remarkable recovery of the biggest banks and brokerage firms since Washington rescued them in the fall of 2008, and follows the huge rebound in profits."[23] How does a moment of general economic distress and wrenching hardship for the many become an opportunity of enhanced resources and power for the few? How do non-market forces work with the market to produce and subsequently manage and profit from international debt crises? In the search for an answer, we should be

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17. REINHART & ROGOFF, *supra* note 9, at 229; *see also* MARTIN WOLF, FIXING GLOBAL FINANCE 33 fig.3.1 (2010) (illustrating the comparative costs of several large financial crises in terms of percent of GDP and explaining that an increase in the United States' public debt equal to 10 percent of GDP would add approximately USD 1.2 trillion to the total U.S. debt).

18. REINHART & ROGOFF, *supra* note 9, at 231. While the Global South has been the primary arena of this phenomenon, advanced capitalist economies have not been immune to financial crises. The Savings and Loan collapse in the 1980s, the exchange-rate crisis in Europe in the early 1990s, Japan's prolonged deflation since the 1990s, the dot.com crisis of 2000, and the 2008–2010 financial meltdown and the resulting "great recession" are instances of this turn.

19. FERGUSON, *supra* note 4, at 338.

20. In 2009, the net financial transfers (net capital flows minus investment income payments) from developing countries to the developed ones were USD 568 billion, compared with USD 891 billion in 2008. DESA 2010 REPORT, *supra* note 12, at ix–x; *see also* Robert Wade, *The First-World Debt Crisis of 2007–2010 in Global Perspective*, 51 CHALLENGE, no. 4, 2008 at 23, 24.

21. JOHNSON & KWAK, *supra* note 16, at 155–56.

22. JOSEPH E. STIGLITZ, FREEFALL: AMERICA, FREE MARKETS, AND THE SINKING OF THE WORLD ECONOMY 200 (2010).

23. Nelson D. Schwartz, *Wall St. Hiring in Anticipation of a Recovery*, N.Y. TIMES, July 11, 2010, at A1; *see also* Susanne Craig & Kevin Roose, *Signs of Swagger, Wallets Out, Wall Street Dares to Celebrate*, N.Y. TIMES, Nov. 24, 2010, at A1 (noting that, while Wall Street salaries are not significantly higher than in 2008, traders and financial-industry executives are decidedly more secure in their jobs and are therefore more willing to spend personal income).

mindful that "in the world of economics, things are never as they seem."[24]

Over 200 years ago, Thomas Jefferson cautioned that "banking institutions are more dangerous than standing armies."[25] Today, in "the age of leverage"[26] and derivatives,[27] finance capital equipped with "financial weapons of mass destruction"[28] can, and does, inflict more destruction than an eighteenth century army ever could. The economic crises that are endemic to capitalism appear to be particular occasions for such damage.[29] One study identifies 148 crises since 1870 in which the GDP of a country fell 10 percent or more and eighty-seven crises when consumption fell by a comparable magnitude.[30]

International financial crises are rooted in dissonance between the territorial logic of states and the globalizing imperative of capital.[31]

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24. STIGLITZ, *supra* note 22, at 71.

25. JOHNSON & KWAK, *supra* note 16, at 14 (quoting Thomas Jefferson).

26. Niall Ferguson, Remarks at the Ninth Annual Niarchos Lecture at Peterson Inst. for Int'l Econ., Fiscal Crises and Imperial Collapses: Historical Perspectives on Current Predicaments 4 (May 13, 2010), *available at* http://www.iie.com/publications/papers/niarchos-ferguson-2010.pdf.

27. For detailed studies of derivatives, see generally DICK BRYAN & MICHAEL RAFFERTY, CAPITALISM WITH DERIVATIVES: A POLITICAL ECONOMY OF FINANCIAL DERIVATIVES, CAPITAL AND CLASS (2006); Raghuram G. Rajan, *Has Financial Development Made the World Riskier?*, FED. RES. BANK KAN. CITY 313 (2005), *available at* http://www.kansascityfed.org/publicat/sympos/2005/pdf/rajan2005.pdf.

28. WARREN BUFFETT, BERKSHIRE HATHAWAY INC. 2002 ANNUAL REPORT 15 (2003), *available at* http://www.berkshirehathaway.com/2002ar/2002ar.pdf.

29. In the history of capitalism, "crises are the norm, not the exception." NOURIEL ROUBINI & STEPHEN MIHM, CRISIS ECONOMICS: A CRASH COURSE IN THE FUTURE OF FINANCE 15 (2010). Indeed, "[c]apitalism *is* crisis; it introduced a level of instability and uncertainty that had no precedent in human history." *Id.* at 46. For an overview of capitalism's boom and bust cycles and the tendency towards crisis, see generally DAVID HARVEY, LIMITS OF CAPITAL (2006); ROBERT HEILBRONER, THE NATURE AND LOGIC OF CAPITALISM (1985).

30. *See generally* Robert J. Barro & José F. Ursúa, *Macroeconomic Crises Since 1870: Comments and Discussion*, BROOKINGS PAPERS ON ECON. ACTIVITY, Spring 2008, at 255 (providing detailed analysis of a wide range of historical economic crises).

31. In the international arena, the dissonance between the tendency of capital to expand globally and territorial sovereign states creates a basic dilemma for capital. Capital is denominated in the currency of the state whose space it occupies and must change its currency denomination as it moves from one state to another. Multiple or national currencies circulate internationally at changing rates of exchange and domestically determined and fluctuating interest rates. Relative changes across monetary areas and over time within monetary spaces are continually transmuted through derivatives. Besides mediating between savers and investors, finance capital has to manage the risk born of spatial and temporal uncertainties. Financialization of the last three decades can be seen, then, as devices of struggle between individual capitals to profit from the global economy's need to hedge itself against the contingencies that disrupt global circulation and accumulation of capital. Trading in financial markets has risen exponentially as the risk born of uncertainty is continually passed along to whoever wishes to bear it. Competition to profit between individual capitals to profit from the global economy's risk management leads to misallocation of risks. At a tipping point, the misallocation of risk and capital turns into a

The history of finance capital is one of bubbles, busts, shocks, and crashes,[32] and a new global economic order has accelerated this volatility. There have been 124 banking crises just in the Global South between 1970 and 2007.[33] The unmistakable lessons of the history of debt and financial crises are that unfettered international mobility of capital is harmful for the well-being of societies,[34] and that financial liberalization is a leading indicator of future crisis.[35]

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financial crisis. *See* Christopher Rude, *The Role of Financial Discipline in Imperial Strategy*, *in* THE EMPIRE RELOADED 82, 84–88 (Leo Panitch & Colin Leys eds., 2004).

32. Financial crises are born of the tendency of financial markets to over- or under-estimate risk that results in misallocation of capital and economic bubbles. According to Hyman Minsky, financial markets tend to go through a cycle from conservative hedge financing, to risky speculative financing, to unsustainable Ponzi financing, and then back to hedge financing. Without public intervention, this financial instability cycle transforms moderate prosperity into a boom, which can unravel quickly to produce a deep recession. *See generally* Hyman P. Minsky, *The Financial Instability Hypothesis* (Jerome Levy Econ. Inst. of Bard Coll., Working Paper No. 74, 1992), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=161024. Financial speculative booms typically end with the "Minsky moment"—the moment it becomes clear that borrowers are overextended and need to sell assets to meet debt obligations. *See* Justin Lahart, *In Time of Tumult, Obscure Economist Gains Currency*, WALL ST. J., Aug. 18, 2007, at A1 (defining "Minsky moment" as "the time when over-indebted investors are forced to sell even their solid investments to make good on their loans, sparking sharp declines in financial markets and demand for cash that can force central bankers to lend a hand"). For a succinct exposition of Minsky's views about finance, see JOHN CASSIDY, HOW MARKETS FAIL: THE LOGIC OF ECONOMIC CALAMITIES 205–17 (2009).

33. CASSIDY, *supra* note 32, at 13; Luc Laeven & Fabian Valencia, *Systemic Banking Crises: A New Database* 5 (IMF, Working Paper No. 08/224, 2008), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_*id*=1278435. "Global South" and "Global North" are used here not necessarily to describe distinct geographical regions, but to indicate the two-thirds and one-third populations of the world that occupy broadly different positions within the global economy. For an account of the North-South divide of the world, see Gustavo Esteva & Madhu Suri Prakash, *Grassroots Resistance to Sustainable Development: Lessons from the Banks of the Narmada*, 20 ECOLOGIST, no. 2, 1992 at 45; Eric Sheppard & Richard Nagar, *From East-West to North-South*, 36 ANTIPODE, no. 4, 2004 at 557–58 (defining the "global North" as the political and economic elite in privileged locations across the globe, in contrast to the "global South," which is made up of the poor, underprivileged, and underdeveloped globally, and noting that development and privilege are no longer along geographic boundaries, as populations of global North and global South often occur within the same nation). "Global South" refers to all countries that are not part of the Organisation for Economic Co-operation and Development ("OECD").

34. *See* Ross P. Buckley, *International Capital Flows, Developing Countries and Economic Sovereignty*, *in* 4 YEARBOOK OF INTERNATIONAL ECONOMIC AND FINANCIAL LAW 1999, at 17, 34 (Joseph J. Norton ed., 2001). In the aftermath of the 2007–2009 global financial crisis, "the belief that unfettered capital flows are a boon for everyone—including the country on the receiving end—has been dealt a major blow." Landon Thomas, Jr., *Countries See Hazards in Free Flow of Capital*, N.Y. TIMES, Nov. 11, 2010, at B1.

35. *See* Graciela L. Kaminsky & Carmen M. Reinhart, *The Twin Crises: The Causes of Banking and Balance-of-Payment Problems*, 89 AM. ECON. REV., no. 3, 1999 at 473, 480 (analyzing the timing of bank crises and balance-of-payment problems and finding that financial liberalization led to boom and bust cycles, which contribute to crises). Ferguson points out that "[b]ubbles are more likely to occur when capital flows freely from country to country . . . [and] without easy credit creation a true bubble cannot occur." FERGUSON, *supra* note 4, at 122.

Liberalization and financialization of the global economy ushered in an era of recurrent financial and public debt crises. These crises, which have become endemic, have "always caused transfers of ownership and power to those who keep their own assets intact and who are in a position to create credit."[36] As a result, "public debt crises are always and everywhere a political phenomenon."[37] Response to a debt crisis "is at its heart a question of politics, not of economics or of regulatory technicalities."[38] Such crises always force "difficult political decisions about what is going to be sacrificed in order to pay the debt."[39] Non-market political forces manage the turmoil caused by these crises to help deepen finance capital's hold on economies.[40] In what has become a pattern over the last three decades, financial crises are managed so that "the damage caused by the turmoil is directed away from the dominant classes and the center towards the subordinated classes and the periphery."[41] In a cycle of financial destruction, imperial forces choreograph responses to debt crises that allocate the burdens of these crises, such as unemployment and impoverishment, to subordinated classes while any losses sustained by financial institutions are covered by bailouts financed by public revenues, at the cost of public expenditures on social welfare programs needed so desperately by those subordinated classes already bearing the burden of the crisis.[42] This cycle of financial destruction routinely culminates in transfers of wealth from the poor to the rich.

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36. Robert Wade & Frank Veneroso, *The Asian Crisis: The High Debt Model Versus the Wall Street-Treasury-IMF Complex*, 228 NEW LEFT REV. 3, 20 (1998).

37. Ferguson, *supra* note 26, at 9.

38. JOHNSON & KWAK, *supra* note 16, at 221.

39. Ferguson, *supra* note 26, at 9.

40. The genesis, consolidation, and global expansion of capitalism cannot be separated from the role played by the states, and it is therefore critical to appreciate the role states play in making "free markets" possible. For example, the rise and consolidation of capitalism was dependent upon the critical role states played in establishing legal regimes of property, contracts, currency, and wage-labor in conjunction with colonial expansion and siphoning of value. *See generally* SAMIR AMIN, ACCUMULATION ON A WORLD SCALE: A CRITIQUE OF THE THEORY OF UNDERDEVELOPMENT (1974); FERNAND BRAUDEL, CIVILIZATION AND CAPITALISM: 15TH–18TH CENTURY (Siân Reynolds trans., 1982); IMMANUEL WALLERSTEIN, THE CAPITALIST WORLD-ECONOMY (1979); ELLEN MEIKSINS WOOD, EMPIRE OF CAPITAL (2003). Note that it is the state that creates "the most important of all financial markets—that in government debt." WOLF, *supra* note 17, at 17.

41. Rude, *supra* note 31, at 83.

42. *See infra* Part V (describing the international debt crises in Latin America, Asia, and Argentina).

Furthermore, the "U.S. Treasury-Wall Street-IMF Complex"[43] consistently takes advantage of international debt crises to further promote an agenda of financial liberalization.[44] In this sense, "financial instability is functional. It disciplines world capitalism."[45] In this process, developing societies are relabeled overnight as "emerging markets,"[46] neoliberal missionary institutions push free-market ideology on reluctant societies,[47] and "capital now flows upstream, from the world's poor to the richest country of all."[48] As a result of the neoliberalism promoted by finance capital institutions, whole populations are subjected to "*debt peonage*."[49] In this deadly game, the iron fist of the state and the hidden hand of the market come together to make machinations of finance capital "the real cutting edge of accumulation by dispossession on the global stage."[50]

This article aims to explore the causes and mechanics of the uneven distribution of gain and pain by locating the current Greek debt crisis in the chain of international debt crises of the last thirty years, arguing that the intensity and result of the Greek debt crisis, like the other international debt crises that preceded it, are rooted in the neoliberal reordering of global capitalism. This project necessitates a thorough

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43. I adopt the construct from Wade & Veneroso, *supra* note 36, at 18–19. Earlier, Jagdish Bhagwati had used the construct "Wall Street-Treasury complex." *See* Jagdish Bhagwati, *The Capital Myth: The Difference Between Trade in Widgets and Dollars*, 77 FOREIGN AFF., no. 3, 1998 at 7, 10–12.

44. *See* RAWI E. ABDELAL, CAPITAL RULES: THE CONSTRUCTION OF GLOBAL FINANCE 24–26 (2007); PAUL BLUSTEIN, THE CHASTENING: INSIDE THE CRISIS THAT ROCKED THE GLOBAL FINANCIAL SYSTEM AND HUMBLED THE IMF 175–205 (2001); Bhagwati, *supra* note 43, at 7–12.

45. Rude, *supra* note 31, at 82.

46. The term, initially coined by the World Bank economist Antoine van Agtmael, was popularized by the International Finance Corporation ("IFC"). When investors remained unenthusiastic about an IFC-investment-fund-styled Third World Investment Trust, the Emerging Market Growth Fund, floated in 1984, proved marketable. The new name gained broad appeal by the early 1990s. Alain Soulard, *The Role of Multilateral Financial Institutions in Bringing Developing Companies to US Markets*, 17 FORDHAM INT'L L.J. S145, S147 (1994).

47. JOSEPH E. STIGLITZ, GLOBALIZATION AND ITS DISCONTENTS 13 (2002).

48. WOLF, *supra* note 17, at 59.

49. David Harvey, *Neoliberalism as Creative Destruction*, 610 ANNALS AM. ACAD. POL. & SOC. SCI., no. 1, 2007 at 22, 36 (emphasis added).

50. *Id.* at 37. The key point of the accumulation by dispossession thesis is that the market always relies on non-market forces and processes to facilitate accumulation of capital. This is in tune with Polanyi's classic observation that "the market has been the outcome of a conscious and often violent intervention on part of government which imposed the market organization on society for non-economic ends." POLANYI, *supra* note 10, at 258. For a detailed discussion of accumulation by dispossession, see David Harvey, *The "New" Imperialism: Accumulation by Dispossession*, *in* THE NEW IMPERIAL CHALLENGE 63 (Leo Panitch & Colin Lays eds., 2003); Tayyab Mahmud, "*Surplus Humanity" and Margins of Legality: Slums, Slumdogs, and Accumulation by Dispossession*, 14 CHAP. L. REV. 1, 11–25 (2010).

examination of the genesis and operations of neoliberal reordering, which is essential to understand the causes and results of international debt crises. The neoliberal reordering was prompted by falling rates of accumulation, threats to U.S. economic hegemony, and the need to recycle global surpluses to fund fiscal and current account deficits of the United States.[51] The reordering entailed ascendency of finance capital and Americanization of global finance directed by the U.S. Treasury-Wall Street-IMF complex. The resulting unbridled international capital flows, while enhancing the returns for finance capital, have accelerated and accentuated boom and bust cycles of the world economy that were tempered by the Keynesian welfare compromise[52] and the Bretton Woods system.[53] International debt crises are then managed to advance the agenda of neoliberal restructuring of national economies, and result in wealth and asset transfers from the poor to the rich.

Part II recounts the unfolding of the 2009–2010 Greek debt crises,[54] describing the sequence of events to illustrate how the bond market pushed the Greek government to squelch economic rights enjoyed by the working classes for over a generation, while the European Union ("EU") was browbeaten to commit over USD 1 trillion to subsidize financial institutions. Part III describes the post-World War II Bretton Woods system of capital controls, which provided a measure of stability to global finance for over a generation, and then explains how the growing U.S. balance-of-payment deficits brought this system to an end.[55] Part IV analyzes the neoliberal counterrevolution to show that it was designed to secure U.S. economic hegemony through ascendency of finance capital and to roll back gains made by the working classes under the Keynesian welfare compromise.[56] Part IV also argues that neoliberalism was not a self-generating phenomenon of free markets or the result of deregulation, but that it was an elaborate reordering of U.S. and global regulatory regimes that established the legal and institutional frameworks to facilitate financialization of the global economy and ascendency of finance capital. Part V examines three major international debt crises of the neoliberal era that preceded the Greek crisis, and shows that each of these crises was caused by opportunistic channeling of access liquidity towards developing economies by financial institutions, eventually and inevitably resulting in

51. *See infra* Part III.
52. *See infra* Part III.
53. *See infra* Part III.
54. *See infra* Part II.
55. *See infra* Part III.
56. *See infra* Part IV.

impoverishment of the working and marginalized sections of societies, as well as enhancement of the power of global finance capital.[57] These crises also served as a means to force neoliberal restructuring of targeted economies. Part VI draws conclusions from the examination of international debt crises and recommends a collective moratorium on debt servicing by developing economies in order to force a reordering of the global financial system in such a way that human beings would be given priority over finance capital.[58]

II. APPEASING THE BOND GODS[59]: A MODERN GREEK TRAGEDY

Deployment of extra-economic power to secure payment of international debts is an age-old phenomenon. The means and methods of doing so, of course, have changed over time. During the colonial era, colonial powers periodically intervened militarily to enforce debt contracts.[60] In October 2009, the newly-elected Socialist government of George A. Papandreou discovered a budget deficit of 12.7 percent of GDP for 2009, more than twice what was asserted by the departing government, and four times the initial estimates. This triggered a battle between Greece and the global bond market about how to service the USD 430 billion Greek debt held by foreign banks.[61]

Rating agencies reacted to the disclosure and, led by Moody's, cut their Greek debt rating, citing the government's "crumbling finances."[62] In response, the Greek parliament quickly passed an "austerity budget,"

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57. *See infra* Part V.

58. *See infra* Part VI.

59. I adopted the expression from Paul Krugman, *Appeasing the Bond Gods*, N.Y. TIMES, Aug. 20, 2010, at A21.

60. For detailed discussions of such interventions, see FERGUSON, *supra* note 4, at 98–100; MICHAEL TOMZ, REPUTATION AND INTERNATIONAL COOPERATION: SOVEREIGN DEBT ACROSS THREE CENTURIES 114, 157 (2007); Niall Ferguson & Moritz Schularick, *The Empire Effect: The Determinants of Country Risk in the First Age of Globalization, 1880–1913*, 66 J. ECON. HIST. 283, 284 (2006); Kris James Mitchener & Marc Weidenmier, *Empire, Public Goods, and the Roosevelt Corollary*, 65 J. ECON. HIST. 658, 658–63 (2005). Such military actions include Britain in Turkey (1876) and Egypt (1882), and the United States in Venezuela (1905) and Haiti (1915). REINHART & ROGOFF, *supra* note 9, at 54. The imposition of British rule over Egypt in 1882 "practically amounted to a 'no default' guarantee" for the bond markets. FERGUSON, *supra* note 4, at 295.

61. Rachel Donadio & Niki Kitsantonis, *Greece Struggles to Tame Debt as Its People Grow More Restive*, N.Y. TIMES, Dec. 12, 2009, at A4. France, Greece's biggest creditor, holds USD 67 billion of the Greek debt. German financial institutions hold USD 37 billion; Italy USD 27 billion; followed closely by Belgium, the Netherlands, and Luxemburg. American banks hold USD 16.6 billion. Jack Ewing, *Already Holding Junk, Germany Hesitates*, N.Y. TIMES, Apr. 29, 2010, at B1.

62. David Jolly, *Moody's Joins Others in Cutting Debt Rating on Greece*, N.Y. TIMES, Dec. 23, 2009, at B2.

promising to cut public spending by 10 percent.[63] The bond market, however, was unimpressed, and Greece was "punished by the rough treatment of bond investors no longer willing to countenance soft promises of reform."[64] The European Central Bank ("ECB") told Greece not to "expect from us any special treatment," and Moody's warned that "the government knows what it needs to do."[65] Greece announced a three-year plan to reduce its budget deficit from 12.9 percent to 3 percent of GDP.[66] Corporate media recommended that "powerful countries of the European Union—like Germany—must come to the rescue."[67] The crisis started putting downward pressure on the euro, and there was speculation about a possible Greek exit from the single currency zone.[68] The ECB reiterated its no-special-treatment posture and reminded Greece that "it ha[d] to catch up on its homework."[69] While investors "worr[ied] that the crisis in Greece could touch off a domino effect across Southern Europe," European leaders remained divided on whether to involve the International Monetary Fund ("IMF") in a possible bailout.[70] Greece paid 6.22 percent to borrow money, a rate the government called "punitive."[71] Greece felt constrained to express "contrition for [past] mistakes . . . and promised to do better," and affirmed its commitment to the euro.[72] Greece needed to raise USD 50 billion before June 30, 2010 or default, while the bond market remained "skeptical that Greece [could] achieve the magnitude of required savings in the face of recession and rising social and labor unrest."[73] Pressure on the euro mounted, and rising bond rates put pressure on Germany and France to decide whether to bail out the troubled EU economies or let them default with "major

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63. Rachel Donadio, *Greece: Austerity Budget Passed*, N.Y. TIMES, Dec. 25, 2009, at A10.

64. Landon Thomas, Jr., *With Greece Teetering, the Worst May Not Be Over for Europe*, N.Y. TIMES, Dec. 31, 2009, at B1.

65. Jack Ewing, *Bank Chief Says Greece Gets No Special Treatment*, N.Y. TIMES, Jan. 15, 2010, at B4.

66. *Id.*

67. Editorial, *After Dubai*, N.Y. TIMES, Jan. 18, 2010, at A20.

68. *Europe Markets Rise Amid Rumors on Deals*, N.Y. TIMES (Jan. 19, 2010), http://www.nytimes.com/2010/01/19/business/19markets.html?dbk=&pagewanted=print.

69. Javier C. Hernandez, *Disappointing Earnings Send Markets Lower a Day After 15-Month Highs*, N.Y. TIMES, Jan. 21, 2010, at B15 (quoting European Central Bank policy maker Jürgen Stark).

70. Stephen Castle & Matthew Saltmarsh, *Rumblings of a Bailout*, N.Y. TIMES, Jan. 29, 2010, at B1.

71. *Id.*

72. Jack Ewing, *Spain, Greece and Latvia Affirm Their Commitment to the Euro*, N.Y. TIMES, Jan. 29, 2010, at B5.

73. Editorial, *The Not-So-Safe Euro Zone*, N.Y. TIMES, Feb. 2, 2010, at A26.

repercussions for Europe and financial markets worldwide."[74] Meanwhile, "markets [were] having fun testing the euro," and there was an increasing recognition that the euro's problem "ha[d] at its heart elements of a political crisis"—national or EU control over economic and fiscal policies.[75]

As the bond rates in Europe kept climbing, investors wanted to know whether governments "[would] have the stomach to push through tough reforms," and bond investors were "spending as much time analyzing the power of . . . Greek unions as they [did] the spreads on credit default swaps."[76] "[B]ond vigilantes" started challenging "weak governments to raise taxes and impose harsh spending cuts on a restive population to bring down their deficits."[77] Nobel Prize laureate Joseph Stigliz found "the investor demands . . . as lacking in merit" and reminded the markets that "[t]hese [were] democracies—not dictatorships."[78] Observers noted that Greeks viewed "welfare policies as acquired rights," and the head of the civil servants union argued that "[i]t [was] not the workers that should [have been] blamed for [the crisis]; it [was] bankers and large capital."[79]

Because European leaders did not want to turn to the IMF to bailout Greece, and the ECB was prevented from buying government bonds or offering direct support to troubled banks, their options were to guarantee Greek bonds, advance aid funds, or issue bonds on behalf of Greece.[80] Rumors that a rescue of Greece by the wealthy nations of Europe could be in the offing touched off a broad rally in European stocks, bonds, and the euro.[81] The EU President used growing alarm over debt levels to call for a new form of "*economic government*" in Europe and argued that "[w]hether it [was] called coordination of policies or economic government . . . only the European Council [was] capable of delivering and sustaining a common European strategy for

74. Floyd Norris, *Fraying at the Edges*, N.Y. TIMES, Feb. 5, 2010, at B1.

75. Steven Erlanger, *Euro Debt Crisis Is Political Test*, N.Y. TIMES, Feb. 6, 2010, at A1.

76. Landon Thomas, Jr., *Under Siege in Europe*, N.Y. TIMES, Feb. 6, 2010, at B1.

77. *Id.*

78. *Id.* Historically, dictatorships have proved more amenable to giving foreign creditors priority over citizens. For example, during the global debt crises of the 1980s, Romanian dictator Nikolai Ceausescu "single-mindedly insisted on repaying . . . the debt of $9 billion owed by his poor nation to foreign banks." REINHART & ROGOFF, *supra* note 9, at 51.

79. Landon Thomas, Jr., *Is Debt Trashing the Euro?*, N.Y. TIMES, Feb. 7, 2010, at B1.

80. Jack Ewing, *European Central Bank in a Squeeze with Hands Tied*, N.Y. TIMES, Feb. 8, 2010, at B1.

81. Javier C. Hernandez & Jack Ewing, *Talk of Assistance for Greece Propels Markets*, N.Y. TIMES, Feb. 10, 2010, at B1.

more growth and more jobs."[82] An economist warned the EU: "If you . . . encouraged the markets to believe that support [was] forthcoming and then it [was] not, we [would] see a backlash."[83] While Germany found itself "forced to help Greece remain solvent, or risk watching markets attack one weak member [of the EU] after the next," coalition partners in the Merkel government insisted that there be "no direct financial help for Greece . . . . It would send the absolutely wrong signal to other euro countries that no country has to strain to save any more."[84] The Greek government announced new plans for USD 2.75 billion in spending cuts, including a salary freeze, increased retirement age, and a higher gasoline tax, and striking civil servants pledged that they "[wouldn't] pay for the crisis! . . . Not one euro to be sacrificed to the bankers!"[85] Faced with further pressure on the euro, EU leaders promised to safeguard the euro by aiding Greece, but offered no immediate assistance and remained silent about their response as investors remained jittery about Greece.[86] The Merkel government felt domestic pressure as seven in ten Germans opposed financial support to Greece.[87] Market analysts warned that "anything that encourage[d] the sovereign[s] . . . to prevaricate over tough fiscal measures . . . would be a mistake."[88]

Regulators discovered that Goldman Sachs had helped Greece hide billions in debt from EU budget overseers.[89] Starting in 2001, Goldman Sachs, for USD 300 million in fees, had designed instruments that disguised loans as currency trades, thus hiding the size of the Greek debt.[90] The scheme amounted to "a garage sale on a national level, Greek officials essentially mortgaged the country's airports and highways."[91] While this scheme was underway, EU finance ministers,

82. Stephan Castle, *European Debt Issues Top Agenda for Meeting*, N.Y. TIMES, Feb. 10, 2010, at B9 (emphasis added).

83. Stephen Castle, *Europe Agrees to Help Greece, but Is Unsure of How*, N.Y. TIMES, Feb. 11, 2010, at B1.

84. Nicholas Kulish, *Germany, Forced to Buoy Greece, Rues Euro Shift*, N.Y. TIMES, Feb. 11, 2010, at A1.

85. Dan Bilefsky & Niki Kitsantonis, *Greek Civil Servants Strike over Austerity*, N.Y. TIMES, Feb. 11, 2010, at A3.

86. Stephen Castle, *European Leaders Vow to Aid Greece, but Skirt Details*, N.Y. TIMES, Feb. 12, 2010, at A6.

87. *Id.*

88. Rob Cox & Rolfe Winkler, *A U.S. Analogy for a Greek Fix*, N.Y. TIMES, Feb. 12, 2010, at B2.

89. Louise Story, Landon Thomas, Jr. & Nelson D. Schwartz, *Wall St. Helped to Mask Debt Fueling Europe's Crisis*, N.Y. TIMES, Feb. 14, 2010, at A1.

