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Financial Liberalization, International Monetary Dis/order, and the Neoliberal State

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FINANCIAL LIBERALIZATION, INTERNATIONAL MONETARY DIS/ORDER, AND THE NEOLIBERAL STATE

TIMOTHY A. CANOVA*

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INTRODUCTION

This International Economic Law Conference has charged itself with a rather lofty task -- that of analyzing the professed justifications of the prevailing neoliberal path of globalization by asking the following question: "Will the new world economic order we describe lead to greater peace, stability, fairness and justice?"¹ The global monetary system constitutes perhaps the most important legal and institutional foundation of today's world economic order in an-

* Assistant Professor of Law, University of New Mexico School of Law. Thanks to Stephen Zamora, Cynthia Lichtenstein, and Chantal Thomas for comments during a panel discussion that helped to inform this paper. I also appreciate the encouragement of Jeff Dunoff, Sara Ford, and Jeff Atik, and I am indebted to Bill McLeod, Linda Longmire, Irwin Stotzky, Barbara Creel, Marty Melkonian, Bill Krehm, Noam Chomsky, Linda McQuaig, Ray Canterbury, and Jenny Moore for providing me with insight and inspiration. Thanks also to Dean Robert Desiderio for his steadfast support and a summer research grant to complete this article. This essay is dedicated to the men and women who implemented the 1944 Bretton Woods Agreement through legislation and convention, and the generation that found the vision and discipline to enforce it for nearly three decades.

1. See *Interfaces: From International Trade to International Economic Law*, ANNUAL CONFERENCE, (Am. Soc'y of Int'l Law, Int'l Econ. Law Group, Washington, D.C.), (Feb. 18-20, 2000).

swering such fundamental questions of peace, stability, and justice. By analyzing the most significant changes in international monetary law, we can shed a great deal of light on how the new world economic order fails to deliver on its promise of peace, justice, and the so-called American way to prosperity.

Part I of this article will analyze how the global monetary system has been transformed over the past two generations from one with a fairly significant degree of regulation and controls on short-term capital flows to a highly liberalized financial environment. The prevailing orthodoxy of liberalized finance, which rests on particularly flawed narratives and discourses, results in recurrent monetary disorders -- balance of payments crises that necessitate some kind of adjustment of monetary imbalances. Unfortunately, the traditional, dominant model for adjustment places the entire burden of adjustment on countries experiencing balance of payment deficits. Such asymmetrical adjustment burdens provide a powerful indictment of the new world economic order's failures.² Free portfolio capital flows have also provided an undemocratic check on once-sovereign nation-states to pursue progressive social and economic policies.³

Part II of this article analyzes the relationship between neoliberal discourse and central bank autonomy, another institutional pillar of the new world economic order that rests on questionable assumptions, dubious legal foundations, and flawed historical narratives that constrain discussion of alternative models. Once again, the material conditions resulting from such structures of thought and policy are at odds with the new world order's legitimizing justifications.⁴ When

2. See GEORGE SOROS, *THE CRISIS OF GLOBAL CAPITALISM: OPEN SOCIETY ENDANGERED* 120-25 (1998).

3. This is neoliberal "can't": once-sovereign governments are told that they "can't" pursue progressive social and economic policies because of the threats posed by currency depreciation and capital flight resulting from neo-liberalized finance. See discussion *infra* notes 41-43 and accompanying text (enumerating threats posed by neoliberal "can't").

4. The new world economic order hangs its legitimacy in the triumphalism of American-style capitalism, and the assumption that such triumph has resulted in greater good for the greatest numbers of people in the world. See FRANCIS FUKUYAMA, *THE END OF HISTORY AND THE LAST MAN* 44-46 (1992); see also RAY CANTERBURY, *WALL STREET CAPITALISM: THE THEORY OF THE BONDHOLDING CLASS* 2-3 (2000) [hereinafter CANTERBURY, *WALL STREET CAPITALISM*] (explaining that "end of history" refers to presumed permanent

combined with the dangers posed by financial liberalization and structural adjustment, central bank autonomy contributes to greater economic inequalities while raising the specter of recurrent financial instability.⁵

While the new world economic order provides riches for the ruling elite around the globe, it also generates fear and trepidation among this elite as well. Their peace is repeatedly shattered by dark omens of financial instability. After concluding that today's neoliberal state generates injustice, fear, and insecurity, as opposed to peace and justice, Part III of this article considers alternative paths of globalization.