90. *Id.*

91. *Id.* In 2009, Goldman Sachs and Morgan Stanley also drew up a plan to overhaul the

in 2002, decided not to prohibit the use of derivatives for creative accounting.[92] The same day a bomb exploded at JPMorgan Chase's offices in Athens, EU officials asked Greece to "immediately explain how the government used complex financial tactics engineered by Wall Street to mask its rising debt."[93] Bets against Greece, made by some of the same banks that had helped Greece shroud its mounting debt, "alarm[ed]" bond investors and escalated the financial crisis.[94] A sovereign bond index fund, iTraxx SovX Western Europe, launched in September 2009, "let traders gamble on Greece shortly before the crisis. . . . [D]erivatives ha[d] assumed an outsize role in Europe's debt crisis."[95] A financial expert opined, "The iTraxx SovX did not create the situation, but it ha[d] exacerbated it. . . . Credit-default swaps [gave] the illusion of safety but actually increase[d] systemic risk."[96] Another expert termed credit derivatives "the most dangerous instruments yet," and added that "[i]nnovation has now cost us $7 trillion. . . . That's a pretty high price to pay for innovation."[97] Given how such instruments had been used, Federal Reserve Chairman Ben Bernanke shared his view that "it's 'counterproductive' to use credit default swaps to crash an institution or a nation exhibits a certain naiveté about how the titans of finance operate now."[98] The U.S. Federal Reserve disclosed that it was investigating Goldman Sachs and the other banks that helped Greece mask its debt.[99] Calls for a crackdown on derivatives increased as an August 2009 confidential Goldman Sachs report surfaced that had advised its clients to "buy CDS [credit default swaps] of developed countries" months before the Greek debt became a big story in financial markets.[100] Greece called on the United States and EU to "crack down on speculative trading, arguing that exotic bets had driven up Greece's

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Greek railway system. Landon Thomas, Jr. & Niki Kitsantonis, *Rail System in Greece Adds to Debt*, N.Y. TIMES, July 21, 2010, at B1. The plan involved laying off half of the system's 7,000 workers and having the government take over half of the company's 8 billion euros in debt. *Id.*

92. Story et al., *supra* note 89, at A1.

93. Stephen Castle, *Pressure Rises on Greece to Explain and Fix Crisis*, N.Y. TIMES, Feb. 17, 2010, at B3.

94. Nelson D. Schwartz & Eric Dash, *Banks Bet Greece Defaults on Debt They Helped Hide*, N.Y. TIMES, Feb. 25, 2010, at A1.

95. *Id.*

96. *Id.*

97. Gretchan Morgenson, *It's Time for Swaps to Lose Their Swagger*, N.Y. TIMES, Feb. 28, 2010, at B1.

98. *Id.*

99. Nelson D. Schwartz & Sewell Chan, *As Greek Crisis Appears to Deepen, Fed Studies Wall St.'s Activities*, N.Y. TIMES, Feb. 26, 2010, at B1.

100. Lynnley Browning & Matthew Saltmarsh, *Calls Increase for Crackdown on Derivatives*, N.Y. TIMES, Mar. 10, 2010, at B1.

borrowing costs and threatened its effort to ease its debt crisis."[101] A hedge fund investor characterized inquiries into questionable hedge fund activities as "witch hunts."[102]

Faced with growing opposition in Germany towards a bailout of Greece, the EU again refused to specify measures to help Greece and the euro.[103] The EU proposed new powers for Eurostat, the European statistical agency, to audit books of national governments, a regime that would constitute "a significant erosion of sovereignty."[104] Crowds in a twenty-four hour general strike that paralyzed Greece chanted "hands off our pension funds" and wondered "what else are they going to cut, the air that we breathe?"[105] Moody's and Standard & Poor's warned that they might again downgrade Greek government bonds.[106] The EU's commissioner for monetary affairs said that Greece's austerity measures, though not adequate, were steps "in the right direction."[107] The head of the main Greek labor union, however, characterized these measures as "a cause for war."[108] Calling them "painful decisions," Greece announced that it was studying a new series of austerity measures.[109] Investors welcomed the news that Greece would raise taxes and cut spending by USD 6.5 billion this year, and derivative traders turned their attention to other vulnerable economies in Europe.[110] Greece raised USD 6.8 billion in the bond market at 6.37 percent, twice the rate on comparable German bonds; this suggested that

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101. Sewell Chan & Jack Ewing, *Greece Fumes at Speculators, and Backs a New Monetary Fund*, N.Y. TIMES, Mar. 9, 2010, at B3.

102. Nelson D. Schwartz & Graham Bowley, *Traders Turn Attention to the Next Greece*, N.Y. TIMES, Mar. 4, 2010, at B1.

103. Nicholas Kulish, *Germans Upset over Helping Greece*, N.Y. TIMES, Feb. 16, 2010, at A4.

104. Stephen Castle & Matthew Saltmarsh, *Greece Struggles to Win Europe's Trust in Its Deficit-Cutting Plan*, N.Y. TIMES, Feb. 16, 2010, at B3.

105. Niki Kitsantonis, *Greeks Strike for 2nd Time Against Steps to Cut Deficits*, N.Y. TIMES, Feb. 25, 2010, at A13. In its 2009 annual report on Greece, the IMF warned that "excessive pension and health care payments to the elderly" would result in a debt level of 800 percent of GDP by 2050. Landon Thomas, Jr., *Retiring at 50? Greek Trend Is a Cautionary Tale*, N.Y. TIMES, Mar. 12, 2010, at A1. A similar calculation for the United States estimates the true measure of federal debt, incorporating Medicare, Medicaid, Social Security, and other obligations at USD 79 trillion, or about 500 percent of GDP. *Id.*

106. Schwartz & Chan, *supra* note 99, at B1.

107. Niki Kitsantonis, *Greece Is Urged to Make More Budget Cuts*, N.Y. TIMES, Mar. 2, 2010, at B3 (quoting Olli Rhen, the commissioner for monetary affairs at the European Union) (internal quotation marks omitted).

108. *Id.* (quoting Yiannis Panagopoulos, the head of Greece's main labor union) (internal quotation marks omitted).

109. Niki Kitsantonis, *Greece Plans New Austerity Measures to Cut Debt*, N.Y. TIMES, Mar. 3, 2010, at B3.

110. Schwartz & Bowley, *supra* note 102, at B1.

"once-reluctant governments [were] now heeding market warnings and taking the political risks necessary to carry out tough fiscal measures."[111]

In a "game of brinkmanship," Greece "threatened to turn to the [IMF] for a bailout" if Merkel and other European politicians resisted pledging aid to help Greece "cope with its newfound frugality."[112] As protesters clashed with police in Athens, the Merkel government, feeling vulnerable in the upcoming election because of widespread opposition to helping Greece, made no public offer of support after Merkel's meeting with the Greek prime minister.[113] German politicians suggested the Greeks consider "plugging the large hole in their budget by selling off some of their lovely islands."[114] Greece said it "would not rule out turning to the I.M.F. for assistance."[115] The European Commission, "wary of I.M.F. involvement" in the Greek crisis, endorsed a German proposal for a "European monetary fund" to head off future debt crises.[116]

The EU announced a mechanism to help Greece that would not include loan guarantees but would involve "coordinated European action, which [would] make bilateral aid available."[117] Standard & Poor's affirmed Greece's long-term credit rating of BBB+ but warned of a negative outlook.[118] Merkel demanded that the "turnaround . . . come from Greece" and warned about the possibility of excluding the country from the euro zone for the non-fulfillment of fiscal obligations.[119] Greece's benchmark ten-year bonds climbed to 6.265 percent as Germany signaled that assistance for Greece should come

111. Landon Thomas, Jr. & David Jolly, *Big Bond Sale Eases Pressure on Greece*, N.Y. TIMES, Mar. 5, 2010, at B1.

112. Swell Chan & Liz Alderman, *I.M.F. Help for Greece Is a Risky Prospect*, N.Y. TIMES, Mar. 5, 2010, at B1.

113. Nicholas Kulish, *Germany Offers No Financial Help to Ailing Greece*, N.Y. TIMES, Mar. 6, 2010, at A6.

114. Nicholas Kulish, *A Chorus of Strum, Drang and Pathos*, N.Y. TIMES, Mar. 7, 2010, at WK4.

115. Chan & Ewing, *supra* note 101, at B3.

116. *Id.*

117. Stephen Castle, *Europe Creates an Apparatus to Provide Loans to Greece*, N.Y. TIMES, Mar. 16, 2010, at B2.

118. Stephen Castle, *Greece Eager for Details on Loans from Europe*, N.Y. TIMES, Mar. 17, 2010, at B3. Bond credit ratings assess the credit worthiness of borrowers, analogous to credit ratings for individuals. They are assigned by credit rating agencies and have letter designations (e.g., AAA, B, CC) that represent the quality of a bond; the higher the rating, the lower the risk of default. Bonds with ratings below BBB/Baa are considered not investment grade and are colloquially called "junk bonds."

119. Jack Ewing, *Merkel Urges Tougher Rules for Euro Zone*, N.Y. TIMES, Mar. 18, 2010, at A12 (quoting Chancellor Angela Merkel of Germany) (internal quotation marks omitted).

from the IMF rather than Europe.[120] With Germany reluctant to be part of any package that appeared to be a bailout of Greece, the IMF was more likely to lead any rescue efforts.[121] Given the important U.S. role in the IMF, the Fund's involvement remained "neuralgic" for the Europeans, who believed that "if they [couldn't] come up with a European solution, it [would] undermine the credibility of the euro zone as a whole."[122] The EU agreed on a financial safety net for Greece that would take effect if the Greek government was unable to borrow in the commercial markets and called for the European Council to become a form of "*economic government*" for the European Union. After objection from many countries about the implied loss of sovereignty, the wording was changed to "*economic governance*" in the final English version.[123]

Greece was able to raise another USD 6.7 billion in the bond market at a 6 percent interest rate.[124] The Greek government announced that due in part to austerity measures, the Greek economy would contract 3 percent in 2010.[125] The yield of the Greek bonds pushed over 7 percent for the first time in two months.[126] As Greek bond yields continued to climb, it became apparent that "the end game [was] an I.M.F. program, and the end game [was] getting closer."[127] Investors remained suspicious of the European assistance package, suspecting that "it was designed to fob off the market and buy everyone time."[128] Greek bond yields continued to rise even as the head of the ECB said that Greece would not be allowed to default.[129] With Greek bond yields reaching as

120. Matthew Saltmarsh & Nelson D. Schwartz, *Germany, in a Reversal, Says Greece Should Turn to I.M.F.*, N.Y. TIMES, Mar. 19, 2010, at B1.

121. Stephen Castle, *I.M.F. Is More Likely to Lead Efforts for Aid to Greece*, N.Y. TIMES, Mar. 23, 2010, at B2.

122. Steven Erlanger, *With Greece Struggling, Europe Looks Uneasily at the I.M.F.*, N.Y. TIMES, Mar. 25, 2010, at A6 (quoting Philip Whyte, an economist at the Center for European Reform in London) (internal quotation marks omitted).

123. Stephan Castle & Matthew Saltmarsh, *Europeans Reach Deal on Rescue for Greece*, N.Y. TIMES, Mar. 26, 2010, at B1 (emphasis added).

124. David Jolly, *In Crucial Test, Greece Raises $6.7 Billion with Sale of Bonds*, N.Y. TIMES, Mar. 30, 2010, at B3.

125. David Jolly, *Optimism and Doubt Feed a Dual over Greece*, N.Y. TIMES, Apr. 1, 2010, at B3.

126. Javier C. Hernandez, *Optimism on Low Interest Rates Offsets Worry over Greece*, N.Y. TIMES, Apr. 7, 2010, at B8.

127. Nelson D. Schwartz, *Greek Bond Yields Soar in Sell-Off*, N.Y. TIMES, Apr. 7, 2010, at B1 (quoting Marco Annunziata, Chief Economist for UniCredit) (internal quotation marks omitted).

128. Matthew Saltmarsh & Niki Kitsantonis, *Pressure Builds on Greece as Europe Delays Details on Crisis Help*, N.Y. TIMES, Apr. 8, 2010, at B11.

129. Matthew Saltmarsh, *Head of European Central Bank Says Greece Will Not Be Allowed*

high as 7.5 percent, it appeared that "[t]he market [was] testing Europe's resolve,"[130] and that this was "no longer about liquidity; it [was] a solvency issue."[131] As Greece approached "the point of no return," the only way out appeared to be "*savage spending cuts and tax increases . . . . No wonder, then, that bond markets [were] losing confidence, and pushing the situation to the brink*."[132] Europe offered USD 40 billion in aid to Greece at a 5 percent interest rate, and the IMF offered another USD 20 billion at an even lower rate.[133] As frustration grew over Germany's harsh handling of the Greek debt crisis, a German scholar claimed: "We sublimated hegemony, . . . [b]ut we're dropping sublimation now."[134]

With its "monster [rescue] package," the IMF "[was] back at the peak of its power and relevance."[135] However, investors "largely shrugged off" the package, claiming that "many of the details had already been priced into markets."[136] Investors "enthusiastically snapped up" USD 2.12 billion Greek short-term securities at rates more than double those that Greece paid in January on similar maturities.[137] While Greek bond yields hovered around 7.3 percent, speculators began to "zero in" on Portugal's debt.[138] Greek bond yields closed at 7.6 percent, and "the market want[ed] it clearly pinned down that the [rescue] money [was] there and ready to go."[139] Greek bond yields climbed to 7.85 percent, and the yield-gap over comparable German bonds rose to a record 4.76

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to Default, N.Y. TIMES, Apr. 9, 2010, at B8.

130. Landon Thomas, Jr., *Running Out of Time in Greece*, N.Y. TIMES, Apr. 9, 2010, at B1 (quoting a senior official in the Greek government) (internal quotation marks omitted).

131. *Id.* (quoting Stephen Jen, a former economist at the IMF) (internal quotation marks omitted).

132. Paul Krugman, *Learning from Greece*, N.Y. TIMES, Apr. 9, 2010, at A27 (emphasis added).

133. Stephan Castle & Jack Ewing, *Europe Unites to Assist Greece with Line of Aid*, N.Y. TIMES, Apr. 12, 2010, at A1.

134. Steven Erlanger, *Germany Asserts Its Interests as Greek Debt Crisis Unfolds*, N.Y. TIMES, Apr. 13, 2010, at A4 (quoting Ulrike Guérot, a senior research fellow with the European Council on Foreign Relations) (internal quotation marks omitted).

135. Christopher Swann & Nicholas Paisner, *History Is Hardly on Greece's Side*, N.Y. TIMES, Apr. 13, 2010, at B2.

136. Javier C. Hernandez, *Move to Aid Greece Helps Dow Close Above 11,000*, N.Y. TIMES, Apr. 13, 2010, at B1.

137. Jack Ewing & David Jolly, *Some Respite for Greece in Successful Debt Sale*, N.Y. TIMES, Apr. 14, 2010, at B5.

138. Landon Thomas, Jr., *Debt Worries Shift to Portugal, Spurred by Rising Bond Rates*, N.Y. TIMES, Apr. 16, 2010, at B1.

139. Matthew Saltmarsh, *Greece's Uncertain Future Weighs on Bond Market*, N.Y. TIMES, Apr. 20, 2010, at B3 (quoting David Schnautz, a strategist at Commerzbank in Frankfurt) (internal quotation marks omitted).

percent.[140] Eurostat raised its estimate of the Greek budget deficit for 2009 to 13.6 percent of GDP; the Greek debt-to-GDP ratio now stood at 115.1 percent.[141] With the yield on Greek bonds at nearly 9 percent, the Greek prime minister described his country's economy as "a sinking ship" and formally requested an international bailout.[142] Chancellor Angela Merkel of Germany insisted that Greece first had to negotiate "a credible savings program,"[143] and a German lawmaker believed the program "*ha[d] to hurt*."[144] Merkel insisted that Greece accept "hard measures" for three years as specified in the IMF program.[145] In turn, a restructuring of the Greek debt became likely.[146] The EU and IMF package did "little to calm the markets," while Standard & Poor's cut Greece's debt to junk level, warning that bondholders could face losses of up to 50 percent in a restructuring.[147] The IMF increased its package to USD 160 billion.[148] Merkel, her "hand . . . forced by mistrustful credit markets and the ratings agency that downgraded Spain, Portugal, and Greece in a matter of just two days," now said that negotiations with Greece "had to be accelerated and that Germany would do its part to safeguard the euro."[149]

Merkel's "foot-dragging" gave markets "both reason and room to run up the price of Greek debt to unsustainable levels."[150] Observers found it "astonishing" that a German regional election "[could] play such a disproportionate role in messing up efforts to contain what was a much

140. David Jolly, *Greece Sells Bills, but Prospects Are Dim*, N.Y. TIMES, Apr. 21, 2010, at B2.

141. Matthew Saltmarsh, *A Setback for Greece as Europe Says Deficit Is Larger than Thought*, N.Y. TIMES, Apr. 23, 2010, at B1.

142. Niki Kitsantonis & Matthew Saltmarsh, *Greece, Out of Ideas, Requests Global Aid*, N.Y. TIMES, Apr. 24, 2010, at B1.

143. Editorial, *Greece and Who's Next?*, N.Y. TIMES, Apr. 24, 2010, at A18 (emphasis added) (quoting Chancellor Angela Merkel of Germany) (internal quotation marks omitted).

144. *Id.* (emphasis added) (quoting Georg Nuesslein, a lawmaker in Merkel's governing coalition) (internal quotation marks omitted).

145. Judy Dempsey & Matthew Saltmarsh, *Confidence About Greek Debt Falters in Germany*, N.Y. TIMES, Apr. 27, 2010, at B1 (quoting Chancellor Angela Merkel of Germany) (internal quotation marks omitted).

146. Jack Ewing, *Best Hope for Greece: Minimize the Losses*, N.Y. TIMES, Apr. 26, 2010, at B1.

147. Landon Thomas, Jr., *Financial Fears Grow in Europe over Greek Debt*, N.Y. TIMES, Apr. 28, 2010, at A1.

148. Landon Thomas, Jr. & Nicholas Kulish, *I.M.F. Promises More Aid for Greece as European Crisis Grows*, N.Y. TIMES, Apr. 29, 2010, at A1.

149. Nicholas Kulish, *Ripples from Greek Crisis Speed Up Merkel's Pace*, N.Y. TIMES, Apr. 29, 2010, at A12.

150. Steven Erlanger, *In Debt Crisis, Europe's Latest Drama, Leaders Are Offstage*, N.Y. TIMES, Apr. 30, 2010, at A1.

smaller crisis several months ago."[151] An economist claimed that "*the I.M.F. [was] the last man standing* and [was] structuring the program."[152] In return for USD 160 billion over three years, the IMF demanded that Greece cut public sector spending by eight billion euro in fourteen months, raise value-added tax to 25 percent, freeze civil servants' wages, eliminate public sector bonuses amounting to two months' pay, adopt measures making it easier to lay off public sector workers, and privatize health care, transportation, and energy sectors.[153] Tens of thousands of Greeks took to the streets to protest these austerity measures.[154] Some economists expressed fear that "*such harsh measures risk[ed] killing the patient*."[155] Others pointed out that "*unfortunately for economists, there is democracy* . . . . If you impose too strict a program, the population will refuse."[156] Germany approved its share of the Greek bailout, and ECB said that it would accept Greek bonds as collateral regardless of any future downgrades.[157] Despite the "supersize" bailout, the yield on two-year Greek bonds rose to 14 percent, under the "logic" that "Greece still has to go through wrenching cuts and may still end up restructuring its debt which could force current bondholders to take a haircut."[158] Speaking about the impact of the Greek bailout on the prospects of the euro, an economist opined that "[i]t is not really about money, . . . *[i]t is about how much pain the people in periphery can stand in order to keep this thing going*."[159] Three people were killed as continuing protests in Athens turned violent.[160] The bond market expressed disappointment that ECB

151. *Id.* (quoting Jacob Kirkegaard, a research fellow in European affairs and structural reform at the Peterson Institute for International Economics) (internal quotation marks omitted). There was an alarm that "[t]he Greek debt crisis [was] spreading. Europe need[ed] a bolder solution—and quickly." *Acropolis Now*, ECONOMIST, May 1, 2010, at 11.

152. Erlanger, *supra* note 150, at A1 (emphasis added).

153. Dan Bilefsky & Landon Thomas, Jr., *Aid Terms Include Higher Taxes and Cuts in Jobs and Pay*, N.Y. TIMES, May 1, 2010, at B1.

154. Dan Bilefsky, *Greeks Take to Streets to Protest Cutbacks*, N.Y. TIMES, May 2, 2010, at A20.

155. Steven Erlanger, *In Bitter Pill, No Sure Cure*, N.Y. TIMES, May 3, 2010, at A1 (emphasis added).

156. *Id.* at A3 (quoting Jean-Paul Fitoussi, a professor of Economics at the Institut d'Etudes Politiques in Paris) (internal quotation marks omitted).

157. Judy Dempsey & Jack Ewing, *Germany Approves Assistance for Greece*, N.Y. TIMES, May 4, 2010, at B4.

158. Antony Currie, Nicholas Paisner & Agnes T. Crane, *Trading Desks Keep Churning*, N.Y. TIMES, May 5, 2010, at B2.

159. Landon Thomas, Jr., *Bold Stroke May Be Beyond Europe's Means*, N.Y. TIMES, May 6, 2010, at B1 (emphasis added) (quoting Timothy Congdon, an economist and professed euro skeptic) (internal quotation marks omitted).

160. Dan Bilefsky, *3 Reported Killed as Violent Groups Overtake Athens Protest*, N.Y.

did not decide to buy the Greek bonds itself as part of the rescue package, and bond yields rose across Europe.[161] Greece's problems were deemed "deeper than Europe's leaders [were] willing to acknowledge," and the possibility of Greece leaving the euro zone remained.[162] Investors were now focused on the risk to European banks if severe budget cuts in crisis-ridden countries froze credit markets and caused a double-dip recession—"the risk [was] that the periphery [would] pull[]down the rest of Europe."[163] Ripple effects of the Greek debt crisis started "affecting the broader global economy," including the ability of Asian firms to raise money and U.S. banks that have USD 3.6 trillion exposure to European banks.[164]

Finally, EU leaders reached an "extraordinary agreement"[165] to provide a rescue package of USD 1 trillion—"*a financial bazooka*"—to stop the spreading debt crisis.[166] The IMF and EU hoped that the sum, which could rise to "more than a quarter of the bloc's gross domestic product [would] prevent troubled institutions from falling."[167] The new plan came after "some not so subtle prodding" from President Obama, worried about the threat of the debt crisis to "the still-fragile" recoveries in the United States and Asia.[168] The Greek bailout is likely to follow the model of the World Bank and IMF bailout of Russia after the 1998 default—"taxpayers paying for the bailout while investors in Greek debt are largely made whole."[169] The IMF's rescue package precluded the option of debt restructuring that "would have been a way to blunt some of the pain Greeks are feeling and shift some of the burden to bankers who made irresponsible loans in the first place."[170] ECB bought 16.5

TIMES, May 6, 2010, at A6.

161. Jack Ewing, *European Bank's Assurances Fail to Placate Investors*, N.Y. TIMES, May 7, 2010, at B1.

162. Paul Krugman, *A Money Too Far*, N.Y. TIMES, May 7, 2010, at A27.

163. Jack Ewing, *Risk to European Banks Seen in Austerity Programs*, N.Y. TIMES, May 8, 2010, at B6 (quoting Stefan Kolek, a debt analyst at UniCredit in Munich) (internal quotation marks omitted).

164. Nelson D. Schwartz & Eric Dash, *Greek Debt Woes Ripple Outward, From Asia to U.S.*, N.Y. TIMES, May 9, 2010, at A1.

165. Christine Hauser, *Stocks Soar After Europe Announces Rescue Plan*, N.Y. TIMES, May 11, 2010, at B1.

166. *Id.* at B8 (emphasis added) (quoting Justin Golden, a senior strategist for Marco Risk Advisors) (internal quotation marks omitted).

167. Jack Ewing & Matthew Saltmarsh, *Doubts Persist as Most European Banks Pass Stress Test*, N.Y. TIMES, July 24, 2010, at B4.

168. Steven Erlanger, Katrin Bennhold & David E. Sanger, *After Half Steps, Major Rescue Took a Nudge from Washington*, N.Y. TIMES, May 11, 2010, at A1.

169. Andrew E. Kramer, *The Euro in 2010 Feels Like the Ruble in 1998*, N.Y. TIMES, May 12, 2010, at B4.

170. Landon Thomas, Jr., *I.M.F. Plays Deal Maker in Europe*, N.Y. TIMES, May 12, 2010, at

billion euro in bonds taking the unprecedented step of intervening in markets to halt a sell-off of Greek and other European debt.[171] Historians "will likely look back to May 9 as a turning point," when European leaders announced the USD 1 trillion in guarantees to deal with the debt crisis in Europe.[172] The Greek pledge to slash its budget deficit by more than 10 percent of GDP by 2014 was characterized as "a recipe for economic stagnation. . . . [D]ebt restructuring [was] inevitable."[173] Greece announced plans for "a big sale of state-owned assets," including 49 percent of the state railroad, 39 percent of the post-office, minority stakes in water utilities, listing ports and airports on the stock market, and privatizing casinos.[174] Moody's now downgraded Greece's credit rating to junk status.[175] A fifth general strike ground Greece to a halt.[176] The Greek parliament, by a vote of 157–134, "forc[ed] through a pension bill that would sharply pare down the country's welfare state by increasing the retirement age and reducing benefits."[177] The drafters called this bill, which also made it easier for companies to fire workers, "our passport out of hell."[178] Since most Greek debt is held abroad, roughly 80 percent of the budget savings go straight to foreign bondholders.[179] Perceptive economists believe that because the bailout requires draconian fiscal adjustments, prolongs the

B1, B4.

171. Jack Ewing, *Central Bank Buys Billions in European Debt*, N.Y. TIMES DEALBOOK (May 18, 2010, 2:14 AM), http://dealbook.nytimes.com/2010/05/18/central-bank-buys-billions-in-european-debt/. The Maastricht Treaty expressly prohibits such bailouts, and this prohibition has been reaffirmed by the German Constitutional Court. *See* George Soros, *The Euro and the Crisis*, N.Y. REV. BOOKS, Aug. 19, 2010, at 28, 29 (discussing how the Maastricht Treaty's prohibitions have made the current crisis in Greece difficult to deal with).

172. Gabot Steingart, *It Takes a Crisis to Make a Continent*, N.Y. TIMES, May 22, 2010, at A17.

173. Op-Ed., *Europe's Endangered Banks*, N.Y. TIMES, May 30, 2010, at WK7.

174. David Jolly, *Greece to Sell Assets to Help Pay Down Deficit*, N.Y. TIMES DEALBOOK (June 3, 2010, 2:52 AM), http://dealbook.nytimes.com/2010/06/03/greece-to-sell-assets-to-help-pay-down-deficit/.

175. Christine Hauser, *Greece's Rating Is Cut, and the Markets Ebb*, N.Y. TIMES, June 15, 2010, at B7.

176. Niki Kitsantonis, *World Briefing Greece: Workers' Strike Halts Public Services and Transportation*, N.Y. TIMES, June 30, 2010, at A8.

177. Landon Thomas, Jr. & Niki Kitsantonis, *Greece Approves Pension Overhaul Despite Protests*, N.Y. TIMES, July 8, 2010, at B1.

178. *Id.* (quoting Yannis Stournaras, an economist in Athens) (internal quotation marks omitted).

179. Peter Boone & Simon Johnson, *It's Not About Greece Anymore*, N.Y. TIMES ECONOMIX (May 6, 2010, 6:11 AM), http://economix.blogs.nytimes.com/2010/05/06/its-not-about-greece-anymore/.

country's recession, and leaves the country with a debt-to-GDP ratio of 148 percent by 2016, Greece's "best option" is an "orderly default."[180]

As the long hot summer of 2010 came to a close, the Greek debt stood at 114 percent of its GDP.[181] By 2040, Greece would have to spend 20 percent of its GDP to simply service this debt.[182] The rescue package has "not paid down one penny. [It is] just moving around a big pile of debt."[183] Even with interest rates around the world "stuck to the floor," Greece had to pay 11 percent on its five-year bonds, while Germany paid 1.4 percent.[184] A team from the IMF and EU was in Athens "to examine the government's progress."[185] An "extremely imperfect" stress test of European banks conducted by European regulators did not test banks' ability to survive a default by Greece.[186] The bond market remained skeptical about the ability of Greece and other debt-ridden economies in Europe to "manage their debts long term."[187] Many European officials, including the French president, believed that Europe's banking problems and sovereign debt crisis were "largely the creation of speculators out to make a profit."[188] This Greek tragedy underscores that borrowing from the bond market to make up budgetary shortfalls rather than relying on taxation has a profound impact on public policies and accountability as the state becomes beholden to capital-owning classes, particularly the bond market.[189] The developments surrounding the Greek debt crisis also substantiate

180. Nouriel Roubini, *Greece's Best Option Is an Orderly Default*, FIN. TIMES (June 28, 2010, 10:56 PM), http://www.ft.com/cms/s/0/a3874e80-82e8-11df-8b15-00144feabdc0.html #axzz16FQi4BGo.

181. Christopher Swann & Nicholas Paisner, *History Is Hardly on Greece's Side*, N.Y. TIMES, Apr. 13, 2010, at B2.

182. Ferguson, *supra* note 26, at 8.

183. Javier C. Hernandez, *Dow Finishes Above 11,000*, N.Y. TIMES, Apr. 13, 2010, at B1 (quoting Phillippe Gijsels, head of research at BNP Paribas) (internal quotation marks omitted).

184. Floyd Norris, *Interest Rates Stuck to Floor*, N.Y. TIMES, Aug. 16, 2010, at A1, A3.

185. Thomas & Kitsantonis, *supra* note 177, at B1.

186. Jack Ewing, *Despite Flaws, Stress Tests May Satisfy Markets*, N.Y. TIMES, July 26, 2010, at B3 (quoting Nicolas Véron, a visiting fellow at the Peterson Institute for International Economics in Washington) (internal quotation marks omitted).

187. Matthew Saltmarsh, *Default Fears Return to European Debt*, N.Y. TIMES, Aug. 26, 2010, at B3.

188. Ewing, *supra* note 186, at B3.

189. According to the head of PIMCO, the largest bond fund in the world, "bond markets have power because they're the fundamental base for all markets. The cost of credit, the interest rate [on a benchmark bond], ultimately determines the value of stocks, homes, all asset classes." FERGUSON, *supra* note 4, at 68 (quoting PIMCO CEO Bill Gross). Historically, bondholders are the capital-owning classes and constitute a very small minority of the population. *See id.* at 73, 100 (noting that bond purchasers must have large amounts of ready capital that they are willing to risk).

that in the face of unbridled global mobility of finance capital, governments increasingly are "hostages to financial-market sentiments, [and] compelled to take account of investor concerns at every turn."[190] The thesis that unchecked international capital flows result in "dramatically more regressive income distribution and an effective veto over public policy" came to fruition in the Greek crisis.[191]

All this raises profound questions about the architecture and architects of the global financial system, the patterns of distribution of gain and pain that issue from international capital flows, and the role of international debt crises in this schema. It also raises issues regarding the asymmetrical sovereignty of states and the representative nature and accountability of political orders. Finally, it brings into relief accumulation by dispossession, an enduring feature of capitalism whereby markets always rely on non-market legal and extra-legal forces to augment capital accumulation by impoverishing subordinated classes.[192] To address these questions, an examination of the genesis of the current global financial order is warranted. The first step in that task is to examine the Bretton Woods system that governed the international capital flows for three decades after World War II, and the demise of

190. Benjamin J. Cohen, *Phoenix Risen: The Resurrection of Global Finance*, 48 WORLD POL. 268, 286 (1996).

191. *Id.* Historically, increase in the mobility of taxable property had always forced political authorities to "bargain with those who possess property rights over the moveable tax base and to share with them formal control over the conduct of public affairs." Robert H. Bates & Da-Hsiang Donald Lien, *A Note on Taxation, Development, and Representative Government*, 14 POL. & SOC'Y 53, 57 (1985). A study of four European welfare states demonstrated that "as business and finance became more mobile, their power resources increased, and those of labor decreased," and governments "lost the ability to carve out national economic strategies and to sustain social accords." PAULETTE KURZER, BUSINESS AND BANKING: POLITICAL CHANGE AND ECONOMIC INTEGRATION IN WESTERN EUROPE, at viii (1993). The result is "the abandonment of policies traditionally associated with social democracy—including numerous entitlement programs; redistributive income policies; and consensual tripartite exchanges among business, labor, and government." Cohen, *supra* note 190, at 286; *see also* Jonathon W. Moses, *Abdication from National Policy Autonomy: What's Left to Leave?*, 22 POL. & SOC'Y 125, 125–26 (1994) (examining the tension between global financial integration and social democracy).

192. For detailed analyses of the unavoidable relation between the market and non-market forces, see DAVID HARVEY, THE NEW IMPERIALISM 137–82 (2003) (noting the importance of primitive accumulation to economic hegemony); MICHAEL PERELMAN, THE INVENTION OF CAPITALISM: CLASSICAL POLITICAL ECONOMY AND THE SECRET HISTORY OF PRIMITIVE ACCUMULATION 25–37 (2000) (describing the centrality of primitive accumulation to the emergence and consolidation of capitalism); Jim Glassman, *Primitive Accumulation, Accumulation by Dispossession, Accumulation by 'Extra-Economic' Means*, 30 PROGRESS HUM. GEOGRAPHY 608, 608–09 (2006) (discussing the political implications of primitive accumulation); Michael Perelman, *Primitive Accumulation from Feudalism to Neoliberalism*, 18 CAPITALISM NATURE SOCIALISM, no. 2, 2007 at 44, 54 (describing the role of primitive accumulation from early capitalism to the neoliberal phase).

which furnished the grounds for the neoliberal architecture of global finance.

III. BRETTON WOODS SYSTEM AND ITS COLLAPSE

By the end of World War II, the center of gravity of global capitalism and military power had decisively shifted to the United States. At this point, as Dean Acheson put it, "only the U.S. had the power to grab hold of history and make it conform."[193] A new imperial economic order had to be designed to overcome the earlier fragmentation of global capitalism into rival empires and to facilitate U.S. economic penetration and close institutional linkages with other advanced capitalist states. The United States proceeded to "conjugate its *particular* power with the *general* task of coordination."[194] A critical step in this direction was to choose an enabling global financial architecture. The preference of U.S. finance capital had been articulated in the 1942 joint statement of the editors of *Fortune*, *Time*, and *Life* magazines. It called for a "new American imperialism" whose goal would be "to promote and foster private enterprise, by removing barriers to its natural expansion," by creating "an expansionist context in which tariffs, subsidies, monopolies, restrictive labor rules . . . and all other barriers to further expansion can be removed," with "universal free trade" as "the ultimate goal of a rational world."[195] Managers of the U.S. state, however, remained mindful of the instability and conflict that unregulated global capital markets had engendered in the pre-World War I era, and the havoc global financial mismanagement had unleashed in the inter-war period.[196]

193. WILLIAM APPLEMAN WILLIAMS, EMPIRE AS A WAY OF LIFE 185 (1980). This understanding of omnipotence appears to be an enduring feature of U.S. foreign policy establishment. Madeleine Albright claimed that the United States is "the author of history." PETER GOWAN, A CALCULUS OF POWER: GRAND STRATEGY IN THE TWENTY-FIRST CENTURY 137 (2010). In her first major foreign policy address, Hillary Clinton cited with approval Tom Paine's statement that "We have within our power to begin the world over again," and went on to declare, "Today . . . we are called upon to use that power." Sec'y of State Hillary Rodham Clinton, Foreign Policy Address at the Council on Foreign Relations (July 15, 2009), *available at* http://www.state.gov/secretary/rm/2009a/july/126071.htm.

194. Perry Anderson, *Force and Consent*, 17 NEW LEFT REV. 5, 20 (2002). For a detailed analysis, see MICHAEL HUDSON, SUPER IMPERIALISM: THE ECONOMIC STRATEGY OF AMERICAN EMPIRE 137–44 (1971).

195. *An American Proposal*, FORTUNE MAG., May 1942, at 59–63.

196. This critical posture towards finance capital is captured by Louis Brandeis in 1914: "The dominant element in our financial oligarchy is the investment banker." LOUIS BRANDEIS, OTHER PEOPLE'S MONEY, AND HOW THE BANKERS USE IT 4 (1914); *see also* Jefferey Rosen, *Why Brandeis Matters: The Constitution and the Crash*, NEW REPUBLIC, July 22, 2010, at 19 (discussing Brandeis' critique of big business and finance). For the inter-war havoc in global finance, see BARRY EICHENGREEN, GLOBALIZING CAPITAL: A HISTORY OF THE INTERNATIONAL

Faced with the tasks of reconstruction of Europe and Japan, containment of the socialist bloc, and management of decolonization in the Global South, the emerging Keynesian consensus of the post-depression era appeared the right road to take. A cautious posture towards finance capital, and the comprehensive war-time controls over currency and capital flows furnished the backdrop of the new global financial architecture institutionalized at Bretton Woods.[197] U.S. Treasury Secretary Henry Morgenthau articulated the agenda as seeking a "New Deal in international economics," and "driving the usurious money lenders out of the temple of international finance."[198] Economist Arthur Bloomfield, writing in 1946, captured the posture well:

> It is now highly respectable doctrine, in academic and banking circles alike, that a substantial measure of direct control over private capital movements, especially of the so-called hot money varieties, will be desirable for most countries not only in the years immediately ahead but also in the long run as well. . . . This doctrinal volte-face represents a widespread disillusionment resulting from the destructive behavior of the movements in the interwar years.[199]

Keynes, the guiding light at Bretton Woods, was deeply suspicious of speculative capital flows and considered capital controls essential for exchange rate stability.[200] A global financial architecture was envisaged that would complement the Keynesian compromise so that national fiscal and monetary policies could be calibrated, aiming at full employment and a welfare state.[201] The Bretton Woods system was

MONETARY SYSTEM 43–90 (2d ed. 2008) (describing the instability of the monetary system between the world wars); JOHN MAYNARD KEYNES, THE ECONOMIC CONSEQUENCES OF THE PEACE 66–81 (Indo-European Publishing 2010) (1920) (proposing that the treaty concluding the First World War would have drastic economic consequences).

197. The Commission responsible for establishing the IMF was chaired and tightly controlled by Harry White, American Deputy Secretary of the Treasury, who ensured that "legal language which made everything difficult to understand" would "make easier the imposition of a *fait accompli*." ROBERT SKIDELSKY, JOHN MAYNARD KEYNES: FIGHTING FOR FREEDOM, 1937–1946, at 350–51 (2001).

198. Leo Panitch & Sam Gindin, *Finance and American Empire*, *in* THE EMPIRE RELOADED, *supra* note 31, at 46, 49–50.

199. ABDELAL, *supra* note 44, at 45.

200. *Id.* at 19.

201. A good definition of a welfare state is offered by Asa Briggs:

> A welfare state is a state in which organized power is deliberately used (through politics and administration) in an effort to modify the play of market forces in at least three directions—first, by guaranteeing individuals and families a minimum income irrespective of the market value of their work or their property; second, by narrowing the extent of 'social contingencies' (for example, sickness, old age or unemployment) which lead otherwise to individual and family crises; and third, by ensuring that all citizens without distinction of status or class are offered the best standards available in

created to lend stability to global finance.[202] The adopted approach aimed at charting a course between the rigidity of the gold standard and the volatility of unbridled mobility of capital.[203] The new order envisaged that control of capital movements would be "a permanent feature of the post-war system."[204] The USD, convertible into gold at USD 35 per ounce, was to be the new anchor of the global financial architecture. The IMF was created to police this system of fixed exchange rates. IMF Articles of Agreement required each member state to maintain a fixed par value for its currency, expressed in USD, and to intervene in foreign exchange markets to maintain the value within a 1 percent range; if a central bank ran out of gold or dollars to maintain the fixed rate, the IMF would provide bridge loans.[205] Cross-border capital movement was to be controlled and the classic "trilemma,"[206] or the "unholy trinity,"[207] was resolved in favor of a fixed exchange rate and independent monetary policy. A prolonged era of growth, often termed "the golden age" of capitalism (1947–1973), was the result.[208] The U.S. finance capital did quite well during this phase, and was able to get rid of the negative image that had attached to it in the post-Great Depression phase.[209] While operating under New Deal regulations, financial institutions took advantage of the post-war boom and rising

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relation to an agreed range of social services.

Asa Brigggs, *The Welfare State in Historical Perspective*, *in* THE WELFARE STATE READER 16, 16 (Christopher Pearson & Francis G. Castles eds., 2d ed. 2006).

202. For details of Bretton Woods' system of fixed exchange rates, see ANTHONY M. ENDRES, GREAT ARCHITECTS OF INTERNATIONAL FINANCE: THE BRETTON WOODS ERA 14–31 (2005); ARMAND VAN DORMAEL, BRETTON WOODS: BIRTH OF A MONETARY SYSTEM (1978).

203. For the era of the gold standard, see EICHENGREEN, *supra* note 196, at 6–42.

204. ABDELAL, *supra* note 44, at 46 (quoting John M. Kaynes).

205. For details, see EICHENGREEN, *supra* note 196, at 91–100 (discussing the structure of the IMF).

206. "Trilemma" refers to the fact that a state can choose only two of three financial policy options: unbridled cross-border capital movements; a fixed exchange rate; and an autonomous monetary policy. FERGUSON, *supra* note 4, at 306.

207. This is Benjamin Cohen's term to signify the intrinsic incompatibility of exchange rate stability, capital mobility, and national monetary policy autonomy. Benjamin J. Cohen, *The Triad and the Unholy Trinity: Lessons for the Pacific Region*, *in* PACIFIC ECONOMIC RELATIONS IN THE 1990S: COOPERATION OR CONFLICT? 133, 133–34 (Richard Higgott et al. eds., 1993).

208. Hyman Minsky observed that "the most significant economic event of the era since World War II is something that has not happened: there has not been a deep and long-lasting depression." HYMAN MINSKY, *Introduction, Can "It: Happen Again? A Reprise*, *in* CAN "IT" HAPPEN AGAIN?: ESSAYS ON INSTABILITY AND FINANCE, at xi (1982).

209. Failure of a 1947 anti-trust suit initiated by the Justice Department against investment houses was a watershed in the history of Wall Street that finally freed the Street of its public image as the home of monopoly capitalists. RON CHERNOW, THE HOUSE OF MORGAN: AN AMERICAN BANKING DYNASTY AND THE RISE OF MODERN FINANCE 502–06 (1990).

mass consumption, and profits of financial firms grew faster than non-financial profits through the 1950s and 1960s.[210]

Within a few decades, however, negative U.S. balance of payments started putting strains on this system. A steady flow of USD and gold out of the United States and emergence of the unregulated Eurodollar and Eurobond markets were the result.[211] By the late 1960s, American hegemony of global capitalism was in crisis. The growing offshore pool of convertability-seeking USD in the Eurodollar market was augmented by growing intra-firm transfers by rapidly expanding transnational corporations and direct foreign investments.[212] Rapidly expanding U.S. balance-of-payment deficits, particularly with Europe and Japan, and the resulting outflows of USD also created the so-called Triffin dilemma[213]: the Bretton Woods system had created an incentive for reserve banks around the world to accumulate dollars, as their convertability was guaranteed; however, the greater such accumulation relative to U.S. gold reserves, the greater the risk to the guarantee. In order to stem its growing balance-of-payment deficits, the United States incrementally instituted controls over export of capital in the early 1960s.[214] The immediate effect was that U.S. banks expanded their overseas operations to participate directly in the unregulated

210. Between 1945 and 1962, the average annual growth in profits in finance was 18 percent compared to 11 percent in the non-financial sector; from 1953 to 1969, the figures were 7.5 percent versus 4.5 percent. Panitch & Gindin, *supra* note 198, at 24. Bank failures, an endemic feature of capitalism, also were at their lowest in history during this period. *See* JOHNSON & KWAK, *supra* note 16, at 36 fig.1-1 (showing the near absence of bank failures during this period).

211. In 1948, the United States held more than two-thirds of global monetary reserves; within a decade, its share had fallen to one-half. EICHENGREEN, *supra* note 196, at 112. For the emergence of the Euromarket, see ERIC HELLEINER, STATES AND THE REEMERGENCE OF INTERNATIONAL FINANCE 82–91 (1996). Some protectionist actions by the United States also had the unintended consequence of enhancing the Eurodollar market. For example, the Interest Equalization Tax instituted in 1963 to stem foreign-bond sales in the United States gave further impetus to the rise of the Eurobond market. Cohen, *supra* note 190, at 279; John B. Goodman & Louis W. Pauly, *The Obsolescence of Capital Controls?: Economic Management in an Age of Global Markets*, 46 WORLD POL. 50, 79 (1993).

212. The growth of the Eurodollar market also reflected the fact that between 1950 and 1970, Europe's share of American direct foreign investment more than doubled to match Canada's share of over 30 percent, while Latin America's share fell from 40 to under 20 percent. MICHAEL BARRATT BROWN, THE ECONOMICS OF IMPERIALISM 39, 57 (1974).

213. *See* EICHENGREEN, *supra* note 196, at 114–15 (discussing the emergence of the U.S. balance-of-payment deficits); Walker Todd, *Triffin's Dilemma, Reserve Currencies, and Gold*, AM. INST. ECON. RES. (Dec. 31, 2008), http://www.aier.org/research/briefs/975-triffins-dilemma-reserve-currencies-and-gold (providing a brief overview of Triffin's theory). For a detailed exposition, see generally ROBERT TRIFFIN, GOLD AND THE DOLLAR CRISIS: THE FUTURE OF COVERTABILITY (1961) (discussing the dollar-gold convertibility regime and the emergence of the dollar crisis).

214. EICHENGREEN, *supra* note 196, at 127.

Euromarket and secure funding for domestic operations.[215] An added incentive was that Glass-Steagall's separation of commercial and investment banking did not extend to overseas operations of U.S. banks.[216] These overseas operations helped American banks "to internalize aspects of [the unregulated Euromarket] within the U.S. domestic financial system."[217] As U.S. deficits grew sizable, Europe started complaining that the United States was collecting "*seigniorage*" from foreign creditors by printing USD.[218] As the real value of gold started to exceed the fixed USD price of gold, demands for gold conversion from foreign holders of USD increased.[219]

For the capital-owning classes in the United States, a crisis was building rapidly. Rates of profit were falling, the share of income of capital-owning classes was shrinking, and the oil price hike of the early 1970s exacerbated the crisis and triggered "stagflation"—an unprecedented combination of inflation and stagnation.[220] The share of national income by the top 1 percent of earners in the United States fell from a pre-World War II high of 16 percent to less than 8 percent by 1978. While the inflationary climate made for "the worst bond bear

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215. Thomas E. Huertas, *US Multinational Banking: History and Prospects*, *in* BANKS AS MULTINATIONALS 248, 254 (Geoffrey Jones ed., 1990).

216. International Banking Operations, 12 C.F.R. § 211 (2010). A foundation of New Deal regulation of finance capital and popularly known as the Glass-Steagall Act, the Banking Act of 1933 was a reaction to the collapse of a large portion of the U.S. commercial banking system in early 1933. The Act introduced the separation of bank types according to their business—commercial and investment banking.

217. LEONARD SEABROOKE, U.S. POWER IN INTERNATIONAL FINANCE: THE VICTORY OF DIVIDENDS 111 (2001).

218. FERGUSON, *supra* note 4, at 308 (emphasis added). Seigniorage is the difference between the value of money and the cost to produce it—in other words, the economic cost of producing a currency within a given economy or country. If the seigniorage is positive, then the government makes an economic profit; a negative seigniorage will result in an economic loss. Holders of overseas USD were well aware that the United States' suspension of gold convertability to print money in response to the liquidity crisis went back to the Aldrich-Vreeland Act of 1908. *See* WILLIAM L. SILBER, WHEN WASHINGTON SHUT DOWN WALL STREET: THE GREAT FINANCIAL CRISIS OF 1914 AND THE ORIGINS OF AMERICA'S MONETARY SUPREMACY 84–85 (2007) (describing the impact of the Aldrich-Vreeland Act of 1908).

219. Starting in 1960, the United States' external USD liabilities exceeded its gold reserves, and the price of gold in international markets started rising significantly above the pegged value of USD. EICHENGREEN, *supra* note 196, at 117, 126.

220. *See* ROBERT BRENNER, THE BOOM AND THE BUBBLE: THE US IN THE WORLD ECONOMY 19–22 (2002) [hereinafter BRENNER, BOOM AND BUBBLE] (discussing the decline in profit rates in the private economy). For detailed analyses of crises of capitalism, see generally GIOVANNI ARRIGHI, THE LONG TWENTIETH CENTURY: MONEY, POWER, AND THE ORIGINS OF OUR TIME (1994); ROBERT BRENNER, THE ECONOMICS OF GLOBAL TURBULENCE (2006); Robert Brenner, *Uneven Development and the Long Downturn: The Advanced Capitalist Economies from Boom to Stagnation 1950–1998*, 229 NEW LEFT REV. 1 (1998) [hereinafter Brenner, *Uneven Development*].

market not just in memory but in history,"[221] others started to foresee "the death of equities."[222] In the face of accelerating demands from the working classes for expanded economic and social rights, Keyensian welfare capitalism and the compact between capital and labor in the Global North supervised by an interventionist state appeared exhausted. The costs of a welfare state within and imperial wars outside kept increasing the pressure on the USD, and the Bretton Woods system did not offer any satisfactory options.[223] As a buildup towards the end of covertability, the Nixon administration rescinded the temporary capital controls of the 1960s and positioned the United States as unequivocally opposed to the use of such controls.[224] The formal end of USD-gold convertability by the United States in 1971—a refusal to honor a commitment to pay gold for USD at a fixed rate—was in effect a default on foreign obligations and sounded the death knell for Bretton Woods.[225] With this delinking, the fixed rate international regime and the so-called "golden age" of capitalism came to an end.[226]

The termination of USD-gold convertability in 1971 was done more as an act of expedience than as a foundational break with the Bretton Woods system.[227] This was not quite "the dawning of a new international regime for money and international relations."[228] Inflation, stagnation, and balance-of-payment problems improved only marginally. Declining value of the USD and large outflows of capital

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221. FERGUSON, *supra* note 4, at 108 (quoting PIMCO CEO Bill Gross).

222. *The Death of Equities: How Inflation is Destroying the Stock Market*, BUS. WK., Aug. 13, 1979, at 54.

223. A state faced with negative balance of payments has a variety of options: devalue the currency, impose capital controls, restrict capital accounts, seek reduction of trade barriers of trading partners, or adopt tight fiscal and monetary policies. Only some of the options were open under the Bretton Woods system. Adjustment of currency value was restricted. The Keynesian welfare compromise between capital and labor precluded raising interest rates or curbs on spending. Capital controls were permitted but became increasingly difficult to enforce because of growing capital mobility that came with the growth of intra-company transfers of proliferating multination corporations.

224. HELLEINER, *supra* note 211, at 101–21.

225. *See* Michael Bordo, *The Bretton Woods International Monetary System: A Historical Overview*, *in* A RETROSPECTIVE ON THE BRETTON WOODS SYSTEM: LESSONS FOR INTERNATIONAL MONETARY REFORM 3 (Michael Bordo & Barry Eichengreen eds., 1993).

226. The period between 1949 and 1973 is often referred to as the "golden age" because of the unusually high and sustained growth and moderate business cycles enjoyed by capitalist economies. For a detailed discussion, see generally PHILIP ARMSTRONG, ANDREW GLYN & JOHN HARRISON, CAPITALISM SINCE WORLD WAR II: THE MAKING AND BREAKUP OF THE GREAT BOOM (1984).

227. JOANNE GOWA, CLOSING THE GOLD WINDOW: DOMESTIC POLITICS AND THE END OF BRETTON WOODS 147, 166 (1983).

228. PETER GOWAN, THE GLOBAL GAMBLE: WASHINGTON'S FAUSTIAN BID FOR GLOBAL DOMINANCE 33 (1999).

threatened the very grounds of U.S. global domination, and democratic pressures on the welfare state kept growing.[229] Low rates of interest, stagnant profits, and inflation were putting increasing pressure on American finance capital.[230] Due to inflation, bond returns in the United States remained negative for nearly four decades.[231] The measure of discontent on Wall Street was one "not seen since the last days of the Hoover presidency."[232] In 1979, even the usually circumspect Bank for International Settlements ("BIS") raised the alarm of "*a genuine dollar crisis*."[233]

The search for qualitative transformations was increasingly running up against the New Deal banking regulations. The gap between the potential and highly profitable markets for private credit and New Deal restrictive regimes was bridged by an incipient "financial services revolution" that can be dated as beginning in the mid-1970s with the abolition of fixed rates on brokerage commissions on Wall Street.[234]

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229. For detailed analyses of this phenomenon, see EICHENGREEN, *supra* note 196, at 6–89; EMMANUEL TODD, AFTER THE EMPIRE: THE BREAKDOWN OF THE AMERICAN ORDER 13–22 (2003); IMMANUEL WALLERSTEIN, THE DECLINE OF AMERICAN POWER: THE U.S. IN A CHAOTIC WORLD 13–27 (2003); G. John Ikenberry, *Rethinking the Origins of American Hegemony*, 104 POL. SCI. Q. 375, 397 (1989). For critiques of the decline thesis, see Stephen Gill, *American Hegemony: Its Limits and Prospects in the Reagan Era*, 15 MILLENIUM: J. INT'L STUD. 311, 311 (1986) (criticizing the assumptions that America's power has weakened); Bruce Russett, *The Mysterious Case of Vanishing Hegemony; or, is Mark Twain Really Dead?*, 39 INT'L ORG. 207, 207 (1985) (reexamining the arguments for America's declining influence in the world); Susan Strange, *The Persistent Myth of Lost Hegemony*, 41 INT'L ORG. 551, 552 (1987) (refuting the position that America's international influence has diminished).

230. *See* BRENNER, BOOM AND BUBBLE, *supra* note 220, at 7–48 (discussing the stagnation of the American economy); MAKOTO ITOH, THE WORLD ECONOMIC CRISIS AND JAPANESE CAPITALISM 60 (1990) (discussing the inflationary crisis of the 1970s); DAVID MCNALLY, ANOTHER WORLD IS POSSIBLE: GLOBALIZATION & ANTI-CAPITALISM 226–31 (2006) (describing the increase in inflation in the United States between 1971 and 1980, the subsequent increase in interest rates in order to tame inflation, and the impact of these actions across the globe); Brenner, *Uneven Development*, *supra* note 220, at 93 (examining stagflation); David McNally, *From Financial Crisis to World-Slump: Accumulation, Fiancialization, and the Global Slowdown*, 17 HIST. MATERIALISM 35, 43 n.23 (2009) [hereinafter McNally, *From Financial Crisis*] (arguing against the position that the thirty-five years since 1973 constitutes a "depression" or "long downturn").

231. Ferguson, *supra* note 26, at 12.

232. CHARLES R. GEISST, WALL STREET: A HISTORY 320 (1997). The Great Depression started in 1929 and kept getting worse until President Hoover left office in March 1933.

233. BANK OF INT'L SETTLEMENTS [BIS], FORTY-NINTH ANNUAL REPORT 3 (1979) (emphasis added); *see also* EICHENGREEN, *supra* note 196, at 126–32 (discussing the dollar crisis).

234. For a detailed discussion of the financial services revolution, see generally MICHAEL MORAN, THE POLITICS OF THE FINANCIAL SERVICES REVOLUTION (1991). Building on certificates of deposit that had initiated the "securitization" of commercial banking, money market mutual funds mushroomed, accounting for $25 billion in 1979 and further quadrupling by 1981. During the 1970s, assets of American banks overseas increased almost seven-fold,

However, what American finance capital needed was a fundamental break with New Deal regimes and a reversal of the Keynesian capital-labor compromise about a welfare state and full employment. Breaking the power of the unions and workers in general was an essential step towards that. Finance capital needed a new disciplinary mechanism to adjust national economies to the new demands of global accumulation. This is when the neoliberal counterrevolution was launched. This neoliberal counterrevolution came in response to economic and political gains secured by working classes, the colonized, other subordinated groups, falling rates of profit, and decline in the share of wealth of capital-owning classes. Since the late 1970s, this counterrevolution has "swept across the world like a vast tidal wave of institutional reform and discursive adjustment."[235]

IV. Neoliberal Counterrevolution

A. The Idea, the Road-Tests, and the Launch

The neoliberal project aims to unfold a new social order across the globe to reverse the setbacks that the economic power and political hegemony of the wealth-owning classes had suffered on account of Keynesian welfare in the West, socialism in Eastern Europe, and nationalism in the global South.[236] Neoliberalism makes increasing recourse to the law to displace Keynesian welfare states through liberalization, deregulation, and privatization, and uses the discipline of expanded markets to remove barriers to accumulation that earlier democratic gains had achieved.[237] To secure unfettered rights to private property and profits, it expands and deepens the logic of the market, undermines state sovereignty and national autonomy, and links local and global political economies to facilitate transnational accumulation of capital.[238] Neoliberalism entails the abandonment of the post-Great

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matching the growth of the Eurodollar market. By the end of the 1970s, foreign earnings accounted for more than half of total earnings of the five largest American banks. Panitch & Gindin, *supra* note 198, at 57–58.

235. Harvey, *supra* note 49, at 23.

236. For a comprehensive exposition of neoliberalism, see generally David Harvey, A Brief History of Neoliberalism (2005); Neoliberalism: A Critical Reader (Alfredo Saad-Filho & Deborah Johnson eds., 2005); Daniel Yergin & Joseph Stanislaw, The Commanding Heights: The Battle Between Government and the Marketplace that Is Remaking the Modern World 330–32 (1998); Harvey, *supra* note 49.

237. For articulation of the case for neoliberal global political economy and related accounts of the law, see generally Robert Keohane, After Hegemony: Cooperation and Discord in the World Political Economy (1984); Kenneth W. Abbot et al., *The Concept of Legalization*, 54 Int'l Org. 401 (2000).

238. *See* A. Claire Cutler, Private Power And Global Authority: Transnational

Depression Keynesian compromise about state intervention in the market that aimed to maintain steady aggregate demand through full employment.[239] It deems flexible labor markets and rollback of welfare safety nets as necessary for stabilization of capitalist economies.[240] As an opening salvo, radical deployment of tight monetary policy is used as a shock treatment to break the power of labor and inflationary expectations of welfare societies. A sustained tight fiscal policy follows the belief that supply finds its own demand, and that a free market always tends towards equilibrium.[241] In the international realm, free trade of goods, services, and capital is its "sacred tenet."[242] Margaret Thatcher summed up the political agenda of neoliberalism: "There is no such thing [as society]! There are individual men and women, and there are families . . . ."[243] Such an agenda necessitates breaking the back of organized labor and fragmenting coalitions of working classes.[244] For neoliberalism, "society achieves its coherence not through design but through the market and its processes of exchange."[245] Consequently, neoliberalism aims at "disempowerment of government: it disables the

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MERCHANT LAW IN THE GLOBAL POLITICAL ECONOMY 32–34 (2003) ("The rules of private international trade law establish the fundamental rules governing private property and contractual rights and obligations operative across the full range of commercial activity, including international trade, investment, [and] finance . . . ."); WILLIAM I. ROBINSON, A THEORY OF GLOBAL CAPITALISM: PRODUCTION, CLASS, AND STATE IN A TRANSNATIONAL WORLD 9–10 (2004) (describing the rise of transnational capital as the defining feature of globalization); William I. Robinson, *Capitalist Globalization and the Transnationalization of the State*, *in* HISTORICAL MATERIALISM AND GLOBALIZATION 210, 223 (Mark Rupert & Hazel Smith eds., 2002) (examining the launch of neoliberalism); Boaventura De Sousa Santos, *Law: A Map of Misreading: Towards a Postmodern Conception of Law*, 14 J.L. SOC'Y 279, 287 (1987) ("Transnational capital has thus created a transnational legal space, a supra-state legality, a world law.").

239. For the economic and political agenda of neoliberalism, see Thomas I. Palley, *From Keyensianism to Neoliberalism: Shifting Paradigms in Economics*, *in* NEOLIBERALISM: A CRITICAL READER, *supra* note 236, at 20; Susanne MacGregor, *The Welfare State and Neoliberalism*, *in* NEOLIBERALISM: A CRITICAL READER, *supra* note 236, at 142.