I. THE NEW INTERNATIONAL MONETARY DIS/ORDER

International monetary law has undergone two sea changes of profound significance during the past two generations. The first brought about the discipline and stability of the Bretton Woods System that provided the bulwark for the reconstruction of a world torn apart by war—a monetary reconstruction that helped maintain peace during the cold war by contributing to social, economic, and financial stability, high levels of employment, and a greater level of social justice than existed in earlier periods.⁶ Bretton Woods helped the advanced capitalist countries to accomplish these objectives through a dual strategy that limited reliance on short-term speculative private capital investment, while providing significant public sector transfers of re-

dominance of United States free-market capitalism and “happy ending” for those following such model).

5. See CANTERBURY, WALL STREET CAPITALISM, *supra* note 4, at 3 (noting that central bank autonomy also results in the domination of monetary policy by private constituencies of privilege and power that favor price stability over employment creation and public spending programs); see also discussion *infra* Part II (describing the autonomy of central banks and lack of transparency in the neoliberal state).

6. See Victor L. Urquidi, *Reconstruction vs. Development: The IMF and the World Bank*, in THE BRETTON WOODS-GATT SYSTEM: RETROSPECT AND PROSPECT AFTER FIFTY YEARS 48 (1996) (noting that the Bretton Woods Agreement was negotiated during the concluding months of World War II to provide a multilateral legal framework for international monetary payments and currency stability).

sources to spur economic development.⁷

The Bretton Woods System was eventually undermined by its own legal and policy limitations, institutional constraints, and a political culture that led increasingly to the capture of central banking by financial interests seeking liberalization from the system's legal and regulatory restraints.⁸ Captured regulators often ratified widespread evasion of regulatory controls, thereby undermining exchange rate stability under the guise of marketplace financial innovation.⁹ Meanwhile the International Monetary Fund ("IMF"), the primary multilateral institution created by Bretton Woods, further undermined the system of fixed exchange rates by placing the entire burden of adjustment on deficit countries.¹⁰ During a period in which countries

7. See Timothy A. Canova, *Banking and Financial Reform at the Crossroads of the Neoliberal Contagion*, 14 AM. U. INT'L L. REV. 1571, 1610 (1999) [hereinafter Canova, *Neoliberal Contagion*] (discussing Article VI of Bretton Woods, which provides member countries with an important policy tool, namely the right to impose restrictions on capital flows).

8. Political scientists have long recognized that the political culture of interest group pluralism invites agency capture through overly broad delegations of legislative power to administrative agencies that exercise wide discretion. See THEODORE LOWI, *THE END OF LIBERALISM: THE SECOND REPUBLIC OF THE UNITED STATES* 22, 50-51 (1979); see also JOHN HART ELY, *DEMOCRACY AND DISTRUST: A THEORY OF JUDICIAL REVIEW* 132-33 (1980) (criticizing overly-broad delegations to semi-autonomous administrative agencies). See also Enrico Colombatt & Jonathan R. Macey, *A Public Choice Model of International Economic Cooperation and the Decline of the Nation State*, 18 CARDOZO L. REV. 925, 933 (1996) (offering a public choice argument that regulators engage in private wealth-maximizing behavior). Agency capture contributed to the liberalization of foreign exchange and capital markets, as well as the preference for high real interest rates as the exclusive policy to maintain domestic price stability and foreign exchange stability. See *infra* notes 9, 71-72, and accompanying text.

9. See Timothy A. Canova, *The Transformation of U.S. Banking and Finance: From Regulated Competition to Free-Market Receivership*, 60 BROOK. L. REV. 1295, 1304-06 (1995) [hereinafter Canova, *Free-Market Receivership*] (describing agency ratification of marketplace evasions of regulatory controls).