240. For a detailed discussion, see Hugo Radice, *Confronting the Crises: A Class Analysis*, *in* THE CRISIS THIS TIME 21, 34–37 (Leo Panitch & Vivek Chibber eds., 2010).

241. For a detailed exposition, see SKIDELSKY, *supra* note 197, at 29–51.

242. Paul R. Krugman, *Is Free Trade Passé?*, 1 J. ECON. PERSP. 131, 131 (1987).

243. Interview by Douglas Keay with Prime Minister Margaret Thatcher, in London, Eng. (Sept. 23, 1987), *available at* http://www.margaretthatcher.org/document/106689.

244. Calling the neoliberal blueprint a "process of 'dedemocratization,'" Philippe Schmitter argues that neoliberal economic and political changes have two common features: "1) [T]hey diminish popular expectations from public choices, and 2) they make it harder to assemble majorities to overcome the resistance of minorities, especially well-entrenched and privileged ones." Philippe Schmitter, *Democracy's Future: More Liberal, Preliberal, or Postliberal?*, 6 J. DEMOCRACY, no. 1, 1995 at 15, 20.

245. BARRY SMART, ECONOMY, CULTURE AND SOCIETY: A SOCIOLOGICAL CRITIQUE OF NEO-LIBERALISM 95 (2002).

state from interfering with the established order of society."[246] Neoliberalism does not displace the state as much as it reformulates it and restructures its options.[247] The neoliberal project is to turn the "nation-state" into a "market-state,"[248] one with the primary agenda of facilitating global capital accumulation unburdened from any legal regulations aimed at assuring welfare of citizens. In summary, neoliberalism seeks unbridled accumulation of capital through a rollback of the state, and limits its functions to minimal security and maintenance of law, fiscal and monetary discipline, flexible labor markets, and liberalization of trade and capital flows.

The neoliberal counterrevolution arrived in stages.[249] First came an ideological assault on the Keynesian consensus and the welfare state.[250] Then, neoliberalism was road-tested on a country-wide scale in Chile following the coup d'etat of September 11, 1973, under the supervision of "the Chicago Boys"—so-called for their subscription to Milton Friedman's economic theories.[251] Chilean government spending was

246. ROBERTO MANGABEIRA UNGER, DEMOCRACY REALIZED: THE PROGRESSIVE ALTERNATIVE 58 (1998).

247. Many perceptive observers reject the "state shrinking and declining" argument as political posturing of neoliberals. In particular, they point to the expansion of the coercive apparatuses of the state and the shift of the state from a managerial mode befitting the Fordist era towards a neoliberal entrepreneurial mode. *See, e.g.*, David Harvey, *From Managerialism to Entrepreneurialism: Transformation in Urban Governance in Late Capitalism*, 71 GEOGRAFISKA ANNALER, ser. B, 1989 at 3, 4–5.

248. Anthony Carty, *Marxism and International Law: Perspectives for the American (Twenty-First) Century?*, *in* INTERNATIONAL LAW ON THE LEFT: REEXAMINING MARXIST LEGACIES 169, 170 (Susan Marks ed., 2008).

249. John Cassidy terms this "conservative counterrevolution." JOHN CASSIDY, HOW MARKETS FAIL: THE LOGIC OF ECONOMIC CALAMITIES 7 (2009).

250. The 1971 memo by Lewis Powell just before his elevation to the Supreme Court, which urged the American Chamber of Commerce to mount a campaign to publicize that what was good for business was good for America, was perhaps the opening ideological salvo. *See* HARVEY, *supra* note 236, at 43. Serial markers along this road were: formation of the Business Roundtable; proliferation of corporate political action committees legalized by campaign finance laws of 1974—and the free speech protection given to these activities by the Supreme Court in 1976; the California Proposition 13 tax revolt of home owners in 1976; the emergence of the Christian right as the moral majority; and the turn of the American South to the Republican party as part of the politics of backlash against post-World War II civil rights gains. The ideological assault also targeted the media, and educational and research institutions. Existing news media were taken over and new ones established that, along with think tanks financed by wealthy individual and corporate donors, publicized the supposedly common sense character of neoliberalism and its promise of liberty, entrepreneurship, and consumerism. For detailed analyses, see generally MANUEL G. GONZALES & RICHARD DELGADO, THE POLITICS OF FEAR: HOW REPUBLICANS USE MONEY, RACE, AND THE MEDIA TO WIN (2006); WILLIAM GREIDER, COME HOME, AMERICA: THE RISE AND FALL (AND REDEEMING PROMISE) OF OUR COUNTRY (2009); WILLIAM GREIDER, WHO WILL TELL THE PEOPLE: THE BETRAYAL OF AMERICAN DEMOCRACY (1992).

251. *See* MILTON FRIEDMAN & ROSE D. FRIEDMAN, TWO LUCKY PEOPLE: MEMOIRS 398–

cut by 27 percent; natural resources, manufacturing, and public pension systems were privatized; trade, profit repatriation, and capital flows were liberalized; and suppression of unions and labor by an authoritarian political order lubricated the transition to neoliberalism.[252] While preparing the ground for unbridled capitalism, by 1982–1983, the neoliberal "shock treatment" ended up with 13 percent contraction of the Chilean economy with one in five workers unemployed.[253] Foreign investment and lending poured in, attracted by high rates of profit.

The Chile experiment was followed by "a coup by the financial institutions against the democratically elected government of New York City."[254] Financial institutions refused to roll over New York's debt, thereby forcing the city to the edge of bankruptcy.[255] A group of bankers forced New York to accept "fiscal discipline" as the cost of a bailout—curbing municipal unions, layoffs in public employment, wage freezes, cuts in social provisions, and imposition of user fees.[256] Management of New York's fiscal crisis "established the principle that in the event of a conflict between the integrity of financial institutions and bondholders' returns, on one hand, and the well-being of the citizens on the other, the former was to be privileged."[257] With trial-runs in Chile, New York, and the United Kingdom secured, finance capital launched the decisive "financial coup"[258] on October 6, 1979 by way of the "Volcker Shock," characterized by Paul Volcker himself as a

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400 (1998) (detailing Friedman's relation to the Chicago Boys during and after the coup d'etat); JUAN GABRIEL VALDES, PINOCHET'S ECONOMISTS: THE CHICAGO SCHOOL IN CHILE (1995) (examining the Chicago Boys' perspective on the market and the transfer of ideas to a developing country); Rossana Castiglioni, *The Politics of Retrenchment: The Quandaries of Social Protection under Military Rule in Chile, 1973–1990*, 43 LATIN AM. POL. & SOC'Y 37, 49–51 (2001) (explaining the role of the Chicago Boys before and after the coup d'etat); Patricio Silva, *Technocrats and Politics in Chile: From the Chicago Boys to the CIEPLAN Monks*, 23 J. LATIN AM. STUD. 385, 392–93 (1991) (describing the Chicago Boys' implementation of economic policy after the coup d'etat).

252. *See* FERGUSON, *supra* note 4, at 213–19 (describing the radical economic changes in Chile during this era).

253. *Id.* at 217; STIGLITZ, *supra* note 47, at 114.

254. HARVEY, *supra* note 236, at 45.

255. Roger E. Alcaly & Helen Bodian, *New York's Fiscal Crisis and the Economy*, *in* THE FISCAL CRISIS OF AMERICAN CITIES 30, 50 (Roger E. Alcaly & David Mermelstein eds., 1977).

256. *See id.* at 52–55 (describing these cutbacks and the reasons for their implementation); *see also* WILLIAM K. TABB, THE LONG DEFAULT: NEW YORK CITY AND THE URBAN FISCAL CRISIS 28–31 (1982) (explaining how there was a loss of democratic control in New York City as the Financial Control Board instituted austerity programs).

257. HARVEY, *supra* note 236, at 48.

258. GÉRARD DUMÉNIL & DOMINIQUE LÉVY, CAPITAL RESURGENT: ROOTS OF THE NEOLIBERAL REVOLUTION 69, 165 (2004).

triumph of central banking.[259] To be able to institute a new global capitalist discipline, the United States had to first, in Volcker's words, "discipline [itself]."[260] This involved radically limiting the money supply and allowing interest rates to rise to any level with any short-term economic cost in order to break the back of inflation, the enemy of finance capital.[261] The Federal base rate increased from 8 percent in 1978 to more than 19 percent at the beginning of 1981, and did not return to single digits until 1984, while the inflation rate went down from 11.3 percent in 1979 to 3.6 percent in 1987.[262] An unwavering anti-inflation agenda was to now guide the Federal Reserve's direct manipulation of interest rates, giving the Federal Reserve, in Volcker's words, a central "role in stabilizing expectations [that] was once a function of the gold standard, the doctrine of the annually balanced budget, and fixed exchange rates."[263] The Keynesian compromise and commitment to full employment stood abandoned and displaced by neoliberalism—the new uber-rule of global accumulation that aims to expand markets and use market discipline to remove barriers to accumulation that earlier democratic gains had achieved. The radical use of monetary policy was the Federal Reserve's bid to become the anchor of a new phase of the USD-based global economy. In the new schema, bondholders now became the "disciplinarians of U.S. policy makers."[264]

The "induced recession" triggered by the Volcker Shock was intended to break the inflationary spiral, and the resulting unemployment would also break the strength of organized labor as a means to reverse the gains working classes had secured since the New Deal.[265] It is critical to note that "monetary policy involves trade-offs between inflation and unemployment. Bondholders worry about

259. Paul A. Volcker, 1990 Per Jacobsson Lecture: The Triumph of Central Banking? 5 (Sept. 23, 1990), *available at* http://www.perjacobsson.org/lectures/1990.pdf.

260. PAUL A. VOLCKER & TOYOO GYOHTEN, CHANGING FORTUNES: THE WORLD'S MONEY AND THE THREAT TO AMERICAN LEADERSHIP 167 (1992).

261. JACK CASHILL, POPES & BANKERS: A CULTURAL HISTORY OF CREDIT & DEBT, FROM ARISTOTLE TO AIG 200 (2010).

262. Marvin Goodfriend, *Interest Rate Policy and the Inflation Scare Problem: 1979–1992*, 79 FED. RES. BANK RICHMOND ECON. Q., no. 1, 1993 at 1–2, *available at* http://www.richmondfed.org/publications/research/economic_quarterly/1993/winter/pdf/goodfriend.pdf; Panitch & Gindin, *supra* note 198, at 60.

263. PETER A. JOHNSON, THE GOVERNMENT OF MONEY: MONETARISM IN GERMANY AND THE UNITED STATES 178 (1998) (quoting Paul Volcker).

264. *The Bond Vigilantes: The Disciplinarians of U.S. Policy Makers Return*, WALL ST. J., May 29, 2009, at A12.

265. Panitch & Gindin, *supra* note 198, at 62–63.

inflation; workers, about jobs."[266] Along with unemployment induced by high interest rates, the power of organized labor was broken by direct and decisive state action. The smashing of the air traffic controllers' strike in 1981 was termed by Volcker as "the most important single action of the administration in helping the anti-inflation fight."[267] Alan Greenspan called this blow to organized labor "a paradigm shift" and a "political turning point."[268] Besides winning the confidence of the financial markets, the United States could now tell others how to manage their economies and address their respective balance-of-class forces.[269] This opened the door for liberalization of U.S. financial markets, expanding their depth, increasing their liquidity, and propelling their unprecedented globalization. High interest rates induced an inflow of capital, U.S. government securities became an investment of choice, and the USD again became secure as the global currency of choice.[270] The attraction of highly liquid U.S. Treasury bills induced a massive secondary market in bonds, and allowed the United States to rely on global financial reserves to run up deficits while expanding its global economic reach. Volcker Shock thus "represented a convergence of imperial and domestic responsibilities."[271]

The Volcker Shock and the first round of liberalizations, however, did not quite do the job of restoring vitality to the U.S. economy. High interest rates resulted in the rise of interest payments as a percentage of pre-tax profits from 13 percent between 1973 and 1979 to 26 percent between 1982 and 1990.[272] High interest rates also kept the USD overvalued with a negative impact on exports, and leading corporations undertook powerful lobbying campaigns demanding relief.[273] Finally, in order to restore the viability of the U.S. manufacturing sector, under pressure from the United States, the G-5 countries signed the so-called Plaza Accord on September 22, 1985, by which they agreed to take joint

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266. STIGLITZ, *supra* note 22, at 142.

267. John B. Taylor, *Changes in American Economic Policy in the 1980s: Watershed or Pendulum Swing?*, 33 J. ECON. LITERATURE 777, 778 (1995). In 1980, the government intervened in the Chrysler bankruptcy proceedings and conditioned loans on securing UAW's concessions about wage cuts and outsourcing. Panitch & Gindin, *supra* note 198, at 64.

268. DAVID M. SMICK, THE WORLD IS CURVED: HIDDEN DANGERS TO THE GLOBAL ECONOMY 220–21 (2008).

269. For detailed analyses, see Panitch & Gindin, *supra* note 198, at 63; Rude, *supra* note 31, at 82–88.

270. Panitch & Gindin, *supra* note 198, at 63.

271. *Id.* at 65.

272. BRENNER, BOOM AND BUBBLE, *supra* note 220, at 58.

273. C. RANDALL HENNING, CURRENCIES AND POLITICS IN THE UNITED STATES, GERMANY, AND JAPAN 276–84 (1994).

action to reduce the exchange rate of USD "to rescue a US manufacturing sector on its way to desolation."[274] As intended by the Plaza Accord, the USD "duly plunged."[275]

These steps were complemented by "aggressive unilateralism."[276] For example, the so-called "voluntary export restraints" of the early 1980s, which were imposed by the United States on Japanese automakers into the U.S. market, were followed by the threat of closing off U.S. markets "as a bludgeon" both to limit imports and to force open Japanese and Asian markets to U.S. exports and direct investments.[277] The Omnibus Trade and Competition Act of 1988 (Super 301)[278] extended the reach of the Trade Act of 1974.[279] As a result, "actions brought against 'unfair' trading practices . . . increased dramatically."[280] The Structural Impediments Initiative of 1989[281] sought a further opening of the Japanese market.[282] Brenner dates the origins of the U.S. bubble-economy from the Plaza Accord of 1995, which he rightly characterizes as a critical turning point for the world economy.[283] It was this Accord and unilateral acts by the United States—not the free market—that set off a decade-long devaluation of the USD with respect to the yen and the mark. The result was relative stabilization of U.S. manufacturing, a secular crisis for Japanese industry, and an unprecedented explosion of export-based expansion of Asian economies.[284] This was the consequence of "quasi-pegging" of Asian

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274. BRENNER, BOOM AND BUBBLE, *supra* note 220, at 59–60.

275. FERGUSON, *supra* note 4, at 317.

276. *See* AGGRESSIVE UNILATERALISM: AMERICA'S 301 TRADE POLICY AND THE WORLD TRADING SYSTEM 1 (Jagdish Bhagwati & Hugh T. Patrick eds., 1991) (providing an overview of the concept of aggressive unilateralism).

277. BRENNER, BOOM AND BUBBLE, *supra* note 220, at 60; *see also* ROBERT GILPIN, THE CHALLENGE OF GLOBAL CAPITALISM: THE WORLD ECONOMY IN THE 21ST CENTURY 80–82, 232–36 (2002) (describing voluntary export restraints and other shifts in American trade policy in the 1980s).

278. Omnibus Trade and Competition Act of 1988 (Super 301), Pub. L. No. 100-418, 102 Stat. 1107 (codified as amended in scattered sections of 19 U.S.C.).

279. Trade Act of 1974, Pub. L. No. 93-618, 88 Stat. 1978 (codified as amended in scattered sections of 19 U.S.C.).

280. MILES KAHLER, REGIONAL FUTURES AND TRANSATLANTIC ECONOMIC RELATIONS 45 (1995). After passage of the new legislation, there was an "onslaught" of pending trade cases. PIETRO S. NIVOLA, REGULATING UNFAIR TRADE 21–25 (1993).

281. *U.S., Japan Launch Structural Impediments Initiative—Joint Statement by George Bush and Sosuke Uno—Transcript*, DEP'T ST. BULL., Sept. 1989, *available at* http://findarticles.com/p/articles/mi_m1079/is_n2150_v89/ai_8057493/.

282. For details of the considerable pressure by the United States upon Japan to liberalize its financial markets, see FRANCES MCCALL ROSENBLUTH, FINANCIAL POLITICS IN CONTEMPORARY JAPAN ch. 3 (1989).

283. BRENNER, BOOM AND BUBBLE, *supra* note 220, at 130–34.

284. WOLF, *supra* note 17, at 61, 63.

currencies with the USD, termed by some as "Bretton Woods Two."[285] However, U.S. balance-of-payment and fiscal deficits kept expanding. Bringing back balance-of-payment surpluses in foreign hands to help sustain U.S. fiscal and current account deficits was now a prime agenda. This is where neoliberal financialization of the U.S. economy entered the scene, and furnished the grounds for the "dramatic . . . resurrection of global finance."[286]

B. Financialization and the Myth of Deregulation

"Financialization" refers to a marked increase in the size and significance of financial markets and institutions in the economy.[287] It entails a "set of transformations through which relations between capitals and between capital and wage-labour have been increasingly financialised—that is, increasingly embedded in interest-paying financial transactions."[288] The "Volcker Shock" and its aftermath had restored the confidence of the financial markets. Finance capital was now poised for accelerated accumulation on a global scale. But first, it needed to be unshackled from the post-New Deal regulatory order. What happened over the next two decades was not deregulation but a redesign of regulations—a re-regulation. To appreciate this critical point one needs to jettison the formal dichotomy between regulation and deregulation and between the state and the market.[289] New forms of state intervention were indispensible for finance capital to have an

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285. *Id.* at 81–97; Michael P. Dooley, David Folkerts-Landua & Peter Garber, *The Revived Bretton Woods System*, 9 INT'L J. FIN. & ECON. 307, 312 (2004).

286. Banjamin J. Cohen, *Phoenix Risen: The Resurrection of Global Finance*, 48 WORLD POL. 268, 268 (1996).

287. *See generally* DUMÉNIL & LÉVY, *supra* note 258, at 110–18 (discussing financialization); FINANCIALIZATION AND THE WORLD ECONOMY (Gerald A. Epstein ed., 2005) (presenting essays on the effect of financialization on the U.S. economy and the international monetary system); JOHN BELLAMY FOSTER & FRED MAGDOFF, THE GREAT FINANCIAL CRISIS: CAUSES AND CONSEQUENCES 77–109 (2009) (discussing the financialization of capitalism and its effects); Hengyi Feng et al., *A New Business Model? The Capital Market and the New Economy*, 30 ECON. & SOC'Y 467 (2001) (analyzing the relationship between the U.S. capital market and corporate business); Paul M. Sweezy, *The Triumph of Financial Capital*, 46 MONTHLY REV. 1 (1994) (discussing capital on a global scale).

288. McNally, *From Financial Crisis*, *supra* note 230, at 56 (emphasis omitted).

289. In this context, it is also critical to note that the state and the economy are not unified entities. A state does not necessarily represent the interests of all who inhabit its territorial bounds. All societies are stratified, with different groups having different measures of representation and influence over state-policy, and the impact of state-policy falls differently on different groups. Similarly, different groups within a society participate in the economy from different positions. For example, capital and labor, or producers and consumers, or borrowers and lenders, participate in the same economy but from different positions and with different interests.

expanded and deepened field of operations.[290] The question was not deregulation but the shape regulations would take. The market was not left to its own devices.[291] Instead, elaborate new regulations were redesigned to pave the way for the ascendency of finance capital, and "[t]hrough innovation and invention of financial and regulatory technologies, U.S. actors established the agenda and boundaries of changes in other markets."[292]

The neoliberal counterrevolution entailed an extensive redesigning of the regulatory regimes related to finance.[293] Regulatory regimes born of the New Deal and the Keynesian consensus were set aside or drastically modified, and a host of new regulations were fashioned and entrenched to achieve hegemony of finance capital.[294] After a generation of the so-called deregulation, however, the United States has a regulatory regime with over 100 authorities responsible for overseeing

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290. In debates about financial globalization, neoclassical economists typically assert that "technological nonpolicy factors were so powerful . . . that they would have caused a progressive internationalization of financial activity even without changes in government separation fences." RALPH C. BRYANT, INTERNATIONAL FINANCIAL INTERMEDIATION 69 (1987). While capital mobility was certainly facilitated by advances in communication and information technologies and innovations in financial instruments, "contemporary open global financial order could never have emerged without the support and blessing of states." HELLEINER, *supra* note 211, at vii. For a detailed analysis of the relationship between global markets and state policies, see generally ANDREW C. SOBEL, DOMESTIC CHOICES, INTERNATIONAL MARKETS: DISMANTLING NATIONAL BARRIERS AND LIBERALIZING SECURITIES MARKETS (1994). The decisions that the states made in this regard were "solidly rooted in domestic policy dilemmas and distributional debates." *Id.* at 19. Indeed, financial globalization was "politically engineered . . . [and] a reassertion by the state of an underlying disposition towards financial interests." Ron Martin, *Stateless Monies, Global Financial Integration and National Economic Autonomy: The End of Geography?*, *in* MONEY, POWER AND SPACE 271 (Stuart Corbridge et al. eds., 1994).

291. In 2005, it was rightly observed:

> It is tempting . . . to conceive of the changes in the global financial system since the early 1970s as 'deregulation[,]'[] the withdrawal of the state . . . [but this view] cannot survive serious study of the regulation of financial markets. The modern American financial markets are almost certainly the most highly regulated markets in history, if regulation is measured by volume (number of pages) of rules, probably also if measured by extent of surveillance, and possibly even by vigor of enforcement.

Donald MacKenzie, *Opening the Black Boxes of Global Finance*, 12 REV. INT'L POL. ECON. 555, 569 (2005). Note that Friedrick Hayek, the godfather of neoliberalism, recognized the indispensability of the state for "free" markets. He took the view that "nothing has done so much harm to the [market advocate's] cause as the wooden insistence . . . on certain rough rules of thumb, above all of the principle of laissez-faire [capitalism]." FRIEDRICH A. HAYEK, THE ROAD TO SERFDOM 17 (1944).

292. SOBEL, *supra* note 290, at 151.

293. For a detailed analysis of financialization of the U.S. economy, see Greta R. Krippner, *The Financialization of the American Economy*, 3 SOCIO-ECON. REV. 173 (2005).

294. *See* Martijn Konings, *Neoliberalism and Rethinking the Crisis: Beyond the Re-regulation Agenda*, *in* THE GREAT CREDIT CRASH 3 (Martijn Konings ed., 2010).

different and overlapping segments of the financial market.[295] In 2000, scholars noted that "[t]he financial system is among the most heavily regulated sectors of the American economy."[296]

The only unifying coherence to this regulatory regime was furnished by the overarching neoclassical ideology augmented by the "efficient market hypothesis" that saw all markets as efficient and self-adjusting, which left to their own, would produce efficiency, innovation, supply and demand equilibrium, and stability.[297] This theory, which assumes that market prices are always right and unemployment is voluntary leisure, "became the intellectual justification for financial deregulation."[298] The elaborate legislative interventions of the last generation changed the very nature of financial institutions beyond acquiring savings and providing credit. Far beyond its classic role of

295. Joanna Chung, *Multi-Layered Patchwork Will Be Tough to Unpick*, FIN. TIMES, Apr. 24, 2008, at 13.

296. F. S. MISHKIN, THE ECONOMICS OF MONEY, BANKING & FINANCIAL MARKETS 46 (9th ed. 2009).

297. For detailed expositions of the rational market hypothesis, see generally CASSIDY, *supra* note 32, at 97–107; JUSTIN FOX, THE MYTH OF THE RATIONAL MARKET: A HISTORY OF RISK, REWARD, AND DELUSION ON WALL STREET (2009); Wade, *supra* note 20, at 34. For an insightful analysis of the efficient market hypothesis, and the underlying neoclassical economic theory, see ROBERT SKIDELSKY, KEYNES: THE RETURN OF THE MASTER 29–51 (2009). One scholar notes that "an ideological backlash against state economic interventionism" played a key part in this reordering of the markets. Philip G. Cerny, *The Deregulation and Re-regulation of Financial Markets in a More Open World*, *in* FINANCE AND WORLD POLITICS 51 (Philip G. Cerny ed., 1993). Another notes the critical role of "widely shared ideological commitments" and "mindsets." David M. Andrews, *Capital Mobility and State Autonomy: Toward a Structural Theory of International Monetary Relations*, 38 INT'L STUD. Q. 193, 200–01 (1994).

One should emphasize the global dimension of this phenomenon because of "international patterns of elite interaction . . . [which] are explicitly concerned to foster . . . a shared outlook among the international establishments of the major capitalist countries." Stephen R. Gill & David Law, *Global Hegemony and the Structural Power of Capital*, 33 INT'L STUD. Q. 475, 483 (1989). The efficient market hypothesis triggered a worldview that saw all human behavior as being uniformly dictated by an impulse to maximize gains and all facets of life operating in a competitive market of some sort. *See* GARY S. BECKER, THE ECONOMIC APPROACH TO HUMAN BEHAVIOR (1976). For critical evaluations, see DAN ARIELY, PREDICTABLY IRRATIONAL: THE HIDDEN FORCES THAT SHAPE OUR DECISIONS (2008); Alexander Rosenberg, *Review Symposium: Can Economic Theory Explain Everything?*, 9 PHIL. SOC. SCI. 509 (1979).

298. JOHNSON & KWAK, *supra* note 16, at 68–69. The foundational flaw of neoclassical economic theory is that "[l]eaving history and its uncertain movement out of the analysis imparts a false sense of determinacy and predictability to the economic process." Wallace C. Peterson, *Institutionalism, Keynes, and the Real World*, 11 J. ECON. ISSUES 201, 213–14 (1977). Because neoclassical theory assumes that time and institutions do not matter, it remains an inappropriate tool for analyzing and prescribing real-world policies. For a detailed analysis, see Douglas C. North, *Economic Performance Through Time*, 84 AM. ECON. REV. 359 (1994). In light of the 2007–2009 financial meltdown, it has been suggested that "September 15, 2008, the date that Lehman Brothers collapsed, may be to market fundamentalism . . . what the fall of the Berlin wall was to communism." STIGLITZ, *supra* note 22, at 219.

credit provision, finance was now positioned "directly at the heart of the accumulation process, essentially introducing a new sector that straddled credit and production."[299]

A large ensemble of legislation enabled neoliberal restructuring of financial markets. The critical legislative components were the following: the Depository Institutions Deregulation and Monetary Control Act of 1980, which eliminated interest rate caps;[300] the addition of the 401K provision to the tax code in 1980, which channeled incomes into private pension plans;[301] the Garn-St. Germain Depository Institutions Act of 1982, which lifted restrictions on the savings and loan industry to enter commercial lending and corporate bonds and also allowed inter-state mergers between banks;[302] the Secondary Mortgage Market Enhancement Act of 1984, which permitted investment banks to buy, pool, and resell mortgages in slices with varying levels of risk;[303] the Tax Reform Act of 1986, which created the Real Estate Mortgage Investment Conduit, making mortgage-backed securities more attractive;[304] the Financial Institutions Reform, Recovery, and Enhancement Act of 1989, which rearranged the government-sponsored entity landscape;[305] the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, which allowed banks to operate across state lines;[306] the Community Reinvestment Act, which directed financial institutions to expand their market base;[307] the Gramm-Leach-Bliley Act (Financial Services Modernization Act) of 1999,[308] which repealed

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299. Panitch & Gindin, *supra* note 198, at 3.

300. Depository Institutions Deregulation and Monetary Control Act of 1980, Pub. L. No. 96-221, 94 Stat. 132 (codified as amended in scattered sections of 12 U.S.C.).

301. I.R.C. § 401(k) of 1978 (effective Jan. 1, 1980). For the impact of this tax provision, see ROGER LOWENSTEIN, ORIGINS OF THE CRASH: THE GREAT BUBBLE AND ITS UNDOING 24–25 (2004).

302. Garn-St. Germain Depository Institutions Act of 1982, Pub. L. No. 97-320, 96 Stat. 1469 (codified as amended in scattered sections of 12 U.S.C.).

303. Secondary Mortgage Market Enhancement Act of 1984, Pub. L. No. 98-440, 98 Stat. 1689 (codified as amended in scattered sections of 15 U.S.C.).

304. Tax Reform Act of 1986, Pub. L. No. 99-514, 100 Stat. 2085 (codified as amended in scattered sections of 26 U.S.C.).

305. Financial Institutions Reform, Recovery, and Enhancement Act of 1989, Pub. L. No. 101-73, 103 Stat. 183 (codified as amended in scattered sections of 12 U.S.C.).

306. Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, 108 Stat. 2338 (codified as amended in scattered sections of 12 U.S.C.).

307. Community Re-Investment Act, 12 U.S.C. § 2901, *implemented by* 12 C.F.R. §§ 25, 228, 345, 563(e)). While free-market enthusiasts often cite this legislation as the primary cause of the mortgage meltdown, default rates on Community Re-Investment Act ("CRA") lending are comparable to other areas of lending. STIGLITZ, *supra* note 22, at 10.

308. Gramm-Leach-Bliley (Financial Services Modernization) Act of 1999, 15 U.S.C. §§ 6801–6809 (2006).

the Glass-Steagall Act of 1933;[309] the Commodities Futures Modernization Act of 2000, which left derivatives out of regulatory oversight;[310] and the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, which made it difficult for consumers to seek the protections of bankruptcy.[311]

The courts and regulatory agencies played a supportive role in the interpretation and enforcement of these provisions. In 1986, the courts upheld the Federal Reserve's ruling that commercial banks' placing commercial paper issued by corporations with investors did not violate Glass-Steagall.[312] A November 2001 rule jointly adopted by the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, and the Federal Reserve tied bank capital requirement in securitization to the ability of banks to get rating agencies to approve the investment.[313] On April 28, 2004, the SEC agreed to allow large investment banks to use their own "risk management practices for regulatory purposes."[314] This decision facilitated investment banks to increase their leverage forty to one.[315] The basic principle behind oligarchies—that economic power yields political power—translated well in the course of neoliberal regulatory design for financial capital, a design which substantiated that "as a rule, regulation is acquired by the industry and is designed and operated primarily for its benefit."[316]

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309. Glass-Steagall Act of 1933, Pub. L. No. 73-66, 48 Stat. 162 (repealed 1999).

310. Commodities Futures Modernization Act of 2000, Pub. L. No. 106-554, 114 Stat. 2763 (codified as amended at 7 U.S.C. § 1 (2006)).

311. Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (codified as amended in scattered sections of 11 U.S.C.).

312. Sec. Indus. Ass'n v. Fed. Reserve Sys., 807 F.2d 1052, 1069–70 (D.C. Cir. 1986).

313. Risk-Based Capital Guidelines, 66 Fed. Reg. 59,614 (Nov. 29, 2001) (to be codified at 12 C.F.R. pts. 3, 208, 225, 325, 587); JOHNSON & KWAK, *supra* note 16, at 138–39.

314. Alternative Net Capital Requirements for Broker-Dealers, 69 Fed. Reg. 34,428 (June 21, 2004) (to be codified at 17 C.F.R. pts. 200, 240). For the impact of this provision on financial markets, see JOHNSON & KWAK, *supra* note 16, at 140; Stephen Labaton, *Agency's '04 Rule Let Banks Pile Up New Debt*, N.Y. TIMES, Oct. 3, 2008, at A1.

315. STIGLITZ, *supra* note 22, at 163.

316. George J. Stigler, *The Theory of Economic Regulation*, 2 BELL J. ECON. & MGMT. SCI. 3, 3 (1971). A century ago, Louis Brandeis argued that the "dominant element in our financial oligarchy is the investment banker." BRANDEIS, *supra* note 196, at 4. Barney Frank, Chairman of the House Financial Services Committee, has taken the position that financial institutions and instruments have taken "a large chunk of the economy hostage. And we have to pay ransom, like it or not." ANDREW ROSS SORKIN, TOO BIG TO FAIL: THE INSIDE STORY OF HOW WALL STREET AND WASHINGTON FOUGHT TO SAVE THE FINANCIAL SYSTEM FROM CRISIS—AND THEMSELVES 38 (2009). Hacker and Pierson take the position that besides the neoliberal legislations, it was inaction by the U.S. government that facilitated ascendency of wealth-owning classes and emergence of "winner-take-all-politics." They term such inaction "drift," which they define as

> the passive aggressive form of politics, the No Deal rather that the New Deal. Yet it is

One area that was significantly left out of regulatory oversight was derivatives, which would play havoc down the road.[317] This considered exclusion resulted from a desire to accelerate both the hegemony of finance capital and the imperial role of the United States. In November 1999, the President's Working Group on Financial Markets concluded that "to allow the United States to maintain leadership in these rapidly developing markets . . . the trading of financial derivatives . . . should be excluded from the [Commodities Exchange Act]."[318] Greenspan found regulation of derivatives "wholly unnecessary."[319] Larry Summers, the Secretary of Treasury in 1999–2001, said that one of his great achievements was ensuring that derivatives remained unregulated.[320] When the finance capital was able to beat back attempts to regulate derivatives and restrict predatory lending, its "victory over America was total."[321]

Besides the changes in U.S. regulatory regimes, the neoliberal financial reordering was also facilitated by changes in banking rules of

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> not the same as simple inaction. Rather, drift has two stages. First, large economic and social transformations outflank or erode existing politics, diminishing their role in American life. Then, political leaders fail to update policies, even when there are viable options, because they face pressure from powerful interests exploiting opportunities for political obstruction.

JACOB S. HACKER & PAUL PIERSON, WINNER-TAKE-ALL POLITICS: HOW WASHINGTON MADE THE RICH RICHER—AND TURNED ITS BACK ON THE MIDDLE CLASS 53 (2010).

317. With the end of USD's convertibility, and the move from fixed to floating rates, the measure-of-value property of money was rendered highly unstable. With this increased uncertainty, risk-assessment and risk-hedging became critical for capital that moves through multiple fluctuating currencies. The market for derivatives, instruments designed to hedge risk, exploded in this context. Because one did not have to have a stake in the underlying security to buy a derivative, they quickly became instruments of speculation rather than risk-management. Besides Credit Default Swaps, derivatives mushroomed as speculative bets on the movements of currencies, interest rates, bonds, and stocks. The modern "derivatives revolution" began with the 1981 invention of the interest rate swap by Solomon Brothers, and by 2008 had grown to USD 350 trillion in face value and USD 8 trillion in gross market value. JOHNSON & KWAK, *supra* note 16, at 79–80. As a preview of bigger things to come on the global stage, the game of "frantically rebundling the risks and stuffing them down the throats of any investor we could find" found a public entity victim in Orange County that lost USD 2 billion in 1994 in deals that yielded Merrill Lynch USD 100 million in fees. *Id.* at 81; *see also* FRANK PARTNOY, INFECTIOUS GREED: HOW DECEIT AND RISK CORRUPTED THE FINANCIAL MARKETS 117 (2004) (placing Orange County's bankruptcy within the larger context of the spread of complex and little understood financial instruments).

318. PRESIDENT'S WORKING GRP. ON FIN. MKTS., OVER-THE-COUNTER DERIVATIVES MARKETS AND THE COMMODITY EXCHANGE ACT 1 (1999), *available at* http://www.treasury.gov/resource-center/fin-mkts/Documents/otcact.pdf.

319. JOHNSON & KWAK, *supra* note 16, at 8.

320. STIGLITZ, *supra* note 22, at 46.

321. *Id.* at 10.

the Bank for International Settlements[322] and increased encroachment on economic sovereignty of states through an over-extension of U.S. law and jurisdiction.[323] Global operations of American investment

322. The 1988 Basel Capital Accord, designed in the aftermath of the Latin American debt crisis of the early 1980s, required all banks to maintain capital reserve funds of 8 percent of risk-adjusted assets. *See* BASEL COMM. ON BANKING SUPERVISION, INTERNATIONAL CONVERGENCE OF CAPITAL MEASUREMENT AND CAPITAL STANDARDS 13 (1998), *available at* http://www.bis.org/publ/bcbsc111.pdf. In the mid-1990s, the U.S. Federal Reserve sought replacement of regulation by a supervisory regime that replaced capital requirements with review of banks' internal risk management procedures. Eric Newstadt, *Neoliberalism and the Federal Reserve*, *in* AMERICAN EMPIRE AND THE POLITICAL ECONOMY OF GLOBAL FINANCE 107 (Leo Panitch & Martijn Konings eds., 2009). Under the 1996 amended Capital Accord, capital reserves of 8 percent against both credit and market risks were required. However, banks could use their own internal risk models for measuring their market risk. This created a two-tier system of banks. The global conglomerates that had resources to set up internal risk-measurement and risk-management systems determined their own capital requirements. The smaller banks had their market risk determined by the "standard measurement method" specified in the amendment. BASEL COMM. ON BANKING SUPERVISION, OVERVIEW OF THE NEW BASEL CAPITAL ACCORD 3–7 (2003), *available at* http://www.bis.org/bcbs/cp3ov.pdf. The risk-based capital requirement forces banks to cut back lending during a financial crisis as the value of equity, the largest part of a bank's capital, falls. Therefore, capital requirements become more burdensome during a financial crisis and banks cut back issuing credit. The credit squeeze in a depressed market exacerbates the downward pressure on the market. In effect, then, the Basel standards end up with "a global banking and financial system that in stabilizing itself, destabilizes the underlying macroeconomy." Rude, *supra* note 31, at 93; *see also* ROUBINI & MIHM, *supra* note 29, at 203–09 (critiquing the Basel regulatory regime and its capital requirement structure).

323. *See* B. S. Chimni, *International Institutions Today: An Imperial Global State in the Making*, 15 EUR. J. INT'L L. 1, 3 (2004) (suggesting that myriad international institutions undermine democratic processes, especially in the Third World). The exponential rise of extra-territorial jurisdiction in unilateral and multilateral forms has become an avenue to govern matters beyond international territorial boundaries by reaching deeply inside the domestic jurisdiction of states and enforcing the neoliberal agenda upon reluctant states in the global South. The United States, for example, increasingly uses certification mechanisms "to create laws for other States and to monitor its observance, while the United States itself remains unbound and unmonitored." Nico Kirsch, *More Equal than the Rest? Hierarchy, Equality and US Predominance in International Law*, *in* UNITED STATES HEGEMONY AND THE FOUNDATIONS OF INTERNATIONAL LAW 161 (Michael Byers & Georg Nolte eds., 2003). These factors combine with "substantivism" in U.S. courts, which is "a choice-of-law methodology whose goal is to select the better law in any given case." Hannah L. Buxbaum, *Conflict of Economic Laws: From Sovereignty to Substance*, 42 VA. J. INT'L L. 931, 957 (2002). This results in "over-application of US law" in international disputes, and acts "as a lever forcing convergence . . . outside the political process that generally structures the harmonization movement." *Id.* at 966, 972; *see also* JOHN BRAITHWAITE & PETER DRAHOS, GLOBAL BUSINESS REGULATION 475–77 (2000) (showing how this "harmonization" has impacted the fields of banking, securities regulation, civil aviation, cyber law, etc.). The multilateral form is exemplified by the WTO's compulsory jurisdiction over disputes that lie within its extensive regimes, which opens the door for unilateral prescriptions and measures related to trade and environmental policies of states in the global South. *See, e.g.*, Appellate Body Report, *United States—Import Prohibition of Certain Shrimp and Shrimp Products*, WT/DS58/AB/RW (Oct. 22, 2001) (pertaining to an appeal by Malaysia over a U.S. import prohibition to protect a species of sea turtles); *see also* B. S. Chimni, *India and the Ongoing Review of WTO Dispute Settlement System: A Perspective*, 34 ECO. & POL. WKLY. 264, 265 (1999) (advocating for a WTO dispute settlement system that gives greater deference to

banks played a role in transforming not only financial markets, but also business practices in Europe and East Asia.[324] As a result, a truly global financial system, "based on the deregulation and internationalization of the US financial system, is neither a myth nor even an alarming tendency, but a reality."[325] These redesigned rules of the game substantiated neoliberalism as the hegemonic global economic order.

With the neoliberal counterrevolution underway, equity markets in the United States began to rise, propelled by inflows of funds from newly privatized pension schemes. Big companies increasingly started to rely on equity markets for finance.[326] In response, commercial banks pushed lending into more marginal markets and developed new financial instruments and fee-and-commission activities.[327] The banks expanded the scope of the market by hunting out economically marginal groups for mortgage and consumer credit. In this process, "[e]conomically marginal people constituted, in effect, *a 'developing country' within the United States*, and the banks' strategy was parallel to the way they recycled petrodollars from oil exporters to developing countries, especially Latin America, in the 1970s."[328] Lifting New Deal banking restrictions, along with the implementation of the 1988 Basel standards for bank capital adequacy, accelerated reliance upon fees and commissions and propriety trading of financial assets.[329] This

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national sovereignty); B. S. Chimni, *WTO and Environment: Legitimisation of Unilateral Trade Sanctions*, 37 ECO. & POL. WKLY. 133, 137 (2002) (questioning whether the WTO's dispute resolution system is being used to advantage wealthier states). Increasingly, courts of the global South are deemed unsuitable for adjudicating claims against multinational corporations, thus creating "new national frontiers of responsibility for the conduct of global capital." Upendra Baxi, *Mass Torts, Multinational Enterprise Liability and Private International Law*, 276 RECUEIL DES COURS 297, 312 (1999). For detailed analyses, see Michael Anderson, *Transnational Corporations and Environmental Damage: Is Tort Law the Answer?*, 41 WASHBURN L.J. 399, 402 (2002); H. Zhenjie, *Forum Non Conveniens: An Unjustified Doctrine*, 48 NETH. INT'L L. REV. 143, 159–60 (2001).

324. *See* ROY C. SMITH, THE GLOBAL BANKERS 45–47 (1989) (describing the exportation of American investment banking practices during the 1980s).

325. John Grahl, *Globalized Finance: The Challenge to the Euro*, 8 NEW LEFT REV. 23, 44 (2001). For detailed analyses of Americanization of global finance, see Robert Wade, *Globalization as the Institutionalization of Neoliberalism: Commodification, Financialization, and the Anchorless Economy*, *in* INSTITUTIONS AND MARKET ECONOMIES: THE POLITICAL ECONOMY OF GROWTH AND DEVELOPMENT 250–77 (W. Garside ed., 2007).

326. Wade, *supra* note 20, at 30.

327. For practices of banks during this period, see JOHNSON & KWAK, *supra* note 16, at 57–119 (describing the post-1980s proliferation of complex financial instruments); STIGLITZ, *supra* note 22, at 77–108.

328. Wade, *supra* note 20, at 31 (emphasis added).

329. For detailed analyses of speculative operations of finance capital, see PHILIP AUGAR, THE GREED MERCHANTS: HOW THE INVESTMENT BANKS PLAYED THE FREE MARKET GAME

originate-and-distribute model rested on creating complex financial products and selling them quickly to investors and speculators around the world.[330] In this process, credit rating agencies played a crucial and supportive role.[331] The model grew exponentially after the mid-1990s, as bundling and securitization of debt became ubiquitous. The complexity of the financial products helped conceal the risks from buyers, rating agencies, and regulators.[332]

The widening gap between the rich and the poor gave further impetus to financialization. In the United States, for example, between 1973 and 2002, average real incomes of the bottom 90% fell by 9%, while incomes for the top 1% increased by 101%, and those of the top 0.1% rose 227%.[333] While in 1991, the wealthiest 1% of Americans owned 38.7% of corporate assets, by 2003 their share rose to 57.5%.[334] While the wealthy continuously needed ever newer financial instruments to invest in, the working poor turned to credit markets, particularly mortgages and credit cards, to sustain their living standards. In the loose monetary environments after 1997 and 2001, financial institutions

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(2006); NASSER SABER, SPECULATIVE CAPITAL: THE INVISIBLE HAND OF GLOBAL FINANCE (1999).

330. Anastasia Nesvetailova & Ronen Palan, *A Very North Atlantic Credit Crunch: Geopolitical Implications of the Global Liquidity Crisis*, 62 J. INT'L AFF. 165, 170–71 (2008). The originate-and-distribute model entailed no incentive for banks to evaluate borrowers, as the risk would be borne by the final buyer. The originate-and-distribute model distanced lenders from the consequences of their lending decisions, thus injecting moral hazard into the heart of the financial system. For detailed discussion of the originate-and-distribute model, see JOHNSON & KWAK, *supra* note 16, at 60–87; STIGLITZ, *supra* note 22, at 6–17.

331. For detailed analysis of the role of rating agencies, see TIMOTHY J. SINCLAIR, THE NEW MASTERS OF CAPITAL: AMERICAN BOND RATING AGENCIES AND THE POLITICS OF CREDITWORTHINESS 17 (2008). In the process of "financialization," the role of rating agencies became critical as their stamp of approval over new financial instruments as investment-grade became the only signal of due diligence. Rating agencies, however, were marred by conflicts of interest. *Id.* at 151. They depended on fees by referring parties and thus risked losing business by not obliging any and all seekers with their endorsement. In addition, the rating agencies had a parallel business of advising how to structure financial products. *Id.* at 152. The hope that the products on which they advised would later come before them for rating gave them a double stream of revenue and incentives to overrate. The law leant a helping hand. Under U.S. securities law, rating agencies are entitled to take the information provided by a seller of a financial product more or less at face value without any legally binding obligation to do their own due diligence about the risks of the product. *See* Wade, *supra* note 20, at 32 (concluding that the ratings agencies had no legal obligation to assess the information provided to them by the manufacturers of mortgage-backed securities); *see also* JOHNSON & KWAK, *supra* note 16, at 139–40 (describing investment banks' methods of rigging their financial models to get high ratings on their mortgage tranches); STIGLITZ, *supra* note 22, at 92–94 (criticizing the incentive structure of the ratings agencies and its effect on financial institutions).

332. *See* JOHNSON & KWAK, *supra* note 16, at 74–87 (detailing the ways in which modern financial innovations obscured the line between commercial and investment banking).

333. McNally, *From Financial Crisis*, *supra* note 230, at 60.

334. *Id.*

were able to link both these demands—providing relatively cheap credit and then bundling and securitizing this debt to market to investors around the world. Loosened regulatory regimes allowed the financial sector to leverage and increase its own debt exponentially. Between 1980 and 2007, while U.S. consumer debt relative to GDP doubled, the financial sector debt more than quintupled.[335] Demand for the complex financial products did not naturally flow from their supply; instead, it had "to be created, and liquidity relied critically on demand being whipped up."[336] The financial markets relied on the Federal Reserve to keep the system awash with liquidity to sustain the credit-driven "financialization." Particularly in response to the "dot.com" crash of the early 2000s, the Federal Reserve lowered interest rates and kept them low incessantly, creating liquidity and a credit-fueled boom.[337] The "supply of asset-backed securities doubled between 2003 and 2004, and doubled again between 2004 and 2005."[338] With financialization of the U.S. economy facilitated by new legal regimes, the neoliberal counterrevolution stood entrenched. The economic impact on returns of capital, income, and wealth distribution were quick and in tune with the neoliberal agenda.

C. Scorecard of Neoliberal Re-regulation

The scorecard of the neoliberal counterrevolution shows spectacular gains for finance capital at the expense of the larger economy and the working classes.[339] The record of neoliberalism in stimulating

335. *Id.* at 61. Between 2002 and 2006, the total amount of debt outstanding in the United States went from USD 31.84 trillion to USD 45.32 trillion, an increase of 42.3 percent. CASSIDY, *supra* note 32, at 223–24 fig.17.1.

336. Nesvetailova & Palan, *supra* note 330, at 166.

337. From a peak of 6.5 percent in 2000, the federal funds rate was cut to 1.25 percent in November 2002. CASSIDY, *supra* note 32, at 221; *see also* McNally, *From Financial Crisis*, *supra* note 230, at 61 (suggesting that the lower interest rates facilitated the explosion of credit, particularly for the working class). This, in turn, propelled "artificial liquidity," "liquidity black holes," "liquidity illusion," and "ponzi finance," the ubiquitous characterizations of the financial boom that rested substantially on derivatives based on bundled and securitized sub-prime mortgages. *See* Nesvetailova & Palan, *supra* note 330, at 168 (detailing the rapidity in which complex mortgage-backed securities became illiquid). Liquidity can and does evaporate overnight. Assets are easy to sell when market participants share a sense of optimism about their safety and profitability. When the sense of optimism evaporates, so does liquidity, leaving behind unwanted burdens of illiquid debt. For detailed analyses of crisis-prone nature of financial markets, see HYMAN P. MINSKY, CAN "IT" HAPPEN AGAIN? (1982); ANASTASIA NESVETAILOVA, FRAGILE FINANCE: DEBT, SPECULATION AND CRISIS IN THE AGE OF GLOBAL CREDIT (2007); Hyman P. Minsky, *A Theory of Systemic Fragility*, *in* FINANCIAL CRISES: INSTITUTIONS AND MARKETS IN A FRAGILE ENVIRONMENT (Edward I. Altman & Arnold W. Sametz eds., 1977).

338. Wade, *supra* note 20, at 35.

339. *See* HACKER & PIERSON, *supra* note 316, at 14 (describing the unequal distribution of

economic growth remained dismal even before the 2007–2009 financial meltdown. Annual growth rates in the quarter century after 1973, while higher than an earlier period of global capitalism from 1820 to 1945, were below those achieved in the so-called post-war "golden age."[340] While aggregate growth rates were about 3.5% in the 1960s and 1970s, they were only 1.4% in the 1980s, 1.1% in the 1990s, and below 1% after 2000.[341] Income inequality increased in more than three-quarters of Organisation for Economic Co-operation and Development ("OECD") countries between the mid-1980s and mid-2000s.[342] As the share of labor income shrank, the phenomenal expansion of the financial sector and its profits helped the share of business income in the OECD countries to rise from 28% in 1980 to 36% in 2003.[343] While in 1982, financial corporations generated 8% of total U.S. corporate value added and 5% of total corporate profits, by 2007 their share of corporate value added rose to 16%, and their share of corporate profits went up eight times to 41%.[344] By 2006, the profits per employee in banking were twenty-six times higher than the average in all other industries worldwide.[345] The share of national income by the top 1% of earners in the United States had fallen from a pre-World War II high of 16% to less than 8% by 1978. The neoliberal turn helped reverse the trend, and by 2000, this share climbed back to 15%. The top 0.1% of income earners increased their share of the national income from 2% in 1978 to 6% by 1999. The ratio of median compensation of workers to the salaries of CEOs increased from 30 to 1 in 1970 to more than 400 to 1 in 2000.[346] The average hours worked by the average employed American rose by the equivalent of an extra month's work

wealth in the United States since the 1970s); Tony Cutler & Barbara Waine, *Social Insecurity and the Retreat from Social Democracy: Occupational Welfare in the Long Boom and Financialization*, 8 REV. INT'L POL. ECON. 96, 102 (2001) (pointing to financialization as contributing to the curtailment of social welfare systems in the United States and United Kingdom).

340. ANGUS MADDISON, THE WORLD ECONOMY, A MILLENNIAL PERSPECTIVE 265 (2001).

341. Harvey, *supra* note 49, at 33.

342. OECD, GROWING UNEQUAL? INCOME DISTRIBUTION AND POVERTY IN OECD COUNTRIES 25–34 (2008).

343. *See* Robert Hunter Wade, *Globalization, Growth, Poverty, Inequality, Resentment, and Imperialism*, *in* GLOBAL POLITICAL ECONOMY 373 (John Ravenhill ed., 2d ed. 2008) (examining the consequences of economic globalization); WOLF, *supra* note 17, at 64 (discussing the shift of income from labor to capital in the context of a global savings glut).

344. Wade, *supra* note 20, at 33.

345. *Id.*

346. Harvey, *supra* note 49, at 28; *see also* TASK FORCE ON INEQUALITY & AM. DEMOCRACY, AMERICAN DEMOCRACY IN AN AGE OF RISING INEQUALITY 3 (2004) (charting the growth of inequality in the United States as compared to in Britain and France).

per year.[347] The household debt and the corresponding debt servicing burden grew exponentially.[348] The debt held by the U.S. financial sector grew from USD 2.9 trillion, or 125% of GDP in 1978, to over USD 36 trillion, or 259% of GDP in 2007.[349] Between 1980 and 2000, assets held by commercial banks and securities firms grew from 55% of GDP to 95%.[350] Financial sector profits grew from 13% of all domestic corporate profits from 1978 to 1987, to 30% from 1998 to 2007.[351] By 2004, the proportion of corporate profits in the United States going to finance doubled to over 28%, and the share going to the broader financial sector, combining finance, real estate, and insurance, doubled to nearly 50%.[352]

Perhaps the most important structural change triggered by neoliberal re-regulation was the emergence of a "shadow banking system"—a collection of institutions, instruments, and processes that looked and acted like banks, but remained unregulated and unsecured.[353] By 2007, "shadow banking" accounted for about 60 percent of the U.S. banking system.[354] During the Great Recession in 2007, these "shadow banking beasts born of regulatory evasion . . . [were] at the heart of what would become the mother of all bank runs."[355] It is the subsequent rescue of the financial sector on the backs of the taxpayers that has amounted to one of the largest redistributions of wealth in history.[356]

The new architecture of global finance did achieve another primary goal of the neoliberal counterrevolution: it helped to embed the imperial role of the United States into global financial flows. In particular, the global expansion of financial markets made it possible for global

347. *See* JULIET B. SCHOR, THE OVERWORKED AMERICAN 23 tbl.2.3 (1991) (calculating the increasing amount of labor done by workers in the United States).

348. For the growth of U.S. household debt from 1980 to 2006, see WOLF, *supra* note 17, at 107 fig.4.31.

349. JOHNSON & KWAK, *supra* note 16, at 59.

350. *Id.* at 85.

351. *Id.*

352. David Leonhardt, *Bubblenomics*, N.Y. TIMES, Sept. 21, 2008, at WK1; *see also* DUMÉNIL & LÉVY, *supra* note 258 (discussing the growth of the financial sector under neoliberalism); Greta R. Krippner, *The Financialization of the American Economy*, 3 SOCIO-ECON. REV. 173, 179 (2005) (charting the increase in the profits of the financial sector).

353. ROUBINI & MIHM, *supra* note 29, at 8, 76–80.

354. Paul Krugman & Robin Wells, *The Slump Goes On: Why?*, N.Y. REV. BOOKS, Sept. 30, 2010, at 59, *available at* http://www.nybooks.com/articles/archives/2010/sep/30/slump-goes-why/.

355. ROUBINI & MIHM, *supra* note 29, at 35, 80.

356. STIGLITZ, *supra* note 22, at 200. For details of the mechanisms and costs of the rescue, see ROUBINI & MIHM, *supra* note 29, at 135–57, 165–81; STIGLITZ, *supra* note 22, at 37–52, 109–46.

savings to flow into the United States at an unprecedented scale.[357] These capital flows are rightly seen as "an *imperial tithe* the U.S. imposes on other countries."[358] It is because of the dominant imperial role of the United States in global finance that balance-of-payment deficits appear not to have the same implications for the United States as they do for other states.[359] As early as 1971, the Federal Reserve Bank of Boston pointed out that "*this asymmetry appears to be appropriate, for it corresponds to an asymmetry in the real world*."[360] In tune with this position, Paul O'Neill, U.S. Treasury Secretary, argued that, for the United States, the current account deficit was a "meaningless concept."[361] Alan Greenspan placed "the U.S. current account [deficit] far down the list" of imbalances to worry about.[362] This is where an overwhelming non-market force came into play, i.e., U.S. imperial domination, which ensured that foreign exchange surpluses from around the world, particularly from Asia, would fund escalating U.S. fiscal and current account deficits.[363] In light of this factor, the theory that exchange rates adjust in response to external imbalances became inoperative for the United States.[364] Global savings supported the USD, while the ability to borrow in a currency that it issues meant that U.S. monetary and fiscal policy "suffer[ed] from no external constraints[,] . . . not so much a free lunch as an apparently ongoing free banquet."[365] The United States, as the imperial hegemon, now also became "the superpower of global borrowing,"[366] and global

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357. For comparative global current accounts in 2006, see WOLF, *supra* note 17, at 78 fig.4.14.

358. Panitch & Gindin, *supra* note 198, at 69 (emphasis added).

359. For U.S. current accounts from 1970 to 2006, see WOLF, *supra* note 17, at 62 fig.4.3 (documenting the decline of U.S. current accounts as a percentage of GDP since 1970).

360. MICHAEL HUDSON, SUPER IMPERIALISM: THE ORIGINS AND FUNDAMENTALS OF U.S. WORLD DOMINANCE 327 (2003) (emphasis added). Kindleberger was also of the view that transactions underlying the deficit were largely a "trade in liquidity, which is profitable to both sides," rather than a trade deficit or over-investment abroad as was commonly understood. CHARLES P. KINDLEBERGER, INTERNATIONAL MONEY: A COLLECTION OF ESSAYS 43 (1981).

361. *The O'Neill Doctrine*, ECONOMIST, Apr. 25, 2002, at 12.

362. ALAN GREENSPAN, THE AGE OF TURBULENCE: ADVENTURES IN A NEW WORLD 347 (2007).

363. *See* WOLF, *supra* note 17, at 98–114 (detailing the multifarious factors underlying the global savings glut and its effect on U.S. consumption and growth).

364. For change in value of foreign currencies against the USD between 2002 and 2007, see *id.* at 96 fig.4.26. The patterns of global capital flows substantiate this development. Between 1996 and 2006, countries with the biggest external deficits experienced appreciation of effective exchange rates, while countries with the biggest surpluses tended to experience depreciation. United Nations Conference on Trade and Development, Geneva, Switz., *Trade and Development Report* 16 tbl.1.6, U.N. Doc. UNCTAD/TDR (2007).

365. WOLF, *supra* note 17, at 100, 112.

366. *Id.* at 4.

savings financed "*American credit card imperialism*."[367] The imperial non-market aspect of this phenomenon is evidenced by the fact that while nonresidents hold about half of outstanding U.S. Treasury bills and bonds, two-thirds of these are held by central banks and sovereign wealth funds.[368]

The net effect of global neoliberal financial flows is the transfer of capital from high-savings to low-savings countries.[369] This has translated into flows from less developed countries with high savings, particularly in Asia, to the industrialized economies, particularly the United States.[370] The United States requires access to foreign capital, as its household savings rate is the lowest among industrialized economies.[371] The United States' hardline in favor of unfettered capital mobility reflected its strategic interest in tapping foreign savings pools, particularly those in Asia. As the United States turned from a net creditor to a net debtor in 1985, increased liberalization of global finance enhanced its ability to sell its debt globally.[372] In the absence of the gold standard, U.S. Treasury bills have come to stand for the world's monetary reserve. Today, the U.S. Treasury market is the largest, deepest, and most liquid financial market in the world with USD 4.84 trillion in securities, and about USD 531 billion in transactions daily.[373] The resulting inflow of capital keeps the USD strong, which allows American consumers to import goods cheaply.

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367. ISTVAN MESZAROS, THE STRUCTURAL CRISIS OF CAPITAL 48 (2010) (emphasis added); *see also* John Bellamy Foster, Hannah Holleman & Robert W. McChesney, *The U.S. Imperial Triangle and Military Spending*, 60 MONTHLY REV., no. 5, 2008 at 1, 14–15 (discussing U.S. militarism as a method to retain and expand U.S. hegemony, and to combat periods of economic stagnation).

368. ROUBINI & MIHM, *supra* note 29, at 251.

369. For savings, investment, and current account balances of high-income, emerging market, and oil exporting countries, see WOLF, *supra* note 17, at 66 fig.4.5, 67 fig.4.6.