10. The IMF long ago accepted a highly asymmetrical approach to adjustment, for instance, by adopting a restrictive interpretation of the so-called "scarce currency" clause. See Articles of Agreement of the International Monetary Fund, Dec. 27, 1945, Art. VII, §3(b), 2 U.N.T.S. 39 [hereinafter Articles of Agreement] (providing the multilateral treaty commitments regarding fixed exchange rates between member countries). See also Frances Stewart, *Back to Keynesianism: Reforming the IMF*, 4 WORLD POL'Y J. 465, 472 (1987) (discussing the aggregate effects of IMF activities). Stewart notes that the United States trade deficit is linked to decreased demand in Third World countries and that "IMF-mandated cutbacks in

became increasingly dependent on the fickle finance of short-term private capital flows, official transfers of public capital began to decline.¹¹

The United States dollar was the linchpin of the Bretton Woods System of fixed exchange rates; however, by the early 1970's, the United States economy fell into balance-of-payment deficit while foreign holders of dollars increasingly demanded convertibility of the dollar into gold.¹² The Nixon administration had few choices at the time. It could have swallowed the IMF's model for adjustment for deficit countries — namely, fiscal and monetary austerity — but with global commitments to contain the real and imagined spread of Soviet Communism, the IMF's model was not an appealing option. Nixon refused to deflate those commitments and instead ended the dollar's convertibility to gold.¹³ The Bretton Woods System had effectively passed into history.¹⁴

What has replaced the Bretton Woods System? The most recent sea change in the global financial architecture and international monetary law has been the development of today's neoliberal monetary order. It is well-documented how neoliberal policy reforms resulted in an explosion of cross-border private capital flows (to well over one trillion dollars a day); particularly short-term portfolio in-

Third World spending and employment" led to decreases in worldwide demand and output. *Id.* See also Roy Harrod, *THE DOLLAR: SIR GEORGE WATSON LECTURES 1953*, 110 (1954) (criticizing the limited bilateral nature of the scarce currency clause). Harrod argues that the words of Art. VII, §3(b) "violate the multilateral principle" that is supposed to lay the foundation of the IMF. *Id.*

11. See Kenneth Kasa, *The Composition of International Capital Flows, 2000-18* FED. RESERVE BANK OF SAN FRANCISCO ECON. LETTER (June 2, 2000) (reporting that public capital transfers to developing countries fell from about 50% of total net flows at beginning of 1990s to about 15% of the total by end of decade).

12. See Benjamin J. Cohen, *A Brief History of International Monetary Relations*, in *INTERNATIONAL POLITICAL ECONOMY: PERSPECTIVES ON GLOBAL POWER AND WEALTH* 234, 249-50 (2d ed. 1991).

13. LYNN TURGEON, *BASTARD KEYNESIANISM: THE EVOLUTION OF ECONOMIC THINKING AND POLICYMAKING SINCE WORLD WAR II* 24 (1996) [hereinafter *TURGEON, BASTARD KEYNESIANISM*] (discussing the devaluation of the dollar and the "closing of the gold window" under Nixon's New Economic Policy).

14. See Cohen, *supra* note 12 at 253; see also *TURGEON, BASTARD KEYNESIANISM*, *supra* note 13, at 21 (noting that the United States could have protected the dollar by adopting capital controls and/or cutting its foreign expenditures on the Vietnam War and elsewhere).

vestment flows (i.e., highly liquid stocks and bonds) known as "hot money" because of the speed by which such short-term capital can move in or out of a country.¹⁵