370. For current account balances of developing economies, see *id.* at 38 fig.3.2.

371. Robert Wade, *The Coming Fight over Capital Controls*, 113 FOREIGN POL'Y 41, 45 (1998); *see also* Robert Wade & Frank Veneroso, *The Gathering World Slump and the Battle over Capital Controls*, 231 NEW LEFT REV. 13, 42 (1998) (noting the relationship between savings of Asian economies and deficits of the U.S. economy).

372. *See* Matthias Thiemann, *American Hegemony and the Ascendance of Direct Finance*, 62 J. INT'L AFF. 244, 244–45 (2008) (reviewing SEABROOKE, *supra* note 217) (noting the relationship between flexible exchange rates and increased use of dollar-denominated assets to balance foreign currency fluctuations); *see also* SEABROOKE, *supra* note 217, at 111 (discussing how the Depository Institutions Deregulation and Monetary Control Act and the International Banking Act allowed U.S. banks to hold foreign capital without interest rate ceilings or adequate reserve requirements).

373. Martijn Konings, *American Finance and Empire in Historical Perspective*, *in* AMERICAN EMPIRE AND THE POLITICAL ECONOMY OF GLOBAL FINANCE 72 (Leo Pantich & Martijn Konings eds., 2008). In light of the 2007–2009 financial meltdown and the continuing vulnerabilities of the U.S. economy, there is the possibility that "US treasuries are a safe haven

The escalating U.S. current account deficit and credit-driven consumer spending allowed the U.S. economy to function as "the 'Keynesian engine' of the global economy."[374] As the U.S. economy became "the consumer of last resort," by 2000, U.S. imports accounted for one-fifth of world exports and 4 percent of world GDP.[375] This could be supported only at the cost of a USD 857 billion current account deficit by 2006.[376] While no other country could have sustained such deficits, foreign capital kept pouring into the U.S. economy.[377] It was only in 2002, as overcapacity weighed down profit rates and the U.S. economy started to show signs of vulnerability, that private investors started to move out of USD-based investments.[378] Private capital flows into the United States turned abruptly negative in the third quarter of 2007, with an annualized outflow of USD 234 billion, while the previous quarter had an inflow of USD 823 billion.[379] What saved the USD at this juncture was, again, the non-market force of imperial domination—continued investment by central banks in East Asia and oil-producing Middle-Eastern states, induced by considerable prodding from U.S. political authorities.[380]

Today, China is, in effect, the banker of the United States.[381] In 2006, China's increase of foreign exchange holdings almost matched the net issuance of U.S. Treasury and government bonds.[382] The two countries are now locked in a "balance of financial terror."[383] Centuries

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the way Pearl Harbor was a safe haven in 1941." Ferguson, *supra* note 26, at 11.

374. McNally, *From Financial Crisis*, *supra* note 230, at 63.

375. *Id.*

376. *Id.*

377. For global surplus savers and the United States as a borrower between 1995 and 2006, see WOLF, *supra* note 17, at 121 fig.5.3.

378. ROBERT BRENNER, THE ECONOMICS OF GLOBAL TURBULENCE 237 (2006).

379. GRAHAM TURNER, THE CREDIT CRUNCH: HOUSING BUBBLES, GLOBALIZATION AND THE WORLDWIDE ECONOMIC CRISIS 90–91 (2008).

380. McNally, *From Financial Crisis*, *supra* note 230, at 65. For global current account balances between 1997 and 2007, see WOLF, *supra* note 17, at 79 fig.4.15. For financing of the U.S. current account, see *id.* at 123 fig.5.4.

381. FERGUSON, *supra* note 4, at 335. In 2008, when Bank of China cut its exposure to U.S. Treasury bills, Treasury Secretary Paulson "found himself with a fait accompli. The federal government had to give reassurances to foreign investors in agency debt if it wanted to avoid chaos in financial markets and a run on the dollar." John Grapper, *A US Government Bail-out of Foreign Investors*, JOHN GAPPER'S BLOG (Sept. 8, 2008, 4:06 PM), http://blogs.ft.com/gapperblog/2008/09/a-us-government-bail-out-of-foreign-investors/. Grapper added, "It smacks of debt crises past in Latin American countries, where the ultimate pressure for a bail-out came from foreign investors." *Id.*

382. FERGUSON, *supra* note 4, at 335. For the balance of payments of China from 1996 to 2007, see WOLF, *supra* note 17, at 86 fig.4.19.

383. ROUBINI & MIHM, *supra* note 29, at 253 (quoting Larry Summers).

ago, nearly a third of the silver from the Americas, which had tripled Europe's supply, ended up in China in exchange for silks, spices, and other goods that Europe imported.[384] Today, U.S. imperial weight is able to bring back Chinese foreign exchange surplus to the United States. Global finance profited from this development, as growing Chinese surpluses and growing U.S. deficits generated a surge in global credit relative to gross world product.[385] While China's ability to supply consumer goods at a low price kept consumer price inflation in check, reinvestment of China's surplus in the United States helped propel asset price inflation, including property and financial assets.[386] Ballooning U.S. trade deficits were matched by rapid growth of the world's foreign exchange reserves, mostly denominated in USD. Global foreign exchange reserves doubled between 2004 and 2008, increasing as much as they had in the entire previous century.[387] Global finance capital now profits from this unprecedented global movement of capital, while the United States feeds off global savings and foreign exchange surpluses.[388]

D. Transforming the IMF into the Global Enforcer of Neoliberalism

With the neoliberal global financial reordering underway, captains of global finance understood that, as Robert Rubin states, "periodic financial crises of one sort or another are virtually inevitable," and that the United States would act as "chief of the fire department."[389] The IMF now became, in Larry Summers' words, "the cheapest and most effective way" to promote U.S. interests in international financial affairs.[390] This required repositioning the IMF as the global enforcer of

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384. FERNAND BRAUDEL, *supra* note 40, at 198, 490–91.

385. Wade, *supra* note 20, at 36.

386. *Id.*

387. *Id.* at 37; *see also* RICHARD DUNCAN, THE DOLLAR CRISIS: CAUSES, CONSEQUENCES, CURES 44–45 (2005) (discussing how reliance on the dollar as the driver of the international economy has created intractable problems, notably over-investment in dollar-denominated assets).

388. For a comparative chart of net savers and net lenders in 2006, see WOLF, *supra* note 17, at 68 fig.4.7.

389. ROBERT RUBIN & JACOB WEISBERG, IN AN UNCERTAIN WORLD: TOUGH CHOICES FROM WALL STREET TO WASHINGTON 213–15 (2004).

390. EVA RIESENHUBER, THE INTERNATIONAL MONETARY FUND UNDER CONSTRAINT: LEGITIMACY OF ITS CRISIS MANAGEMENT 125 (2001) (quoting Larry Summers); *see also* Ruth Felder, *From Bretton Woods to Neoliberal Reform: The International Financial Institutions and American Power*, *in* AMERICAN EMPIRE AND POLITICAL ECONOMY OF GLOBAL FINANCE 175, 175–84 (Leo Pantich & Martijn Konings eds., 2009) ("The Bretton Woods Agreement of 1944, which gave birth to the IMF, established an organizational structure and procedures that guaranteed a pro-American bias in the goals and operation of the new institution.").

the new neoliberal order. The role of the U.S.-dominated IMF changed from being a currency stabilization fund to that of a manager of foreign debt crises. Concurrently, the IMF also became a global enforcer of neoliberalization through structural adjustment programs imposed upon any state that needed its assistance with debt repayments. Debt crises are now used to enforce fiscal austerity, privatization, and market liberalization—the interlinked pillars of the Washington Consensus.[391] In 1978, the IMF's Articles of Agreement were amended to redefine surveillance and expand the scope of state policies that could be subjected to IMF scrutiny.[392] New Guidelines on Conditionality, released in 1979, ratified the expanded surveillance power and laid the basis for conditionality of structural adjustment that would henceforth accompany IMF assistance.[393] In order to perform its new mandate, the IMF purged Keynesian economists from its ranks in 1982 and replaced them with neoliberal monetarists.[394] Concurrently, the World Bank was turned into "strictly a junior partner, with the guidelines of the programs dictated by the IMF."[395] The World Bank's lending was switched from project loans to structural adjustment loans subject to IMF approval and accompanied by IMF-imposed conditionalities.[396]

As the Bretton Woods schema of capital controls yielded to neoliberal orthodoxy, the IMF, which was "founded on the belief that markets often worked badly, now champion[ed] market supremacy with ideological fervor."[397] Keynesian concerns about international capital mobility were jettisoned. The new IMF dogma of unfettered mobility of capital was summed up by Stanley Fischer, then-chief economist of the IMF: "[F]ree capital movements facilitate a more efficient global allocation of savings, and help channel resources into their most

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391. This is the name given to a package of economic policy prescribed by the United States, IMF, and the World Bank. Typically, the package includes fiscal discipline, taxation reform, liberalization of interest rates, protection of property rights, privatization of industries and services, deregulation of markets, floating exchange rates, liberalization of trade, and removal of barriers to foreign direct investment. *See* STIGLITZ, *supra* note 47, at 53–88; Alfredo Saad-Filho, *From Washington to Post-Washington Consensus: Neoliberal Agenda for Economic Development*, *in* NEOLIBERALISM: A CRITICAL READER, *supra* note 236, at 113, 113–19; John Williamson, *What Washington Means by Policy Reform*, *in* LATIN AMERICAN READJUSTMENT: HOW MUCH HAS HAPPENED? 7, 7–20 (John Williamson ed., 1989).

392. HELLEINER, *supra* note 211, at 110.

393. Louis Pauly, *Good Governance and Bad Policy: The Perils of International Organization Overextension*, 6 REV. INT'L POL. ECON. 401, 415 (1999).

394. HARVEY, *supra* note 236, at 32–34.

395. STIGLITZ, *supra* note 47, at 14.

396. *Id.* at 13–14.

397. *Id.* at 12.

productive uses, thus increasing economic growth and welfare."[398] This is contrary to the historical record, which shows that periods of high international capital mobility have repeatedly produced international banking crises.[399] Financial liberalization often precedes banking crises; indeed, it seems to help predict them.[400]

In the neoliberal era, IMF decisions have become "a curious blend of ideology[,] . . . bad economics[,] . . . [and] thinly veiled special interests."[401] As a condition of providing loans to overcome balance-of-payment crises, the IMF dictates the macroeconomic policies of the debtors "leaving domestic governments with little scope for input."[402] The new IMF policies "reflect a quite extreme free market ideology,"[403] and "the interests and ideologies of the Western financial community."[404] Conditionalities on availability of funds now require structural adjustment programs—a policy package of comprehensive neoliberal economic reordering that typically includes "harsh fiscal austerity,"[405] privatization, and liberalization.[406] If a country rejects these IMF mandates, it also forfeits the right to assistance from the World Bank.[407] As IMF conditions have started to go "beyond

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398. Stanley Fischer, IMF Seminar: Asia and the IMF, *Capital Account Liberalization and the Role of the IMF* ¶ 10 (Sept. 19, 1997), *available at* http://www.imf.org/external/np/apd/asia/FISCHER.HTM. Calling the apex of global financial management the "Wall Street-Treasury complex," noted international economist Jagdish Bhagwati argued that "it is a lot of ideological humbug to say that without free portfolio capital mobility, somehow the world cannot function and growth rates will collapse." Wade & Veneroso, *supra* note 36, at 18–19 (citing Interview with Jagdish Bhagwati in TIMES OF INDIA (Dec. 31, 1997)).

399. REINHART & ROGOFF, *supra* note 9, at 155.

400. *See* REINHART & ROGOFF, *supra* note 9, at 159; Kaminsky & Reinhart, *supra* note 35, at 479–80; Asli Demirguc-Kunt & Enrica Detragiache, *The Determinants of Banking Crisis in Developing and Developed Countries*, 45 IMF STAFF PAPERS 81, 104 (1998), *available at* http://204.180.229.21/external/pubs/ft/staffp/1998/03-98/pdf/ demirguc.pdf.

401. REINHART & ROGOFF, *supra* note 9, at xiii.

402. ROSS P. BUCKLEY, INTERNATIONAL FINANCIAL SYSTEM: POLICY AND REGULATION 11 (2009).

403. *Id.* at 12.

404. STIGLITZ, *supra* note 47, at 130.

405. Susan George, Conference on Economic Sovereignty in a Globalising World: A Short History of Neo-liberalism: Twenty Years of Elite Economics and Emerging Opportunities for Structural Change (Mar. 24–26, 1999), *available at* http://www.globalexchange.org/campaigns/econ101/neoliberalism.html. For a detailed discussion, see generally SUSAN GEORGE, A FATE WORSE THAN DEBT: THE WORLD FINANCIAL CRISIS AND THE POOR (1990).

406. Supervising comprehensive reordering of economies of former Soviet Union and Eastern Europe furnished opportunity to the IMF to legitimize its operations beyond its traditional concern with balance-of-payment adjustments and to enforce its prescriptions on a continental scale. Wade & Veneroso, *supra* note 36, at 18.

407. *Id.* at 12.

economics into areas that properly belong in the realm of politics,"[408] it has begun to symbolize "*global governance without global government.*"[409] The contradictory prescriptions to cope with financial crises—structural adjustment in the Global South versus monetary easing in the Global North—emerged as the IMF was redesigned to impose neoliberalism on debtor countries in the 1980s in response to the Latin American debt crisis. The austerity imposed by the IMF aimed to prevent the turmoil from spreading to the Global North, while monetary easing aimed to end the turmoil itself.[410]

As part of the "Big Push . . . to institute a world-wide regime of capital mobility,"[411] the U.S. Treasury-Wall Street-IMF complex also worked hard to promote the WTO's agreement on liberalizing financial services. In response to resistance from developing economies, leaders of global finance worked in concert to urge finance ministries around the world to join the WTO.[412] Again, a debt crisis was used to accomplish the objective. As the Asian crisis heated up, Asian leaders dropped their objections as they "saw no choice: either they signed or their receipt of IMF bailout funds would be complicated."[413] On December 12, 1997, more than seventy countries signed the agreement that commits them to open banking, insurance, and securities markets to foreign firms. In 2000, two publicists of neoliberalism claimed with satisfaction that "[t]oday's international system is built not around a balance of power but around American hegemony. The international financial institutions were fashioned by Americans and serve American interests."[414]

With the U.S. neoliberal financial regulatory regime, a repositioned IMF, and the WTO's agreement on financial services in place, the

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408. STIGLITZ, *supra* note 47, at 44–45.

409. *Id.* at 21.

410. Rude, *supra* note 31, at 92. When faced with the financial meltdown, U.S. authorities "chose the blank check option, over and over again . . . [which was] the opposite of what the United States had pressed upon emerging market governments in the 1990s." JOHNSON & KWAK, *supra* note 16, at 173. If the IMF prescribes to the United States the same remedy as it does to the Global South, it would be to "nationalize troubled banks and break them up as necessary." *Id.*

411. Wade & Veneroso, *supra* note 36, at 19–20.

412. For example, "executives of groups including Barclays, Germany's Dresdner Bank, Societe Generale of France and Chubb Insurance, Citicorp, and Ford Financial Services of the US . . . agreed discreetly to impress on finance ministers around the world the benefits of a WTO deal." Guy de Jonquieres, *Vision of a Global Market: WTO Members are Hoping to Deregulate Financial Services*, FIN. TIMES, Apr. 10, 1997, at 28.

413. Wade & Veneroso, *supra* note 36, at 19.

414. Robert Kagan & William Kristol, *The Present Danger*, *quoted in* GOWAN, *supra* note 193, at 17.

hegemony of global finance capital under the U.S. imperial umbrella was complete.[415] This neoliberal global financial regime thrives not only during phases of stability and growth, but also during phases of instability and crises.[416] Indeed, even natural disasters are turned into opportunities to enforce rabidly free-market ideologies and policies.[417] This is the context in which international debt crises increasingly served to entrench neoliberalism globally while feeding finance capital through accumulation by dispossession. We now turn to some of the signal moments in this journey.

V. INTERNATIONAL DEBT CRISES AND ACCUMULATION BY DISPOSSESSION

A. Latin America: From Petroleum to Tequila

By the mid-1970s, "'[h]ot' money, which had been outlawed at Bretton Woods, was hot again."[418] Its first victim was Latin America, particularly Mexico. The debt crisis that it triggered in Latin America in 1982 was one of the most damaging and far-reaching financial crises of the twentieth century.[419] Ever since independence in the early nineteenth century, debt crises have been a recurrent feature of Latin American states.[420] However, these crises were linked to the boom and bust cycle of the economies of the region, and matched neither the scale of the 1980s crisis nor the region's new vulnerability to external machination. Historically, foreign capital had come to Latin America

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415. The U.S. domination of this global financial order is evidenced by the fact that during the Mexican debt crisis of the mid-1990s, the U.S. Treasury, without even consulting Europeans or the Japanese, simply instructed the IMF to bailout U.S. bondholders overnight, and channeled IBS resources towards that objective. GOWAN, *supra* note 193, at 9.

416. *See* PETER GOWAN, THE GLOBAL GAMBLE: WASHINGTON'S FAUSTIAN BID FOR WORLD DOMINATION 35 (1999) (discussing how financial crises often serve to strengthen U.S. domination).

417. *See* NAOMI KLEIN, THE SHOCK DOCTRINE: THE RISE OF DISASTER CAPITALISM (2007) (arguing that economic crises and natural disasters around the world have been used to push neoliberal economic policies).

418. FERGUSON, *supra* note 4, at 309. "Hot money" is capital that flows between financial markets as investors attempt to ensure they get the highest short-term interest rates possible. Hot money will flow from low interest rate yielding countries into higher interest rate countries by investors looking to make the highest return. If the amount of capital moving in or out of a market is high, these financial transfers can affect exchange rates and the balance of payments suddenly and drastically.

419. *See* CARLOS A. MARICHAL, A CENTURY OF DEBT CRISES IN LATIN AMERICA: FROM INDEPENDENCE TO THE GREAT DEPRESSION, 1820–1930, at 95 (1989) (discussing the 1982 debt crisis in Latin America); J. Livingston, *The International Financial System: A Flawed Architecture*, 23 FLETCHER FORUM WORLD AFF. 1, 9–16 (1999) (discussing the impact of the debt crisis on Mexico, Brazil, and Argentina).

420. MARICHAL, *supra* note 419, at 238.

through bonds, direct foreign investment, and official loans.[421] Starting in the early 1970s, lending by major U.S. banks rapidly became the major source of foreign capital.[422]

The fiction has been long cultivated that bad loans are always the debtor's fault.[423] However, in the case of Latin America, as in subsequent cases, opportunistic and imprudent overlending by the banks, fueled by excess liquidity, was the primary cause of excessive debt and the subsequent crisis.[424] The massive lending to Latin America by U.S. banks in the 1970s was a prime mechanism to recycle petrodollars—the massive transfer of funds to the Organization of the Petroleum Exporting Countries ("OPEC") cartel as a result of the quadrupling of oil prices in 1973–1974.[425] The United States had quietly favored the oil price hike as a means of regaining a competitive edge against Europe and Japan given their comparatively larger dependence on imported oil.[426] The petrodollars quickly flowed back to Eurodollar deposits of U.S. banks.[427] The oil price hike also triggered a recession in industrialized countries, and the resulting weakness of internal demand came at a time when the major U.S. banks were losing

421. F. G. DAWSON, THE FIRST LATIN AMERICAN DEBT CRISIS: THE CITY OF LONDON AND THE 1822–25 LOAN BUBBLE 237 (1990).

422. B. Eichengreen & R. Portes, *After the Deluge: Defaults, Negotiations and Readjustments During the Interwar Years*, *in* THE INTERNATIONAL DEBT CRISIS IN HISTORICAL PERSPECTIVE 40–41 (B. Eichengreen & P. H. Linder eds., 1989). By the early 1980s, the total exposure of U.S. banks to Latin America represented 176 percent of bank capital, and the 1983 exposure of the nine largest U.S. banks to Argentina, Brazil, and Mexico was 115 percent of the capital of those banks. Jeffery D. Sachs, *Introduction*, *in* DEVELOPING COUNTRY DEBT AND THE WORLD ECONOMY 10 (Jeffery D. Sachs ed., 1989). For net capital flow to Latin America between 1980 and 2006, see WOLF, *supra* note 17, at 47 fig.3.8.

423. Livingston, *supra* note 419, at 36–37. Emerging market borrowing tends to be extremely procyclical; favorable terms of trade lead to high borrowing, and with drops in commodity prices, borrowing collapses and defaults go up. For details, see Mark Aguiar & Gita Gopinath, *Emerging Market Business Cycles: The Cycle is the Trend*, 115 J. POL. ECON., no. 1, 2007 at 69.

424. UNCTC, TRANSNATIONAL BANK BEHAVIOR AND THE INTERNATIONAL DEBT CRISIS 50–51 (Sept. 1989). Even a former BIS General Manager takes the position that behavior of lenders and investors from the industrialized world played a major role in spurring financial crises in developing countries. ALEXANDRE LAMFALUSSY, FINANCIAL CRISES IN EMERGING MARKETS: AN ESSAY ON FINANCIAL GLOBALISATION AND FRAGILITY 47–66 (2000).

425. *See* FERGUSON, *supra* note 4, at 308 (discussing the "revival of nongovernmental capital export" and Latin America's quadrupling of its foreign borrowing).

426. PETER R. ODELL, OIL AND WORLD POWER 223–25 (8th ed. 1986). This was not the first or the last time the United States actively orchestrated formation of global cartels. For example, the U.S. State Department and other agencies actively supported the establishment of a global aluminum cartel following the plummeting of aluminum prices in 1994. A central actor in this development was Paul O'Neil, CEO of Alcoa and later Treasury Secretary. *See* STIGLITZ, *supra* note 47, at 173–76.

427. By the end of 1975, 13.8 billion OPEC dollars had been deposited in U.S. banks. PHILIP A. WELLONS, WORLD MONEY AND CREDIT: THE CRISIS AND ITS CAUSES 23 (1983).

market share at home. These losses made foreign lending more attractive.[428] New markets were quickly found in the Global South, and the surplus capital in the United States started funding a lending boom in Latin America.[429] Large U.S. banks dominated the syndicated lending to Latin America, though Canadian, European, and Japanese banks also participated.[430] Europe and Japan also used these loans to improve their trade balance by shifting their trade deficits with OPEC to the Global South.[431] Financial managers saw this recycling of petrodollars as a positive development and "banks were applauded for smoothing the transition to higher oil prices."[432]

The lending banks were very aggressive in marketing these loans and came to "depend on income from special deals with riskier clients willing to pay higher fees, commissions and interest to gain market access."[433] In the rush to lend mounting petrodollar deposits, "the banks sent salesmen to Mexico, not analysts."[434] The majority of the loans went to major industrial, oil, and energy corporations of the region, many of which were wholly or partially state-owned, and state-owned development banks.[435] And as loans became due, "[n]ew lending to repay old loans made sense in the circumstances."[436] Banks found comfort in the fact that, as the Chairman of Citicorp put it, "[c]ountries never go bankrupt."[437] The primary beneficiaries of the loans were "[t]echnocrats, generals, and businessmen who received secret commissions and contracts on the huge flow of foreign funds. In no period of modern Latin American history has financial corruption reached such heights . . . ."[438] The massive debt was accompanied by

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428. *Id.*

429. MARICHAL, *supra* note 419, at 41–42, 95; FERGUSON, *supra* note 4, at 309.

430. BUCKLEY, *supra* note 402, at 22 (quoting a UN study).

431. WELLONS, *supra* note 427, at 58–63. Between 1973 and 1979, France's trade surplus with its former colonies in Africa increased from 550 million to 2.2 billion dollars. UNCTC, *supra* note 424, at 11–12.

432. *See, e.g.*, Jonathan D. Aronson, *International Lending and Debt*, 6 WASH. Q. 62, 66 (1983).

433. BUCKLEY, *supra* note 402, at 24 (quoting UNCTC, DEBT EQUITY CONVERSIONS—A GUIDE FOR DECISION-MAKERS 24 (1991)).

434. DARRELL DELAMAIDE, DEBT SHOCK: THE FULL STORY OF THE WORLD CREDIT CRISIS 102 (1984).

435. MARICHAL, *supra* note 419, at 235.

436. Sachs, *supra* note 422, at 9.

437. *Id.* at 8. The massive lending was proving very profitable. In the case of Citibank, for example, 72 percent of its 1976 earnings came from its international operations, and in 1977, profits from its Brazilian business exceeded those from its entire U.S. operation. DELAMAIDE, *supra* note 434, at 117; Sachs, *supra* note 422, at 8.

438. MARICHAL, *supra* note 419, at 238. This underscores that benefits and costs of liberalized financial flows accrue differentially within societies. Note that "crony capitalism" has

massive capital flight from Latin America. The capital flight was propelled on the one hand by the incentives of the combination of high exchange rates and the history of inflation in the region, and on the other by distance assets from its often tainted origins. During the 1970s, when Mexico accumulated 75 billion of foreign debt, its private sector accumulated 40 billion of foreign assets.[439] In 1980–1981, outflow of private capital from Argentina was 84 percent of the inflow of debt, and in the case of Venezuela, the outflow exceeded the inflow.[440] For Argentina, Mexico, and Venezuela combined, the three countries hit hardest by the debt crisis, capital flight during 1979–1982 amounted to 67 percent of capital inflows.[441]

The primary trigger of the debt crisis was the 1979 Volcker Shock that dramatically raised U.S. interest rates.[442] As a spillover, Euromarket interest rates doubled between 1978 and 1981, peaking at 19.5 percent in March 1980.[443] Given their recently accumulated debt load, "the effect on the borrowing developing nations was catastrophic."[444] Aggressive monetary policy in advanced capitalist countries, particularly the United States, designed to prevent domestic inflation, "imposed a frightful cost on the less developed world under the very loans the OECD governments had encouraged their banks to make."[445] When the crisis hit, banks resisted advancing new funds,[446] and Latin American governments imposed harsh austerity measures "at the behest of [] creditors."[447] The banks had no doubt who was responsible for the debt crisis; indeed, it was the "debtor's inappropriate demand management and recourse allocation policies prior to 1982, and their inadequate adjustment to the adverse global environment that

been characterized as "the market economy's most familiar and durable form." WOLF, *supra* note 17, at 14.

439. Sachs, *supra* note 422, at 12.

440. *Id.* at 9.

441. WORLD BANK, WORLD DEVELOPMENT REPORT 64 (1985).

442. ROUBINI & MIHM, *supra* note 29, at 25–26. For the Volcker Shock, see *supra* notes 258–75 and accompanying text.

443. BUCKLEY, *supra* note 402, at 35 n.71.

444. Robert A. Pastor, *The Debt Crisis: A Financial or a Development Problem?*, *in* LATIN AMERICA'S DEBT CRISIS: ADJUSTING TO THE PAST OR PLANNING FOR THE FUTURE 8 (Robert A. Pastor ed., 1987).

445. BUCKLEY, *supra* note 402, at 36.

446. Rory Macmillan, *The Next Sovereign Debt Crisis*, 31 STAN. J. INT'L L. 305, 328–29 (1995).

447. BUCKLEY, *supra* note 402, at 39.

followed."[448] This view of responsibility justified banks' resistance to debt relief resulting in "appalling human suffering."[449]

The decisive response to the crisis was not market-driven but was choreographed by the United States. As the crisis escalated and triggered political instability, the U.S. Treasury Department stepped in. After the aborted "Baker Plan," the "Brady Plan" was put in place in 1990.[450] Skirting the option of debt forgiveness by official lenders to ease the debt burden, it focused on the debt to commercial banks through the conversion of loans into collateralized bonds and debt-equity swaps. In the case of Mexico, in order to make the restructuring plan attractive to the banks, the SEC issued a new interpretation of Financial Accounting Standards (FAS 15), whereby banks did not have to recognize a loss "if the total future undiscounted cash receipts specified by the new terms of the loan, including receipts designated as both principal and interest, equal or exceed the book value of the loan."[451] "Turning reality on its head," the SEC created a mechanism to treat interest as principal and make the value of the loan in thirty years equal to its current value.[452] After Congress rejected the Treasury's bailout proposal, the Treasury moved ahead without congressional approval and "strong-armed other governments to participate," and "seemed to revel in its ability to outsmart Congress."[453] After considerable arm-twisting by regulators, banks converted 41 percent of the total debt into discounted principal bonds, 49 percent into discounted interest bonds, and advanced new money for the remaining 10 percent.[454]

The restructuring worked out rather well for the banks. It signaled an end of the debt crisis to the broader markets, and debtor countries could

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448. *Id.* at 25–26 (quoting R. de Vries, Chief Economist, Morgan Guarantee Trust Company).

449. Ross P. Buckley, *The Facilitation of the Brady Plan: Emerging Market Debt Trading from 1989 to 1993*, 21 FORDHAM INT'L L.J. 1802, 1818 (1993).

450. The Baker Plan, named after the then-U.S. Secretary of Treasury, aimed at resolving the debt crisis with sufficient new credit to debtors so that economic growth would lessen the debt burden. When banks declined to advance additional funds on top of the existing sovereign debt, the Baker Plan failed. The Brady Plan, named after the new U.S. Secretary of Treasury, was the new prescription. For details, see BUCKLEY, *supra* note 402, at 39–54.

451. SEC Letter (July 14, 1989), *in* JONATHAN HAY & NIRMALJIT PAUL, REGULATION AND TAXATION OF COMMERCIAL BANKS DURING THE INTERNATIONAL DEBT CRISIS 128 (1991).