To appreciate how central the program of capital account liberalization is to the development of the new global economic order, one need only consider the many bilateral and multilateral efforts to entrench such liberalization with the force of law.¹⁶ The combination of such efforts undermined the legal rights of countries around the world to protect themselves against speculative attacks on their currencies, yet without explicitly amending international monetary law. For instance, while Article VI of the Bretton Woods Agreement explicitly provides member nations with the legal authority to impose controls on capital movements,¹⁷ in recent years the IMF has actively undermined such an important policy tool by routinely requiring capital account liberalization as a condition for financial and structural adjustment assistance.¹⁸ Also in recent years, the IMF has unsuccessfully pushed for amending its charter to provide express jurisdiction to push capital account liberalization, an amendment that would have explicitly killed Article VI.¹⁹ During the worst of the Asian financial crisis, the IMF stepped back from this agenda, but only slightly, compromising on the pace, but not the direction of

15. See David Felix, *On Drawing General Policy Lessons From Recent Latin American Currency Crises*, 20 J. POST KEYNESIAN ECON. 191, 198 (1997-98) (noting that the incongruity between the exponential expansion of international financial flows since the "demise" of Bretton Woods stunted global growth of production and output). Felix also reports that the global foreign exchange turnover rose from \$18.5 billion per day in 1977 to \$1.23 trillion in 1995. *Id.*

16. See Canova, *Neoliberal Contagion*, *supra* note 7, at 1614-18 (critiquing efforts to advance capital account liberalization through the State Department's Bilateral Investment Treaty ("BIT") program, and multilateral efforts of World Trade Organization ("WTO"), Organization of Economic Cooperation and Development ("OECD"), and Bank for International Settlements ("BIS")). See also Noam Chomsky, *Domestic Constituencies*, Z MAGAZINE, May 1998, at 16, 24 (reporting on OECD proposal for Multilateral Agreement on Investments ("MAI") to bar all national constraints on capital flows).

17. See Articles of Agreement, *supra* note 10, Art. VI §3 (providing legal guidelines for member nations in using controls on capital flows).

18. See Canova, *Neoliberal Contagion*, *supra* note 7, at 1613 n. 173-76 (discussing IMF's loan conditionality requirement of capital account liberalization).

19. See *id.* at 1612-13 n. 170-71.

capital account liberalization.²⁰

In addition, many developing countries have “unilaterally” opened themselves up to the dangers of sudden outflows of portfolio capital as a strategy to attract inflows of scarce capital.²¹ This move was undoubtedly part of the Mexican leaders’ motivation in agreeing to the investment liberalization provisions of the North American Free Trade Agreement (“NAFTA”).²² Such rationale is a product of the dominant neoliberal narratives and discourses that blame the developing countries for their lack of access to scarce capital and, thereby, call for a range of structural adjustment and policy changes in those countries, including liberalization, privatization, central bank autonomy, and austerity.²³

Neoliberal discourse is essential to provide justification for the new world economic order’s institutional framework and policy agenda.²⁴ This discourse claims to be value-neutral and cloaks itself in the mystique of scientific certainty²⁵—as if economics were a hard science like physics or chemistry²⁶—a pretense that serves to disempower and discredit critics of the neoliberal model. But the terms of neoliberal discourse are far from value-neutral; rather, they reflect

20. See Timothy A. Canova, *The Disorders of Unrestricted Capital Mobility and the Limits of the Orthodox Imagination: A Critique of ROBERT SOLOMON, MONEY ON THE MOVE: THE REVOLUTION IN INTERNATIONAL FINANCE SINCE 1980*,” 9 MINN. J. GLOBAL TRADE 219, 222 n. 12 (2000) [hereinafter Canova, *The Disorders of Unrestricted Capital Mobility*] (describing the IMF’s commitment to keeping capital account liberalization as its highest priority despite growing criticism of its role in “exacerbating the global currency contagion”).

21. See Canova, *Neoliberal Contagion*, *supra* note 7, at 1617 (reporting that many developing countries liberalize their capital accounts to attract foreign investment).

22. North American Free Trade Agreement, Dec. 17, 1992, U.S.-Can.-Mex., chs. 11, 14, 32 I.L.M. 296 [hereinafter NAFTA].

23. See generally Canova, *Neoliberal Contagion*, *supra* note 7.

24. See *Id.*

25. See Canova, *The Disorders of Unrestricted Capital Mobility*, *supra* note 20, at 219 n.1 (distinguishing economics from the hard sciences through assertion that economics deals with uncontrollable conditions and theories that are difficult to refute).

26. See *id.* at 219. Compare Laurence H. Tribe, *The Curvature of Constitutional Space: What Lawyers Can Learn From Modern Physics*, 103 HARV. L. REV. 1 (1989) (employs the use of physics metaphors to illustrate the need for a revised constitutional jurisprudence).

the values of private constituencies of power and privilege.²⁷ For instance, the neoliberal program of capital account liberalization often rests on narratives of "economic efficiency."²⁸ But such narratives ignore inconsistent historical and empirical evidence.²⁹ This permits the alleged inefficiencies of capital restrictions to appear paramount over other considerations.³⁰

In neoliberal parlance, the definitions of basic terms have dis-

27. See Canova, *The Disorders of Unrestricted Capital Mobility*, *supra* note 20, at 219, 224-25 (noting that, for instance, privileged constituencies generally value private investment over public sector economic development efforts).

28. Capital scarcity, like capital accumulation, is a function of market conditions as well as marketplace power and favorable terms of trade often supported by a high "degree-of-monopoly." See E. Ray Canterbury, *Galbraith, Sraffa, Kalecki and supra-surplus capitalism*, 7 J. POST KEYNESIAN ECON. 77, 83-87 (1984); see also E. Ray Canterbury and William McLeod, *The doctrine of inherent productivity: Keynes, Sraffa, and Kalecki*, 11 J. POST KEYNESIAN ECON. 630, 639 (1989) (noting that capital accumulation must conform to conditions prevailing when products are ready for sale). The authors argue that capital "creates and destroys" market processes, thus precluding the potentiality of "inherent productivity." *Id.*

29. See *infra* notes 86-96 and accompanying text (discussing the domination of flawed historical narratives that overshadow alternative narratives based on fact).

30. For instance, while some proponents of free trade with China have conceded the probable need for trade adjustment assistance for American workers displaced by Chinese imports, their priority was to obtain permanent normal trading relations status for China. See Raj Bhala, *Enter the Dragon: An Essay on China's WTO Accession Saga*, 15 AM. U. INT'L L. REV. 1469 (2000) (stating that trade adjustment assistance could wait, which in reality means that eventually it will probably be either denied completely or grossly insufficient).

Likewise, the free capital mobility usually trumps the classical liberal concern for the free movement of people. In the new world economic order, while capital moves across borders in a nano-second, ordinary people risk their lives to cross borders. See Alan Riding, *In Searing Images, Ravages of Upheaval: Brazilian Chronicles the Toll of Migration*, N.Y. TIMES, Apr. 24, 2000, at B1 (describing past decade as time of greatest migration of people in modern times); see also Warren Hoge, *Bodies of 58 Asians in Dover: An 'Evil Trade in People.'* N.Y. TIMES, June 20, 2000, at A3 (reporting on deaths of 58 illegal immigrants from apparent suffocation in back of truck); see also David Gonzalez, *300 People, 14 Dead, Found Stranded on Isle in Bahamas*, N.Y. TIMES, Apr. 28, 2000, at A6 (reporting on suffering and deaths of Haitian "boat people" en route to the United States); see also *13 of 17 Stuffed in Van Killed in Crash With Truck*, CHI. TRIB., Dec. 5, 1999, §1 at C16 (reporting on deaths of 13 illegal Mexican migrants); see also *One Dead, 21 Hurt in Crash*, ALBUQUERQUE TRIB., Jan. 22, 2000, at A3 (reporting on another fatal crash of van carrying 22 undocumented Mexican immigrants).

tinctly biased meanings.³¹ "Adjustment" always means the policy concessions that must be made by deficit countries to restore them to balance.³² This biased definition of adjustment marginalizes the idea that surplus countries should bear some of the burden of adjustment by increasing their imports from deficit countries or by requiring them to actually recycle a portion of their foreign monetary reserves to deficit countries.³³