452. BUCKLEY, *supra* note 402, at 43–44.

453. STIGLITZ, *supra* note 47, at 256 n.10.

454. BUCKLEY, *supra* note 402, at 44. These are aggregate figures. Banks of different countries chose different combinations of the three parts. German banks converted most of their share into par bonds; Japanese banks chose discount bonds. Only U.S. and French banks advanced new funds. Differences in regulatory and tax regimes accounted for the variations. *Id.* at 44–45.

borrow and issue bonds again, generating fees for the banks. Loans having been converted into bonds, distressed assets went off the balance sheets and freed up capital for other uses. It gave the banks liquid bonds in place of the relatively illiquid loans, and triggered a turn-around in secondary market prices of these assets. By 1997, USD 305 billion in loans and USD 2,403 billion in Brady Bonds were traded in secondary markets.[455] While the Brady Plan resolved the debt crisis from the perspective of creditors, the debt remained in place to be serviced at the cost of domestic development and social services expenditures. Between 1982 and 1990, Latin America repaid far more than it received in new credits.[456] The total indebtedness of Mexico, the country hardest hit by the crisis, remained unchanged as the relief afforded by the discounted bonds was offset by new loans. While Mexico's net annual transfer to lending banks was USD 3.24 billion before the restructuring, it was USD 3.59 billion after the restructuring.[457] The debt-servicing burden was borne by the most vulnerable, who were denied access to healthcare, education, housing, and a life of dignity. The economic cost of the Latin American debt crisis was over 2 percent growth per year for the 1980s and, as a result, it is considered the "lost decade in Latin America."[458]

Within ten years, the cycle repeated itself in Mexico in the form of the so-called "tequila crisis," which spilled over into other Latin American economies.[459] By 1993, "60 million more Latin Americans had been driven below the poverty line, bringing the total to nearly half of the population."[460] A decade later, wages for Mexican workers were lower, and inequality higher.[461] When all was over, the big winners

455. *Id.* at 53.

456. Sachs, *supra* note 422, at 10.

457. BUCKLEY, *supra* note 402, at 46.

458. *Id.* at 22.

459. Just when there was talk of the "new" Latin America and the "Mexico miracle" following a lending boom of the 1990s, the so-called "tequila crisis" hit Mexico in late 1994. PAUL KRUGMAN, THE RETURN OF DEPRESSION ECONOMICS AND THE CRISIS OF 2008, at 31–32 (2009). The prescribed tight monetary policy had kept the value of the peso high and hurt Mexico's exports. The current account deficit was made up of a capital account surplus—an asset to be sold to foreign investors. In December 1994, Mexico devalued the peso, hot capital made for the exits, and the peso tumbled to half its pre-crisis value; by early 1995, Mexico was paying investors an interest rate of 75 percent. *Id.* at 47–48. During 1995, Mexico's GDP plunged 7 percent, its industrial production fell by 15 percent, and the financial crisis started to spill to other Latin American countries. *Id.* at 48. Mexico had to be rescued with a USD 50 billion bail out. *Id.* at 51. The cost of Mexico's bank rescue in 1994–1997 was equal to 15 percent of its GDP, and a substantial part of that went to owners of banks. STIGLITZ, *supra* note 22, at 41.

460. Duncan Green, *Hidden Fist Hits the Buffers*, NEW INT'L, Oct. 1995, at 35.

461. STIGLITZ, *supra* note 22, at 42.

were the lending banks and the wealthy and politically well-connected borrowers, and the losers were the taxpayers and the impoverished.[462] In yet another instance of accumulation by dispossession, extra-market forces had choreographed the market to facilitate accumulation of capital. The Latin American debt crisis of the 1980s—the first international debt crisis of the neoliberal era—demonstrated a pattern that held true for subsequent debt crises. Excess global liquidity was channeled by financial institutions of the Global North into credit to the Global South. Unbridled international mobility of capital accentuated boom and bust cycles of debtor countries. The unsustainable burden of servicing the debt was borne by the working classes of the debtor societies. The crisis was managed to secure the interests of global finance capital and to enforce expansion of neoliberal economic restructuring of debtor economies.

B. Asian Flu and the Second Opium War

The fire sale of Asian assets to foreign interests triggered by the Asian debt crisis[463] was evocatively dubbed "the Second Opium War."[464] Nobel Laureate economist Joseph Stiglitz, who observed the crisis closely, argues that "capital account liberalization was *the single most important factor leading to the crisis*."[465] In a similar vein, Nobel Laureate economist James Tobin takes the view that Asian countries were "victims of a flawed international exchange rate system that, under U.S. leadership, [gave] the mobility of capital priority over all other considerations."[466] The debt that became a problem in Asia was private, as opposed to public or quasi-public as the case in Latin America. It started as a currency crisis and metastasized into a general economic crisis with long-term impact on the region and beyond.

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462. This is in tune with the broader pattern that, once a debt crisis has passed, "[t]he big winners are the wealthy, politically influential risk takers, and the biggest losers are the taxpayers in countries like Mexico or Indonesia." Charles W. Calomiris, *The IMF's Imprudent Role as Lender of Last Resort*, 17 CATO J. 275, 276–77 (1998).

463. STIGLITZ, *supra* note 47, at 129–30.

464. Wade & Veneroso, *supra* note 36, at 14. For detailed accounts of the First Opium War from 1840 through 1842, see PETER WARD FAY, OPIUM WAR, 1840–1842 (1998) (providing a history of the origins of the First Opium War); CARL TROCKI, OPIUM, EMPIRE AND THE GLOBAL POLITICAL ECONOMY: A STUDY OF THE ASIAN OPIUM TRADE 1750–1950, at 1–11 (1999) (discussing the impact of the opium trade on world economics in the lead up to the First Opium War).

465. STIGLITZ, *supra* note 47, at 99.

466. James Tobin, *Why We Need Sand in the Market's Gears*, WASH. POST, Dec. 21, 1997, at C3.

The Asian crisis struck when no one expected it. As opposed to the Latin American crises of the 1980s, the Asian crisis occurred within "a benign international environment with low interest rates and solid growth in output and exports."[467] Interest rates in the lending countries were low and stable, bank lending was rising to record levels, Asian economies were booming, and rating agencies were lavishing praises upon the governments in the region.[468] The macroeconomic fundamentals were strong—low inflation, healthy fiscal profiles, and stable or rising exchange reserves. In the 1990s, the region, while accounting for a quarter of world output, accounted for over half of world growth and almost two-thirds of world capital spending.[469] Between 1990 and 1996, capital formation in East Asia (excluding Japan) jumped by nearly 300 percent, compared to 40 percent growth in the United States and Japan, and a mere 10 percent growth in Europe.[470] International debt crises arise when a country's total indebtedness exceeds its capacity to service the debt. The measures of this capacity are debt-export ratio and debt-service ratio. These crises are generally signaled by a debt-export ratio over 200 percent, and a debt-service ratio over 20 percent.[471] These ratios for the East Asian and Pacific regions were 99 percent and 12 percent respectively in 1996.[472] Consequently, this was not a conventional debt crisis. The countries at the center of the Asian crisis were following a neoliberal prescription to the letter. Tight fiscal and monetary policies, low inflation, high private savings and investment rates, open capital markets, and export-led growth had come to define these "Asian Tigers" and the "Asian miracle."[473] These countries, with some of the highest saving rates in

467. 1 WORLD BANK, GLOBAL DEVELOPMENT FINANCE 1998, at 4, 30 (1998).

468. Wade & Veneroso, *supra* note 36, at 3.

469. *Id.* at 4.

470. ROBERT BRENNER, THE ECONOMICS OF GLOBAL TURBULENCE 300 (2006).

471. Aronson, *supra* note 432, at 68.

472. 1 WORLD BANK, GLOBAL DEVELOPMENT FINANCE 1997, at 160 (1997).

473. The unusually high export-led growth rates achieved by Hong Kong, Malaysia, Taiwan, Thailand, Singapore, and South Korea in the 1980s and 1990s earned these titles. These Asian economies had a high-debt model, with debt/equity ratios commonly two to one, primarily because savings and bank deposits are much higher. The high ratios of bank deposits to GDP and corporate debt to equity make the financial structure vulnerable to shocks that depress liquidity. This requires considerable support and guidance from the governments in tune with a national industrial strategy. This is at the root of the developmental state in Asia that combines high household savings, high corporate debt/equity ratios, bank-firm state collaboration, a national industrial strategy, and investment incentives conditioned on international competitiveness. *See* ROBERT WADE, GOVERNING THE MARKET: ECONOMIC THEORY AND THE ROLE OF GOVERNMENT IN EAST ASIAN INDUSTRIALIZATION 34, 256 (1990) (discussing the role that the state industrial structure has played in domestic investment strategies in East Asian economies); *see also* CHALMERS JOHNSON, MITI AND JAPANESE MIRACLE: THE GROWTH OF INDUSTRIAL

the world, had been capital exporters. They had all the capital they needed for their development.

Working "in the interests of owners and managers on international capital," IMF sought to open up Asian economies to global capital "in one way or another."[474] Urged on by the IMF, Thailand, Indonesia, and Korea opened their economies to global capital flows prematurely without adequate regulatory supervision.[475] Hot capital rushed in quickly and these economies became vulnerable to "self-fulfilling speculative attacks."[476] Following the historic "capital-push" model,[477] in the two years preceding 1997, excess liquidity in the United States and Europe resulted in record quantities of capital flowing into the Asian region.[478] The capital inflows went primarily into property and stock market investments, driving up the prices of those assets in speculative bubbles. Faced with steep yield curves, local banks borrowed short term and lent long term without adequately hedging their foreign exchange exposure.[479] Crony capitalism prevalent in many countries of the region engendered the moral hazard for local banks owned or controlled by influential quarters, and high-risk and highly lucrative ventures were influenced by the prospect of a local bailout should things turn sour. Lack of exchange rate flexibility added to the problem. Thailand, Malaysia, and Korea had pegged their currencies to the USD in the mid-1990s. The USD was appreciating and so were the pegged currencies. With increasingly high-tech exports, these economies were now competing with Japan at a time when Japanese currency was depreciating, which put pressure on the export competitiveness of the pegged-currency countries in the region. China's devaluations in the early 1990s, and the U.S.–Japan

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POLICY, 1925–1975, at 305–26 (1982) (describing the interplay between post-World War II industrial structure and national financial growth in Japan as a potential model for the region).

474. Wade & Veneroso, *supra* note 36, at 18.

475. For composition of net capital flows to Asian emerging market economies between 1980 and 2006, see WOLF, *supra* note 17, at 48 fig.3.9.

476. KRUGMAN, *supra* note 459, at 110.

477. Excess liquidity in creditor nations has historically triggered capital moving to debtor nations. *See* MARICHAL, *supra* note 419, at 95, 212–13 (describing the movement of European investments into Latin American public works projects in the early 1870s); *id.* at 212 tbl.8 (showing the high rate of default on capital loans to Latin American nations in the early 1900s); *see also* DELAMAIDE, *supra* note 434, at 96, 99, 120 (explaining how the massive foreign investments in Latin America throughout the twentieth century made effective debt rescheduling and renegotiation with these nations difficult in the early 1980s).

478. Investors in the United States were confronted with very low interest rates and an inflated stock market. BUCKLEY, *supra* note 402, at 58.

479. For share of short-term borrowing in foreign-currency borrowing of Asian Crisis countries, see WOLF, *supra* note 17, at 54 fig.3.14.

arrangement before the 1996 election[480] that resulted in depreciation of the yen, seriously impacted Korean and Southeast Asian competitiveness. As export earnings and stock markets fell, there was a rush by the banks to call in the loans across the board. When the size of impending losses became apparent, capital fled the region in a panic. The sudden swing from a capital inflow to an outflow in late 1997 was over 10 percent of GDP of the countries involved.[481]

The financial turmoil began with the devaluation of the Thai baht in July 1997, and spread quickly to Indonesia, Thailand, the Philippines, and South Korea.[482] By the end of 1997, all of these countries were in deep contraction. When loss of confidence struck, it led to rapid outflow of hot capital, and a freezing of external re-financing.[483] This led to deep depreciation of local currencies and revealed massive unhedged foreign exchange exposures, severely damaging balance sheets of local corporations.[484] Fleeing foreign capital treated the whole region as one, failing to distinguish between the quite different strengths and weaknesses of the economies of Thailand, Malaysia, Indonesia, Philippines, and South Korea.[485]

480. The USD appreciated against the yen after 1995 as a result of an agreement between the U.S. Treasury and the Japanese Finance Ministry to help Japan export its way out of its recession, use the surpluses to buy Treasury bills, and thus keep U.S. interest rates at politically desirable levels. *See* Klaus Engelen, *How Bill Clinton Really Won*, EUR., Nov. 1996, at 14–20; Chalmers Johnson, *Cold War Economics Melts Asia*, NATION, Feb. 23, 1998, at 16–20 (explaining the role of the Clinton administration in post-Cold War economies in Asia).

481. Rude, *supra* note 31, at 95.

482. *See* Christopher Rude, *The 1997–98 East Asian Financial Crisis: A New York Market-Informed View*, *in* GLOBAL FINANCIAL TURMOIL AND REFORM 369–403 (Barry Herman ed., 1999) (noting that local and foreign market speculation over the stability of local currencies exacerbated the pressure already mounting on those currencies, thus speeding financial collapse).

483. In a deregulated capital market, capital flows are pro-cyclical—capital flows out in a recession, precisely when it is needed most, and flows in during a boom, exacerbating inflation.

484. WORLD BANK, *supra* note 467, at 5, 30.

485. Asian economies, while only modestly linked by way of the flow of goods, were "linked in the mind of investors." KRUGMAN, *supra* note 459, at 94. Flow of capital into Asia was often channeled through "'emerging market funds' that lumped the countries together. When bad news came from Thailand, money flowed out of these funds, and hence out of all the countries in the region." *Id.* at 93.

When problems began, the IMF's advice exacerbated the situation.[486] The IMF diagnosed that Thailand had "a conventional demand-management problem—excessively easy fiscal and monetary policy and a deteriorating current account—requiring a general policy of tightening."[487] The IMF sought increased interest rates, tightening of credit, and fiscal austerity. These caused domestic deflation and worsened the crisis by causing widespread bankruptcies and further erosion of confidence. The IMF strategy "discourage[d] investment, compound[ed] the recessionary impact of the reversal in capital flows, and generally exacerbate[d] the difficulties faced by firms, banks, and public finances."[488] Thailand required the opposite treatment to which it was subjected—a supportive rather than tight fiscal policy.[489] Analysts agree that the IMF funds should have been used "not for rescuing foreign creditors, nor for financing capital flight, but for financing compensating fiscal expansion."[490] Even when financial crises are partly caused by the weakness of an economy's economic fundamentals, the time to deal with the structural issues is not while the crisis is at its peak. The short-term focus must be on minimizing the damage by counter-cyclical interventions, with long-term reforms left for another day.[491] The IMF made matters worse by overemphasizing the supposed structural causes of the crisis.[492] The IMF policy of encouraging bank closures in crisis countries caused "a bank panic that

486. *See, e.g.*, Gordon De Brouwer, *The IMF and East Asia: A Changing Regional Financial Architecture*, *in* THE IMF AND ITS CRITICS 254, 254–55 (David Vines & Christopher L. Gilbert eds., 2003) (explaining that the IMF misread the nature of the crisis at its outset, which led to its insistence on the implementation of ideologically rigid macroeconomic, structural, and market policies throughout the region); *see also* Robert Weissman, *Twenty Questions on the IMF*, *in* DEMOCRATIZING THE GLOBAL ECONOMY 84, 90–91 (Kevin Danaher ed., 2001) (suggesting that the IMF missed an opportunity to contain the Asian crisis when it chose to use the same approach it had used for other financial crises).

487. De Brouwer, *supra* note 486, at 257.

488. ARIEL BUIRA, AN ALTERNATIVE APPROACH TO FINANCIAL CRISES 20 (1999); *see also* WARNER M. CORDEN, THE ASIAN CRISIS: IS THERE A WAY OUT? 42 (1999) (stating the IMF underrated the adverse effects of high interest rates in the region).

489. De Brouwer, *supra* note 486, at 268. The misdiagnosis is captured by this summary: "[The IMF] failed to anticipate the severity of the Asian downturn or see that the restrictive fiscal policies it recommended would themselves make that downturn worse . . . . [T]he Fund's fiscal targets were too tight and . . . larger deficits should have been encouraged." BARRY J. EICHENGREEN, TOWARDS A NEW FINANCIAL ARCHITECTURE: A PRACTICAL POST-ASIA AGENDA 110 (1999).

490. CORDEN, *supra* note 488, at 59; STIGLITZ, *supra* note 47, at 104–32.

491. CORDEN, *supra* note 488, at 45; De Brouwer, *supra* note 486, at 3; Hak K. Pyo, *The Financial Crisis in Korea and Its Aftermath: A Political Economic Perspective*, *in* CAPITAL FLOWS WITHOUT CRISIS: RECONCILING CAPITAL MOBILITY AND ECONOMIC STABILITY 237, 243 (Dipak Dasgupta et al. eds., 2001).

492. CORDEN, *supra* note 488, at 48; De Brouwer, *supra* note 486, at 2.

helped set off financial market declines in much of Asia."[493] Instead of highlighting their flaws, it would have been "better to try to calm markets by emphasizing the positive features of these economies."[494] Instead, the IMF "engineered a simultaneous contraction in aggregate demand *and* supply."[495] Contractionary policies advocated by the IMF "exacerbated the *contagion*, the spread of the downturn from one country to the next."[496] In Jeffery Sachs' evocative words, "instead of dousing the fire, the IMF in effect screamed fire in the theater."[497] The IMF's insistence on closing down banks, even in the absence of deposit insurance-induced bank runs, and its insistence on cutting demand and liquidity, caused bankruptcies in even efficient and profitable firms.[498] Bank closures and bank runs in Indonesia induced by the IMF exacerbated political unrest and ethnic divisions in Indonesia. When food and fuel subsidies were drastically cut back, riots exploded.[499]

The Asian crisis proved once again that "financial crises have always caused transfers of ownership and power to those who keep their own assets intact and who are in a position to create credit."[500] During and after the Asian crisis, very little excess capacity was shed; rather, it was "re-organized and snatched up by foreign investors seeking to capture valuable assets from distressed and ailing firms."[501] The euphoria the fire-sale of Asian assets created for global finance capital was captured well by an investment banker: "If something was worth $1 billion yesterday, and now it's only $50m, it's quite exciting."[502] The combination of devaluations, IMF-imposed liberalization, and IMF-assisted recovery precipitated "the biggest peacetime transfer of assets

493. David E. Sanger, *IMF Now Admits Tactics in Indonesia Deepened the Crisis*, N.Y. TIMES, Jan. 14, 1998, at B1.

494. CORDEN, *supra* note 488, at 48.

495. STIGLITZ, *supra* note 47, at 111.

496. *Id.* at 107.

497. Jeffery Sachs, *The IMF and the Asian Flu*, AM. PROSPECT, Mar.–Apr. 1998, at 16, 17.

498. Wade & Veneroso, *supra* note 36, at 5.

499. STIGLITZ, *supra* note 47, at 119. The ubiquitous riots triggered by IMF-prescribed policies have been dubbed the "IMF Riots." *See* JAHN WALTON & DAVID SEDDON, FREE MARKETS AND FOOD RIOTS: THE POLITICS OF STRUCTURAL ADJUSTMENT 39–45 (1994) (describing the protests that often follow in response to IMF-initiated structural adjustment policies).

500. Wade & Veneroso, *supra* note 36, at 20.

501. McNally, *From Financial Crisis*, *supra* note 230, at 63; *see also* Paul Burkett & Martin Hart-Landsberg, *Crisis and Recovery in East Asia: The Limits of Capitalist Development*, 8 HIST. MATERIALISM 3, 27 (2001) (discussing the role foreign investors played in the post-crisis South Korean economy).

502. Clay Harris & John Ridding, *Asia Provides Golden Buying Opportunities*, FIN. TIMES, Feb. 26, 1998, at 16; *see also Investing in South Korea: Bargains Galore*, ECONOMIST, Feb. 7, 1998, at 67–68.

from domestic to foreign owners in the past fifty years anywhere in the world, dwarfing the transfer from domestic to U.S. owners in Latin America in the 1980s."[503]

While aggravating the crisis, the IMF used it to expand the enforcement of the neoliberal agenda in the region. Even after the crisis had begun, at the September 1997 annual meeting of the IMF and the World Bank in Hong Kong, the IMF put pressure on developing countries to liberalize capital markets.[504] The IMF's stand-by agreement with Korea exemplifies the IMF's push for structural and institutional changes in the middle of a financial crisis.[505] The U.S. Treasury Department was directly involved in stiffening the IMF's insistence on radical financial opening in Korea.[506] The IMF package called for closing down or recapitalizing troubled financial institutions, allowing foreign institutions to freely buy domestic ones, requiring banks to follow Basil prudential standards, requiring international accounting standards to be followed, and requiring the use of international accounting firms for auditing.[507] The Korean government was prohibited from intervening in lending decisions of banks or from giving credit and tax concessions to firms to avoid bankruptcies.[508] Capital accounts were to be opened and all restrictions on foreign borrowing by corporations eliminated.[509] The trade regime was to be liberalized by eliminating restrictive import licensing and trade-related subsidies. Labor markets were to be liberalized to improve labor market flexibility. Added to this were tighter monetary and fiscal policies to restrict domestic demand.[510] Here, neoliberalism by mandate was imposed in one sweep.

U.S. Treasury joined the IMF to squelch Japan's offer of USD 100 million to create an Asian Monetary Fund in order to finance an urgently needed stimulus.[511] The alternative IMF package consisted of

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503. Wade & Veneroso, *supra* note 36, at 20–21.

504. STIGLITZ, *supra* note 47, at 93.

505. For the text of the agreement, see *Republic of Korea—IMF Stand-by Arrangement: Summary of the Economic Program*, *Dec. 5, 1997*, IMF, http://www.imf.org/external/np/oth/korea.htm (last visited Mar. 15, 2011).

506. The Treasury made it clear that Korean financial liberalization was a precondition of U.S. contribution to the bailout. Paul Blustein & Clay Chandler, *Behind the S. Korean Bailout: Speed, Stealth, Consensus*, WASH. POST., Dec. 28, 1998, at 1.

507. *See Republic of Korea—IMF Stand-by Arrangement*, *supra* note 505.

508. *Id.*

509. *Id.*

510. *Id.*

511. As financial clouds gathered in Asia, in summer 1997, Japan proposed to establish an Asian Fund to assist economies of the region in trouble. Not wanting Japan to send its capital to

long-term loans from USD 15 billion for Thailand to USD 57 billion for South Korea. These loans were made on the condition that they would be used to repay creditors. The loans thus became long-term public debts for these countries and bailouts for the creditors.[512] More specifically, the IMF bailouts were made available for the purpose of fully repaying short-term bank debt—the very debt that had triggered the crisis. The IMF rewarded short-term speculative creditors and inflicted severe adversity upon the economies of the region. It has been noted that "[f]oreign creditors were thus the main recipients of the money loaned to crisis countries."[513] Indeed, the bailouts amounted to being "a welfare system for Wall Street."[514] While the IMF later admitted that the tight fiscal policy it had recommended was excessively austere,[515] the BIS applauded that large banks "have been able to avoid significant loss," credited "risk mitigants . . . [and] solvency [capital] requirements of G10 banks," and claimed that banks were "much better diversified than in past crises, in terms of both countries and types of counterparties."[516] The public bailout of the lenders only reinforced the moral hazard for short-term speculative capital, which quickly found a new outlet in Russia for massive credits in late 1997 and early 1998, this time triggering Russia's crisis in August 1998.[517]

Asia rather than to the United States by buying Treasury bills, and not wanting Japan to emerge as the bailout leader, the U.S. Treasury, and Deputy Secretary Larry Summers, in particular, insisted that the cleanup be entrusted to the IMF. Japan agreed to desist in a November 1997 meeting in Manila. STIGLITZ, *supra* note 47, at 112–13; *see also* Johnson, *supra* note 480, at 16.

512. Charles W. Calomiris & Allan H. Meltzer, *Fixing the IMF*, 56 NAT'L INT. 88, 88 (1999).

513. Buckley, *supra* note 34, at 69; *see also* GEORGE SOROS, OPEN SOCIETY: REFORMING GLOBAL CAPITALISM 269 (2000).

514. Charlotte Denny, *IMF Sheds No Tears for Argentina*, GUARDIAN, Apr. 29, 2002 (quoting a senior G-7 official).

515. IMF, ANNUAL REPORT OF THE EXECUTIVE BOARD FOR THE FINANCIAL YEAR ENDED APRIL 30, 1998, at 25 (1998).

516. *Supervisory Lessons to be Drawn from the Asian Crisis* 15–16 (BCBS Working Paper No. 2, 1999), *available at* http://www.bis.org/publ/bcbs_wp2.htm.

517. For details of the Russian financial crisis, see ARIEL COHEN, RUSSIA'S MELTDOWN: ANATOMY OF THE IMF FAILURE (1998); STEPHEN F. COHEN, FAILED CRUSADE: AMERICA AND THE TRAGEDY OF POST-COMMUNIST RUSSIA (2000); MICHAEL MCFAUL, RUSSIA'S UNFINISHED REVOLUTION: POLITICAL CHANGE FROM GORBACHEV TO PUTIN (2001); THE NEW RUSSIA: TRANSITION GONE AWRY (Lawrence R. Klein & Marshall Pomer eds., 2001); PETER REDDAWAY & DMITRI GLINSKI, THE TRAGEDY OF RUSSIA'S REFORMS: MARKET BOLSHEVISM AGAINST DEMOCRACY (2001); Ross P. Buckley, *A Force for Globalization: Emerging Markets Debt Trading from 1994 to 1999*, 30 FORDHAM INT'L L.J. 185 (1999). Fearful of inflation, IMF insistence that Russia maintain an overvalued currency and support it with billions of dollars in loans ultimately crashed the economy. The first round was the instantaneous price liberalization that set in motion an inflationary spiral that wiped out domestic savings. The second round was tightening monetary policy by raising interest rates. Natural resources prices were kept

While speculative hot capital was made whole, the vulnerable had to bear the brunt of the crisis, and millions of people were plunged into dire poverty. Unemployment rates went up fourfold in Korea, threefold in Thailand, and tenfold in Indonesia.[518] In Korea there was an increase in absolute poverty and an increase in income and wealth inequality.[519] In Indonesia alone, thirty million more people dropped below the $1 per day poverty line.[520] In 1998, GDP in Thailand fell by 10.8 percent, in Indonesia by 13.1 percent, and in Korea by 6.7 percent.[521] Currencies in countries that followed IMF prescriptions fell rapidly—the Thai baht fell by 50 percent, the Indonesian rupiah by 75 percent and the Korean won by 40 percent.[522] By increasing unemployment and poverty throughout the Global South, the Asian crisis "put downward pressure

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artificially low to attract foreign investment. The end result was that between 1990 and 1999, Russian GDP fell 54% and industrial production fell 60%, devastation greater than that suffered during World War II. STIGLITZ, *supra* note 47, at 135–43. The overvalued ruble had flooded the market with foreign goods and led to massive contraction of the domestic manufacturing sector. The ill-fit between market principles and a centralized governance system led to an explosion of corruption and the creation of state-backed oligarchs. *See generally* P. Murrell, *Can Neo-Classical Economics Underpin the Economic Reform of the Centrally Planned Economies?*, 5 J. ECON. PERSPECTIVES 59 (1991) (comparing centrally planned economies and market economies). When the Asian crisis resulted in a dramatic fall of 40% in crude oil prices between 2007 and 2008, the weight of servicing the huge foreign debt became unbearable. By the middle of 1998, it became clear that Russia would need outside assistance to maintain its exchange rate. As confidence in the currency eroded, the yield on local currency government bonds went up to 150%. Yields on dollar-denominated bonds rose from 10% to 50%. As the crisis mounted, IMF offered the first rescue package of USD 4.8 billion in July 1998. IMF insisted that Russia borrow more in foreign currency than in rubles, discounting the risk of imminent devaluation that would make repayment of foreign currency loans more expensive. Under "enormous political pressure from the Clinton administration to lend money to Russia," the IMF and the World Bank crafted another rescue package of USD 22.6 billion. STIGLITZ, *supra* note 47, at 148–49. The rescue came too late, and on August 17, 1998, Russia announced a unilateral suspension of payments and a devaluation of the ruble. The ruble crashed, losing 45% in real terms by January 1999. The Russian default precipitated a global financial crisis, interest rates soared and even relatively sound developing economies could not raise credit. Brazil, Argentina, and other Latin American economies were pushed into currency and financial crisis. The New York Federal Reserve was forced to engineer a private bailout of LTCM. An industrial giant had been turned into a natural resource exporter. The human costs of the transition were enormous. While in 1989, only 2% of Russians lived in poverty, by 1998, the number had soared to 23.8%, and 50% of children were living in families in poverty. *Id.* at 149–50.

518. STIGLITZ, *supra* note 47, at 97.

519. While "the labor and capital income of the highest 10% in 1998 increased by 8% . . . that of the other 90% of income earners decreased sharply." Pyo, *supra* note 491, at 248.

520. *Crisis in Asia Spawns Millions of Newly Poor*, WALL ST. J., June 4, 1999, at B-5A. Likewise in Mexico two years earlier, "[t]he austerity program the Mexican government put in place when its economy faltered was a devastating blow to the country's working poor, but the big investors emerged largely unscathed." David E. Sanger, *Maybe a Bankrupt Nation Isn't the Worst Thing in the World*, N.Y. TIMES, Oct. 12, 1997, at WK6.

521. Pyo, *supra* note 491, at 248.

522. BUCKLEY, *supra* note 402, at 67.

on wages worldwide, thus increasing the global rate of exploitation."[523] Speculators also used the crisis to attack currencies and stock markets in the region, particularly those of Hong Kong and Malaysia.[524]

The crisis brought to an end the longest period of rapid growth in the Global South and the so-called "Asian miracle." Japanese banks, invested heavily in the region, were hit particularly hard. Coming on top of the collapse of the "bubble economy" in the early 1990s, the Asian flu pushed Japan further into long-term deflation that it has not recovered from since. The crisis led global finance to reduce its exposure to the global South generally. This had an immediate adverse effect on "emerging economies" that were forced to adopt tighter fiscal and monetary policies to counter the downward pressure on their currencies. Quickly, signs of acute financial stress appeared in Russia, Brazil, and Argentina. Russia defaulted in August 1998, followed by the collapse of the LTCM hedge fund, with the latter leading to a general panic in financial markets.[525]

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523. Rude, *supra* note 31, at 75.