Likewise, in neoliberalese, "foreign investment" has increasingly come to mean private investment, and usually a particular type of private investment—that of portfolio capital (i.e., "hot money").³⁴ Such a meaning minimizes the importance of other forms of private investment, including longer-term relational investment such as foreign direct investment, and completely marginalizes the very idea of public investment. For instance, neoliberal usage ignores past successes of public transfers of capital, such as the Marshall Plan—known officially as the European Recovery Program—under which the United States gave \$13 billion (more than \$150 billion in today's dollars) in foreign aid from 1947 to 1951 to rebuild the economies of Western Europe.³⁵ Since Western Europe used those Marshall Plan

31. See generally *infra* notes 64, 65, 83-85 and accompanying text (discussing the biased definitions of "transparency", "accountability", and "autonomy").

32. Many of the dominant neoliberal narratives fail to prescribe the adjustment medicine to the United States, which has now become the greatest trade deficit country in world history. See *Trade Deficit For March Hit \$30.2 Billion*, N.Y. TIMES, May 20, 2000, at B2 (reporting that the United States trade deficit grew to a record high of \$30.2 billion due to a growing demand for oil, automobiles and imports). See also *Asking the Right Questions About the IMF*, 13 THE REGION, FEDERAL RESERVE BANK OF MINNEAPOLIS ANNUAL REPORT, May 1999. Despite its title, this IMF report failed to ask any fundamental questions about burdens of adjustment.

33. See Canova, *Neoliberal Contagion*, *supra* note 7, at 1636-42 (arguing that surplus nations that remain chronically unbalanced need to bear burdens of adjustment); Chantal Thomas, *Does the "Good Governance Policy" of the International Financial Institutions Privilege Markets at the Expense of Democracy?*, 14 CONN. J. INT'L L. 551 (1999).

34. See Kasa, *supra* note 11.

35. See Canova, *Neoliberal Contagion*, *supra* note 7, at 1638-39 (providing overview of the Marshall Plan and the United States' contribution of foreign aid to developing countries). Likewise, Japan recycled surpluses by paying about \$1.2 billion in reparations to Southeast Asian countries after the Second World War. Those payments ended around 1976. See LYNN TURGEON, *The Political Economy of Reparations*, NEW GERMAN CRITIQUE 111, 122 (Winter 1973) [hereinafter

funds to purchase United States capital goods, the Marshall Plan helped to sustain demand in the United States economy as well.³⁶

The biases of neoliberal discourse permit policymakers to position themselves as pseudo-reformers while silencing critics of orthodox policy.³⁷ Moreover, biased definitions, such as the neoliberal definition of foreign investment, distort the public discourse by presenting a false all-or-nothing dichotomy to developing countries trying to attract capital. In other words, either a country adopts the neoliberal market reforms necessary to attract private portfolio investment or it receives no investment at all. The false all-or-nothing dichotomy presented to developing countries distorts public discussion of other important trade issues as well. For instance, the elite of developing countries are naturally hesitant to discuss human rights, labor, and environmental standards precisely because higher standards will reduce their cost advantages and undermine their abilities to attract or maintain present levels of private investment. But if accords on higher standards were supplemented by public capital transfers—essentially the Marshall Plan model—then developing country governments might be more receptive to higher standards, rather than the race to the bottom alternative.³⁸

TURGEON, NEW GERMAN CRITIQUE] (stating that export surpluses are usually a sign of weakness in domestic demand and reparations permit the surplus country to maintain economic growth through exports). After its reparations ended in 1976, Japan was able to hide its declining productivity for a time by pushing women out of the labor force and dumping products on world markets. See LYNN TURGEON, *THE ADVANCED CAPITALIST SYSTEM: A REVISIONIST VIEW* 42, 81-82 (1980) [hereinafter TURGEON, *THE ADVANCED CAPITALIST SYSTEM*] (explaining unemployment rates and inflation).

36. See TURGEON, *NEW GERMAN CRITIQUE*, *supra* note 35, at 120 (arguing that the Marshall Plan was employment-creating and neo-mercantilist by allowing the United States “to extend the sale of its goods on foreign markets without importing goods from abroad”).

37. See Timothy A. Canova, *Global Finance and the International Monetary Fund's Neoliberal Agenda: The Threat to the Employment, Ethnic Identity, and Cultural Pluralism of Latina/o Communities*, 33 DAVIS L. REV. 1547, 1573-74 (2000) [hereinafter Canova, *Global Finance*] (discussing marginalization of Joseph Stiglitz, who was presented with the “choice” of silencing himself or resigning as World Bank chief economist, in retaliation for criticizing IMF's orthodox policies).

38. See Canova, *The Disorders of Unrestricted Capital Mobility*, *supra* note 20, at 230 n.51 (discussing how such issues played out at the WTO's Third Ministerial meeting in Seattle in December 1999). Most neoliberals advocated permanent normal trade relations (PNTR) with China and China's entry in the WTO re-

Neoliberal narratives offer false dichotomies for a wide range of policy options by sharing the basic mantra that “there is no alternative.”³⁹ This distortion of language is typical of neoliberal “cant”⁴⁰ and neoliberal “can’t.”⁴¹ The false dichotomies and biased definitions send the message that the international monetary system “can’t” place adjustment burdens on the so-called winners of the global economic competition, even though they are the most capable of bearing those burdens; that governments of rich countries “can’t” find the resources to recycle or transfer public capital to developing countries; and that we “can’t” afford a more equitable economic system that provides for the neglected both at home and in deficit countries abroad.⁴²

gardless of their dismal human rights, labor, or environmental standards. *See generally* Bhala, *supra* note 30. Additionally, neoliberals advocated PNTR without consideration of whether China should be convinced to recycle its huge surplus of foreign monetary reserves to maintain its high levels of demand and economic growth, and thereby provide an incentive for higher standards. *Id.*

39. *See* Canova, *The Disorders of Unrestricted Capital Mobility*, *supra* note 20, at 228 n.43 (discussing the origins of the “there is no alternative” (“TINA”) mantra). *But see id.*, 230 n.52 (arguing that “We have other alternatives” (WHOA!), an appropriate rejoinder for those who oppose the TINA view).

40. The false dichotomies characteristic of neoliberal discourse fit the dictionary definition of “cant”: to talk hypocritically; the expression or repetition of conventional, trite, or unconsidered opinions or sentiments; especially the insincere use of pious phraseology. WEBSTER’S NEW COLLEGIATE DICTIONARY 163 (1975).

41. *See infra* note 43 and accompanying text (discussing how false dichotomies of neoliberal “can’t” preclude the international monetary system from placing adjustment burdens on surplus countries).

42. Sometimes neoliberal discourse asserts that we “can’t” undertake policies that stimulate the economy because it would be “bad economics.” *See* Alan Parkman, Comments at the Forum on Globalization, University of New Mexico School of Law, Apr. 17, 2000 (stating that deficit countries must accept austerity and other adjustment burdens as “good economics”). But such a view ignores the “good economics” of the Marshall Plan, whereby the world’s major surplus country bore its adjustment responsibilities by recycling part of its monetary surplus to deficit countries. *See* Canova, *Neoliberal Contagion*, *supra* note 7, at 1639-40 (discussing the historical background and positive impact of the Marshall Plan on developing countries). At other times, neoliberal discourse asserts that we “can’t” even talk about a progressive policy reform—such as forgiveness of Third World debt—whether or not it is “good economics,” because such proposals are not politically feasible and such talk would undermine our own credibility. *See* Enrique Carrasco, *Opposition, Justice, Structuralism, and Particularity: Intersections Between Lat-Crit Theory and Law and Development Studies*, 28 U. MIAMI INTER-AM. L. REV. 313, 328 (1996-97) (arguing that opposition to neoliberal order would pose risk

It is not enough to acknowledge that the two major neoliberal policy reforms, capital account liberalization and asymmetrical burdens of adjustment burdens, are important institutional foundations of the new international economic order, that they serve the narrow interests of particular private constituencies, or that they are based on fatally flawed narrative justifications. We accepted the challenge of asking whether this new order leads to greater peace, stability, fairness and justice.⁴³ A review of global economic conditions and developments dictates a negative assessment. It is a painful and sad material reality that the increased dependence of developing countries on short-term private capital inflows has all too often been followed by sudden outflows of capital and financial and economic collapse.⁴⁴