524. At the height of the crisis, in "possibly the largest market conspiracy of all time," speculators took short positions worth USD 30 billion in the Hong Kong stock market. KRUGMAN, *supra* note 459, at 130. Hong Kong aggressively used its monetary authority's sizable reserves to intervene in the market and routed the speculators. *Id.* at 130–31. While Malaysia accused speculators to be doing America's bidding "to cut assertive Asians down to size," Hong Kong officials claimed that hedge funds had paid reporters to run stories about impending devaluations to engineer a run on the currency. *Id.* at 95, 129.

525. On the rise and fall of LTCM, see NICHOLAS DUNBAR, INVENTING MONEY: THE STORY OF LONG-TERM CAPITAL MANAGEMENT AND THE LEGENDS BEHIND IT (2000); ROGER LOWENSTEIN, WHEN GENIUS FAILED: THE RISE AND FALL OF LONG-TERM CAPITAL MANAGEMENT (2000); Donald MacKenzie, *Long-Term Capital Management and the Sociology of Arbitrage*, 32 ECON. & SOC'Y 350, 374 (2003). LTCM, the hedge fund founded in 1994, had by 1998 leveraged USD 4.8 billion in capital into more than USD 125 billion in assets and several times more in off-balance sheet positions. With a twenty-five to one leverage ratio, LTCM delivered returns over 40 percent in 1995 and 1996, and had 60,000 trades on its books in August 1998. SCOTT, *supra* note 16, at 15–16. The brains behind LTCM and the Black-Scholes model of options were awarded the Nobel Prize in economics in 1997. The number of options sold, and involvement of other financial institutions earned LTCM the title "the Central Bank of Volatility." DUNBAR, *supra*, at 178. In October 1998, LTCM lost 90 percent of its capital and the New York Federal Reserve and the U.S. Treasury engineered a bail-out with an infusion of USD 3.6 billion in capital by a consortium of fourteen Wall Street banks that were both lenders to and counterparties of LTCM. FERGUSON, *supra* note 4, at 328; SCOTT, *supra* note 16, at 16–17. The unwinding of LTCM's highly leveraged derivative positions caused the otherwise deep and liquid U.S. Treasury market to freeze up and threatened to unravel the very foundations of the global financial system. Rude, *supra* note 31, at 95. Reviewing the LTCM crisis, the BIS concluded that "[p]olicymakers should . . . appreciate that the fallout from last year's financial market strains was less pronounced on real activity in the industrial[ized] countries." COMM. ON THE GLOBAL FIN. SYS., REVIEW OF FINANCIAL MARKET EVENTS IN AUTUMN 1998, at 2 (1999), *available at* http://www.bis.org/publ/cgfs12.htm.

Note that the countries in the region that did not follow the IMF model of free capital mobility weathered the crisis better. For example, Malaysia, instead of following IMF prescriptions, and in the face of opposition by its central bank, pegged its currency, the ringgit, to the USD in September 1998, decreed repatriation of all offshore ringgits within a month, and froze repatriation of foreign capital for twelve months, later turning the capital exit control into an exit tax.[526] These capital controls allowed Malaysia to have a shallower downturn and to recover quickly.[527] Similarly, China and India avoided the contagion from the Asian crisis, enjoying growth of 8 and 5 percent respectively during the period, due to strong capital control regimes.[528] This relative insulation helped the two economies again during the 2007–2010 global financial crisis. Insulation from the crisis was also provided by the fact that while India's public debt is 80 percent of GDP, 90 percent of that is owed to its own citizens.[529] This phenomenon demonstrates that effective capital controls and reliance on domestic savings to fund public debt can insulate an economy from speculations of hot capital, as well as from the spread of destabilizing impact of debt crises. Imprudent recycling of excess global liquidity into debt to developing economies and unbridled international mobility of capital furnished the grounds for the Asian debt crisis, like they had for the Latin American crisis. Management of the crisis by the IMF further aggravated the economic costs, with the burden falling primarily on the working classes and the poor of debtor countries. The crisis was used by the IMF to further advance the neoliberal agenda of privatization, liberalization, and removal of capital controls. The few countries that resisted neoliberal prescriptions weathered the crisis better, demonstrating that strong regulation of finance capital, including strict

526. STIGLITZ, *supra* note 47, at 123.

527. *See* Ethan Kaplan & D. Rodrik, *Did the Malaysian Capital Controls Work?*, *in* PREVENTING CURRENCY CRISES IN EMERGING MARKETS 393, 397 (Sabastian Edwards & Jeffery Frankel eds., 2002) (recognizing that Malaysia's use of capital controls produced better financial results than those that would have resulted if it had adopted IMF prescriptions).

528. STIGLITZ, *supra* note 47, at 125–26. For details of how capital controls have worked well both historically and during the Asian crisis, see generally RAMKISHEN RAJAN, THE SOUTHEAST ASIAN CURRENCY AND FINANCIAL CRISIS: A CASE OF 'SUDDEN DEATH' OR 'DEATH FORETOLD'? (2010); Sebastian Edwards, *How Effective are Capital Controls?*, 13 J. ECON. PERSP. 65 (1999); S. H. Poon, *Malaysia and the Asian Financial Crisis: A View From the Finance Perspective*, 2 AFR. FIN. J. 13 (1999); Carmen M. Reinhart & Richard T. Smith, *Temporary Controls on Capital Inflows*, 57 J. INT'L ECON. 327 (2002); Akira Ariyoshi et al., *Country Experiences with the Use and Liberalization of Capital Controls*, IMF OCCASIONAL PAPER 1, 29–30 (1999).

529. Vikas Bajaj & Keith Bradsher, *Asia's Economies Prove Resilient Despite the Danger of Deficits*, N.Y. TIMES, Feb. 8, 2010, at B1.

capital controls, are vital for the autonomy and economic wellbeing of countries in the Global South.

C. Argentina: The Darling of the IMF Defaults

The Argentinean debt crisis of 2001–2005 is yet another instance of unbridled capital flows combining with IMF debt-crisis management to trigger accumulation by dispossession. However, it is also a lesson of how sovereign default can be used to secure meaningful debt relief and to break free of the stranglehold of the IMF. Argentina's crisis stemmed directly from IMF policies.[530] In its new role as enforcer of neoliberalism, the IMF had pushed for liberalization of capital accounts before prudential regulations were in place. This had "proved to be a recipe for disaster" during the Asian crisis, and proved the same for Argentina.[531] As was typical with this practice, speculative prospects attracted a rush of short-term foreign capital. While the rush created temporary booms in targeted markets, those booms remained unconnected to economic fundamentals. Of course, at the first sign of trouble, capital flees, leaving disaster in its wake, which is exactly what happened in Argentina. The situation in Argentina was exacerbated by the fact that throughout the 1990s, high liquidity in industrialized countries made a flow of massive credit possible. Argentina relied on foreign capital to fund its budget and capital account deficits.[532] Security firms reaped USD 1 billion in fees to underwrite government bonds from 1991 to 2010, as a "gusher of foreign money" poured into Argentina with "reckless abandon."[533]

Having subscribed to the neoliberal prescriptions, Argentina became a "darling of the IMF and the financial markets,"[534] and was held as "the best case of 'responsible leadership' in the developing world."[535] It privatized a broad range of industries, doubled its exports, achieved record levels of agricultural and industrial output, and experienced

530. L. Rother, *Giving Argentina the Cinderella Treatment*, N.Y. TIMES, Aug. 11, 2002, at A14. In a classic case of contagion, Argentina's financial collapse in 2001 can be traced back to the fallout from the 1995 Mexican crisis, which was later exacerbated by the Asian crisis of 1997, and the Brazilian crisis of 1998. STIGLITZ, *supra* note 22, at xiv.

531. BUCKLEY, *supra* note 402, at 79.

532. Miguel Kiguel, *Structural Reforms in Argentina: Success or Failure?*, 44 COMP. ECON. STUD. 83, 101 (2002).

533. Paul Blustein, *Argentina Didn't Fall on Its Own; Wall Street Pushed Debt Till the Last*, WASH. POST, Aug. 3, 2003, at A1. In 1998, Argentinean bonds accounted for 28.8 percent of the bellwether Emerging Markets Bond Index-Plus, which "virtually forced" investors to lend to Argentina even if its long-term solvency was in doubt. *Id.*

534. BUCKLEY, *supra* note 402, at 76.

535. *Chaos in Argentina*, NATION, Jan. 21, 2002, at 3.

marked growth in oil and mineral production. Between 1991 and 1998, GDP increased by 44 percent and inflation remained under control.[536] By the end of 1998, however, partly due to the global fall in commodity prices induced by the Asian flu, Argentina entered a severe recession that by 2001 developed into a severe crisis.[537] IMF and neoliberal prescriptions precluded countercyclical policies. Instead, in 1999 taxes were raised, along with a 13 percent wage cut for public workers, and deep cuts made in education and pensions.[538] The neoliberal shock-therapy only aggravated the crisis. A 2004 IMF internal audit found that the fund "significantly contributed to one of the most devastating financial crises in history . . . [and] certainly deepened a recession that threw millions of Argentineans into poverty."[539]

The principal cause of the crisis was the earlier decision to peg the Argentinean peso to the USD, as well as the massive inflows of foreign capital facilitated by complete liberalization of capital accounts.[540] The peg effectively controlled inflation and made Argentina very attractive to foreign capital. However, by fixing the exchange rate, Argentina gave up the principal means to deal with balance-of-payment problems—adjustment in exchange rate to ensure its exports remained competitive. For example, Brazil, faced with similar pressure on its balance of payments, devalued its currency by 40 percent and avoided a crisis.[541] Pegging the peso to the USD meant that to be able to guarantee convertibility, the central bank had to back each peso in circulation with a USD at hand.[542] Once hyperinflation had been put under control by 1994, a gradual decline in value of the peso would have boosted exports and made the economy stronger.[543]

The IMF's initial response to the Argentinean crisis in 2000 was a USD 40 billion bailout to service a mix of public and corporate debt.[544]

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536. BUCKLEY, *supra* note 402, at 75.

537. EICHENGREEN, *supra* note 196, at 207.

538. Simon Jeffery, *Crisis in Argentina*, GUARDIAN (Jan. 4, 2002, 2:59 PM), http://www.guardian.co.uk/world/2002/jan/04/qanda.argentina.

539. Paul Blustein, *IMF Says Its Policies Crippled Argentina; Internal Audit Finds Warnings Were Ignored*, WASH. POST, July 30, 2004, at E1.

540. EICHENGREEN, *supra* note 196, at 205; Martin Feldstein, *Argentina's Fall*, 81 FOREIGN AFF. 8, 10 (2002).

541. William Gruben & Sherry Kiser, *Why Brazil Devalued the Real*, FED. RES. BANK DALLAS (July 1, 1999), http://www.dallasfed.org/eyi/global/9907real.html.

542. Feldstein, *supra* note 540, at 8.

543. Ross P. Buckley, *Re-envisioning Economic Sovereignty: Developing Countries and the IMF*, *in* RE-ENVISIONING SOVEREIGNTY: THE END OF WESTPHALIA? 267, 279–80 (Trydy Jackobson et al. eds., 2008); Jeffery Sachs, *A Crash Foretold: Argentina Must Revamp Its Society and Economy for a High-tech World*, 159 TIME INT'L, Jan. 14, 2002, at 17.

544. Eric Hershberg, *Why Argentina Crashed and Is Still Crashing*, 36 NACLA REP. ON

Concurrently, the IMF required the so-called "pesofication"—domestic banks were required to convert their assets into pesos at a one-to-one rate and their liabilities into pesos at a rate of 1.4 to 1. The government then compensated the banks for the losses this entailed by a massive issue of government bonds.[545] With these moves, the burdens of private losses shifted to the public. A former president of Argentina's central bank summed up the bottom line: "The government has transferred about 40% of private debt to workers . . . . We are experiencing *a mega-redistribution of wealth and income unprecedented in the history of the capitalist world*."[546] The model followed the pattern of "massive returns to the rich" set by the earlier capital flows and debt crises in the Global South.[547] As before, the poor had to repay the debts through higher taxes, and suffer from unemployment and reduced spending on health care, education, and infrastructure.[548]

The 2000 currency delinking and austerity measures failed to contain the crisis. Between March 2001 and March 2002, domestic financial assets shrank from USD 126.8 billion to USD 41 billion.[549] Argentina's GDP fell 10.9 percent in 2002, per capita income decreased by 23 percent, and unemployment rose to 26 percent.[550] The long-term consequences for millions of Argentineans turned dire.[551] In once prosperous Argentina, over half of the population was pushed below the poverty line, and over a third of the population could not afford adequate food.[552] Faced with the government's reluctance to enact

AMERICAS, no. 1, 2002 at 32.

545. Andres Gaudin, *Thirteen Days that Shook Argentina—And Now What?*, 35 NACLA REP. ON AMERICAS, no. 5, 2002 at 6; *Latin Banks: Eyes on Brazil*, EMERGING MARKETS MONITOR, Aug. 19, 2002, at 12.

546. Gaudin, *supra* note 545, at 6–9 (emphasis added).

547. *A Survey of Latin America*, ECONOMIST, Nov. 13, 1993, at 991–93.

548. For detailed analyses, see JORGE G. CASTANEDA, UTOPIA UNARMED: THE LATIN AMERICAN LEFT AFTER THE COLD WAR 5 (1993); Ross P. Buckley, *The Rich Borrow and the Poor Pay: The Fatal Flaw of International Finance*, 19 WORLD POL'Y J. 59 (2002); Jerry Dohnal, *Structural Adjustment Programs: A Violation of Rights*, 57 AUSTRALIAN J. HUM. RTS. 72 (1994); Harold James, *Deep Red—The International Debt Crisis and Its Historical Precedents*, 56 AM. SCHOLAR 331 (1987).

549. BUCKLEY, *supra* note 402, at 76–77.

550. Hector E. Maletta, *A Catastrophe Foretold: Economic Reform, Crisis, Recovery and Unemployment in Argentina* (Univ. of El Salvador, Instituto de Investigación en Ciencias Sociales, Working Paper Series, 2007), *available at* http://ssrn.com/abstract=903124.

551. *See* Sophie Arie, *Rich Argentina Tastes Hunger*, OBSERVER (May 19, 2002, 2:38 BST), http://www.guardian.co.uk/world/2002/may/19/argentina.sophiearie (describing the struggle of Argentina's middle class to maintain its way of life as the financial crisis caused dietary staples to become unaffordable luxuries).

552. *See* Mark Milner & Charlotte Denny, *It's Penalty Time for Argentina*, GUARDIAN, May 8, 2002, at 22 (noting the dire social consequences that resulted from the paralysis of Argentina's

further austerity measures, the IMF denied further credits. In response, Argentina defaulted on its foreign debt of USD 132 billion in December 2001.[553] Argentina's president took the position that he would not service the debt from the "suffering and hunger of the people."[554]

In September 2003, Argentina demanded that the creditors write-off 75 percent of the USD 4.3 billion in debt and all the interest that had accumulated since the default. Wiping out the accumulated interest meant that the value of offer, which Argentina described as "unmovable," was only 10 percent of the total outstanding debt.[555] In late 2004, Argentina improved the offer so that USD 82 billion of bonds would be converted into USD 42 billion in new bonds with lower interest rates and longer maturities. This amounted to agreeing to honor 50 percent of the outstanding debt, but not the USD 23 billion in past due interest. In March 2005, creditors holding 76 percent of Argentina's debt agreed to exchange the debt for bonds at a 66 percent discount of the present value. Argentina emerged as a "defaulting debtor on the most advantageous terms ever secured by a middle-income country in debt restructuring in history."[556] The *Financial Times* bemoaned the "dangerous precedent," claiming that "*Argentina gambled, and the gamble paid off*."[557] In April 2005, Argentinean President Nestor Kirchner declared: "*There is life after the IMF, and it's a good life*."[558]

The genesis of Argentina's debt crisis shared the pattern of the Latin American and Asian debt crises: it was also caused by global excess liquidity, imprudent lending, and absence of capital controls. Just like in the other two cases, the burden of Argentina's unsustainable debt fell on the working classes. However, Argentina's response to the crisis departed from the pattern of the other two crises. Argentina, after rejecting the IMF's neoliberal prescriptions of debt management, demanded radical debt write-offs, chose the option of default to secure

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banking system).

553. BUCKLEY, *supra* note 402, at 76.

554. *Argentina and the IMF: Which is the Victim?*, ECONOMIST, Mar. 6, 2004, at 63. Argentina's poverty rate doubled from 27 percent in 1999, to 54.7 percent in 2004, and the debt that represented 47.4 percent of GDP in 1999 rose to 140 percent of GDP in 2004. BUCKLEY, *supra* note 402, at 83.

555. *The End of the Affair*, ECONOMIST (Feb. 20, 2004), http://www.economist.com/node/2440367?story_id=2440367.

556. BUCKLEY, *supra* note 402, at 84.

557. *Argentina Sets a Dangerous Precedent: The IMF Should Set Tough Conditions for Further Lending*, FIN. TIMES, Mar. 7, 2005, at 20 (emphasis added).

558. Christopher Swann, *Hugo Chavez Exploits Oil Wealth to Push IMF Aside*, N.Y. TIMES, Mar. 1, 2007, at B1.

unprecedented concessions from its creditors. Argentina's experience of default provides a productive example for all developing economies carrying mountains of debt. It demonstrates that debtor economies "are in a good position to impose solutions on creditors . . . [and] that a determined sovereign is normally stronger than its creditors . . . unless they have the assistance of a great power."[559] Sovereign defaults had declined in recent decades substantially as a result of changes in the U.S. and U.K. laws restricting application of sovereign immunity when sovereigns engage in commercial activity.[560] The experience of Argentina, however, underscores that default is an attractive option for debtor states. By late 2010, many experts have come to believe that the "better and fairer" option even for Europe's weakest economies is to default.[561] Indeed, faced with the escalating debt crises in Ireland, Italy, Portugal, and Spain, experts have recommended a Europe-wide default plan.[562] When faced with excessive debt, historically the options have been to "[c]ut, print, or default."[563] The IMF prescription is always to cut spending, which amounts to a default on the commitments to politically weak sections at home. The print option, i.e., vaporizing debt through inflation, is not a viable option because international debt today is mostly in foreign currency and thus immune to local currency inflation. Furthermore, condemning domestic bondholders to inflation-driven, negative real interest rates is not viable anymore as the term structure of government debt in local currency is often much shorter.[564] Attractiveness of the default option increases by the fact that, historically, new creditors are generally indifferent to a sovereign

559. WOLF, *supra* note 17, at 8, 186.

560. *See generally* Georges R. Delaume, *The Foreign Sovereign Immunities Act and the Public Debt Litigation: Some Fifteen Years Later*, 88 AM. J. INT'L L. 257 (1994) (evaluating the U.S. courts' interpretations of sovereign immunity under the Foreign Sovereign Immunities Act where public debts are involved); G. W. Larson, *Default on Foreign Sovereign Debt: A Question for the Courts?*, 18 IND. L. REV. 959 (1985) (analyzing issues that arise in default actions against foreign sovereign debtors).

561. Landon Thomas, Jr., *In Europe, a Look at Defaults to Stem the Pain*, N.Y. TIMES, Nov. 23, 2010, at B1. Many experts now say that "bailouts only delay the inevitable." *Id.* The IMF finds default unnecessary, undesirable, and unlikely. *See* CARLO COTTARELLI ET AL., IMF STAFF POSITION NOTE, DEFAULT IN TODAY'S ADVANCED ECONOMIES; UNNECESSARY, UNDESIRABLE, AND UNLIKELY (Sept. 1, 2010), *available at* http://www.imf.org/external/pubs/ft/spn/2010/spn1012.pdf. Kenneth S. Rogoff, an expert on sovereign debt crises, points out that the IMF's position stems from the fact it is controlled by creditor nations. Thomas, *supra*, at B1.

562. *See, e.g.*, Simon Johnson, *Will Ireland Default? Ask Belgium*, N.Y. TIMES (Nov. 25, 2010, 6:00 AM), http://economix.blogs.nytimes.com/2010/11/25/will-ireland-default-ask-belgium/; Nouriel Roubini, *Irish Woes Should Speed Europe's Default Plan*, FIN. TIMES (Nov. 15, 2010, 9:02 PM), http://cachef.ft.com/cms/s/0/b3dbaa92-f0f7-11df-bf4b-00144feab49a.html.

563. Ferguson, *supra* note 26, at 11.

564. *Id.* at 12.

debtor's default history.[565] If a single debtor state fears retaliation and being cut off from credit markets, the way out may well be a collective moratorium on servicing, or repudiation of foreign debts by all or groups of developing countries. Here it is important to note that "[m]ost countries in all regions have gone through a prolonged phase as serial defaulters on debt owed to foreigners."[566] Furthermore, ubiquitous rescheduling and restructuring of debts are deemed "negotiated partial defaults."[567] A collective default then is a matter of proverbial hanging together or hanging separately. Such action, or even the threat of such action, may be sufficient to force favorable restructurings and changes in the global financial architecture. A collective default to force radical changes in the global financial architecture would also bring the non-market political nature of the international debt question out in the open. The case of forgiveness of Iraqi debt recently underscored this fact.[568]

565. R. M. Auerback, *Sovereign Debt: Default and Restructuring of Debts Owed to Private Creditor*, 18 J. INT'L BANKING L. & REG. 440, 442 (2003).

566. REINHART & ROGOFF, *supra* note 9, at 49. Since 1800 there have been 250 defaults on external debt. *Id.* at 111.

567. *Id.* at 90.

568. Iraq under military occupation presents a vivid picture of neoliberal-designed political economy and exceptional treatment of foreign debt for political ends. Perhaps, the "shock and awe" of the bombing campaign in the Iraq War was a sufficient substitute for any monetarist shock-therapy to prepare the ground for implementing neoliberalism in one sweep. The September 19, 2003 orders of the Coalition Provisional Authority in occupied Iraq did just that. *See* Antia Juhasz, *Ambitions of Empire: The Bush Administration Economic Plan for Iraq (and Beyond)*, 12 LEFT TURN MAG., Feb.–Mar. 2004, at 27–32, *available at* http://www.ifg.org/analysis/globalization/ambition.htm. The orders mandated full privatization of public enterprises, full ownership rights by foreign firms of Iraqi businesses, full repatriation of profits, opening of Iraq's banks to foreign control, national treatment for foreign companies, elimination of nearly all trade barriers, a flat tax, outlawing strikes, and banning unions in key sectors of the economy. The orders were to apply to all sectors of the economy, including manufacturing, services, finance, construction, transportation, and the media. An Iraqi member of the Authority called it "free market fundamentalism . . . a flawed logic that ignores history." Thomas Crampton, *Iraqi Official Cautions on Imposing Free Market*, N.Y. TIMES, Oct. 14, 2003, at C5. At the end of 2004, the sovereign debt of Iraq stood at USD 120 billion, apart from the USD 200 billion owed in reparations as a result of the first Gulf war. BUCKLEY, *supra* note 402, at 81–87. In late 2004, as a result of strong lobbying by the United States and the Paris Club, the standing group representing governments of the nineteen largest creditor states, agreed to write off 80% of the debt owed to them by Iraq. The agreed upon relief was designed to unfold in three phases: 30% of the outstanding debt as of January 1, 2005 to be cancelled immediately; a further 30% to be cancelled upon Iraq's subscription to a standard IMF program with the usual conditionalities; and a further 20% to be cancelled upon completion of the last IMF board review after three years of implementation of standard IMF program. The remaining 20% was rescheduled over a period of twenty-three years including a grace period of six years. *Id.* at 88. The Iraqi Finance Minister had characterized Iraq's burden as an "odious debt, used to build up the war machine of the ousted regime, largely through arms purchases supported by lending countries." Joanna Chung & Stephen Fidler, *Restructuring Under Fire: Why Iraqi Debt Is No Longer a Write-Off*, FIN. TIMES, July 17, 2006, at 15 (quoting Iraqi Finance Minster Ali Allawi). The Paris Club shied away from mentioning the term and rested their position on unsustainability of debt servicing given the war.

In the context of collective bargaining about international debt, the Global South should rekindle the demands for a New International Economic Order that were left by the wayside in the turn to neoliberalism.[569] This would call for a new accounting that balances the debt of the Global South against the siphoning of value from the Global South during and since the colonial era. Only such a historical settling of accounts can usher in a global economic system based on equity and justice.

VI. CONCLUSION

The financial meltdown and the deep recession of 2007–2009 have rung the death-knell of the neoliberal free-market consensus that exercised hegemony over national and global socio-economic policy making for over thirty years. We are told that anemic growth and pervasive joblessness are the "new normal" of the U.S. economy.[570] Paul Volcker, the architect of the 1979 "Volcker Shock," reports that "[p]eople are nervous about the long-term outlook, and they should be."[571] These may be new developments for the United States, but Greece and other societies saddled with mountains of foreign debt confront much worse. Money may well make the world go around, but

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It has been pointed out that even after the write-off, Iraq will remain "shackled with over USD 25 billion of debt, not to mention new loans being peddled by the IMF and World Bank . . . . Furthermore, IMF conditions—such as privatization and ending food rations—could further exacerbate the poverty and instability in Iraq." *Saddam's Debt, the IMF, and the Privatization of Iraq's Economy*, JUBILEE IRAQ (May 26, 2005), http://www.jubileeiraq.org/ resources.htm.

569. In the early 1970s, developing countries sought to free themselves of trade dependency and the debt trap by creating a New International Economic Order ("NIEO"). This aimed to improve the terms of trade for raw materials and build up agricultural and industrial self-sufficiency. The NIEO was a comprehensive package of multilateral policy options that aimed to improve the position of Third World countries in the world economy relative to the richest states. It came together at the Non-Aligned Movement's ("NAM's") Conference held at Algiers in September 1973. Subsequently, the leaders of the NAM requested a Special Session of the UN General Assembly to address issues associated with international trade in raw materials. At this Session in April 1974, the Group of 77 ("G-77") secured the adoption of the Declaration and Program of Action for a NIEO despite lacking the support of the United States and a small group of advanced industrialized countries. The NIEO's prescriptions for world trade were designed to stabilize and raise the prices of the commodities many G-77 members relied upon to earn foreign exchange, and to overcome long-term declines in their terms of trade. For details, see generally SANEEP CHAUHAN, DEMAND FOR NEW INTERNATIONAL ECONOMIC ORDER (1997); THE NEW INTERNATIONAL ECONOMIC ORDER: THE NORTH-SOUTH DEBATE (Jagdish Bhagwati ed., 1977); ROBERT L. ROTHSTEIN, GLOBAL BARGAINING: UNCTAD AND THE QUEST FOR A NEW INTERNATIONAL ECONOMIC ORDER (1979). For a perceptive analysis of how the United States undermined this progressive initiative and instead pushed for financial dominance over the rest of the world, see MICHAEL HUDSON, GLOBAL FRACTURE: THE NEW INTERNATIONAL ECONOMIC ORDER (2005).

570. Nelson D. Schwartz, *Jobless and Staying that Way*, N.Y. TIMES, Aug. 8, 2010, at WK1.

571. Louis Uchitelle, *Volcker, Loud and Clear*, N.Y. TIMES, July 11, 2010, at C1, C7.

it is an extremely bumpy ride. The architecture of global finance distributes gain and pain of financial flows to the advantage of finance capital and to the detriment of working and marginalized classes around the world. International debt crises that have become ubiquitous in recent decades testify to this phenomenon. All this is not some natural result of operations of the ostensibly "free" market. Extra-market forces and means channel the markets to achieve these results. It took a politically directed foundational reconstruction of international financial systems to bring about this state of affairs.

In response to the Great Depression, the two World Wars, and struggles of working classes, a Keynesian compromise between capital and labor aimed at full employment and a welfare state gradually unfolded. As a necessary precondition, a global regime of capital controls was instituted to contain the predatory and destabilizing tendencies of global finance capital. The result was a prolonged phase of sustained economic growth and stability and incremental expansion of civil and economic rights of working classes. Falling rates of profit, expanding U.S. balance-of-payment deficits, and threats to U.S. economic hegemony brought this phase to an end in the 1970s. Thereafter, a neoliberal economic order was put in place, aimed at reversing the gains of the working classes and consolidating U.S. economic and political hegemony.

Elaborate reordering of the U.S. and global financial regulatory regimes facilitated unbridled international mobility of finance capital. This enabled finance capital to play a dominant role in the global economy, raised its rates of profit, and channeled global savings to sustain U.S. fiscal and balance-of-payment deficits. The exponential expansion of financialized credit economy created debt peonage within advanced capitalist countries and mounting debt burdens internationally. International debt combined with absence of capital controls accentuated boom and bust cycles of debtor countries. Recurrent international debt crises have been the result. These crises are managed in ways that further impoverish vulnerable sections of the debtor societies and augment the power of finance capital. International debt crises over the past three decades have facilitated further expansion of neoliberalism. These crises are used to enforce neoliberalism on debtor countries through mandates and conditionalities of structural adjustment. Promotion of open financial markets generates further crisis-prone debt. And the cycle continues in an ever-escalating mode. Financial crises and their management have become functional to neoliberalism's reproduction and extension. They are exploited to reduce or remove barriers to capital that the market and diplomacy are unable to dislodge.

There has to be a better way. The accounts above show that the better way is a rollback of neoliberalism. In particular, finance capital needs to be contained and subordinated to productive and distributive needs both globally and within states. In order to do this, effective international capital controls and a balance-of-payments stabilization fund—one that is free of imperial control—are indispensible. Turning the clock back to Bretton Woods is not viable or desirable. We have to imagine and design systems of global capital flows that are not subservient to predatory capitalism. A collective moratorium on debt servicing or even a default by developing economies is a viable means to force a reordering of the global financial architecture. Only this will enable all states to gain economic sovereignty, for the people to take charge of their collective destiny, and for human beings to have priority over capital.