The pattern of addiction to inflow followed by sudden outflow has been repeated so often that the phenomenon has been described as a "contagion." Orthodox economists have perfected the strategy of blaming each flare up of currency contagion on victim countries by identifying exceptional factors (i.e., corruption, crony capitalism, etc.) unrelated to the neoliberal agenda.⁴⁵ Other terms such as the "Asian flu" and the "Tequila effect" have also served to obfuscate the role of neoliberal policy, while drawing attention to "exceptional" factors that are not all that exceptional.⁴⁶ As periodic financial scares and scandals have amply demonstrated, the United States is guilty of many of the same so-called exceptional factors.⁴⁷

that "policymakers would not take our work seriously"). Such conclusions are unduly defeatist, as well as elitist by allowing neoliberal policymakers to assume the role of gatekeepers of public discourse and political possibilities. See Canova, *Global Finance*, *supra* note 37.

43. See *supra* note 1 and accompanying text (asking whether the new world economic order will lead to greater peace, stability, fairness and justice).

44. See Canova, *Neoliberal Contagion*, *supra* note 7, at 1585-86 (describing how a country must protect itself against short-term money inflows).

45. See Ilene Grabel, *Rejecting Exceptionalism: Reinterpreting the Asian Financial Crises*, in *GLOBAL INSTABILITY: THE POLITICAL ECONOMY OF WORLD ECONOMIC GOVERNANCE* 37-67 (J. Michie and J. Grieve Smith, eds. 1999). See also Canova, *Neoliberal Contagion*, *supra* note 7, at 1594 (describing how "blame the victim" narratives subordinate perspectives critical of neoliberal model).

46. See Canova, *Neoliberal Contagion*, *supra* note 7, at 1597-1600.

47. See *id.* at 1582-84, 1594 (reporting on American crony capitalism, conflicts of interest, and lack of transparency); see also Timothy L. O'Brien and Raymond

Moreover, the long list of currency crises victims demonstrates that there is nothing exceptional about addiction to neo-liberalized hot money inflows.⁴⁸ In the early 1990s, currency crises beset Western Europe as those countries liberalized capital flows between each other and the outside world.⁴⁹ Throughout the rest of the decade, the world witnessed currencies suddenly collapsing from Mexico and Latin America to East Asia, from Russia to the Horn of Africa. No major area of the globe was safe from the threat or the reality of such currency contagion. Neoliberal policy provided the common catalyst: currency contagion humbled or threatened each country that had liberalized its capital accounts and permitted inflows of short-term private capital flows.⁵⁰

The new world economic order systematically adds insult to injury. Many countries flattened by the global currency contagion have been forced to accept the IMF's bitter medicine: a Structural Adjustment Program ("SAP") that usually includes a sharp currency devaluation, fiscal and monetary austerity, deep cuts in public subsidies for food, fuel, and other basic necessities, sharply higher interest rates, privatization of state-owned industries, deeper financial liberalization, and reform of central bank structure to free those bankers from any accountability to wider electorates.⁵¹ The IMF has also

Bonner, *Senior Bank Official Took Bribe, U.S. Says*, N.Y. TIMES, Feb. 16, 2000 at A8 (reporting on alleged corruption of senior Bank of New York official (and United States citizens) in illegally moving billions of dollars from Russia).

48. See Chantal Thomas, *Balance of Payment Crises: Balancing Trade and Finance in the New Economic Order*, 15 AM. U. INT'L L. REV. 1249 (2000) (discussing trend in recent years for "sudden and sharp reduction of foreign investment — most typically short-term portfolio investment" to trigger balance of payments crises).

49. SIDEK MOHAMED, EUROPEAN COMMUNITY LAW ON THE FREE MOVEMENT OF CAPITAL AND THE EMU, 66-89 (1999) (reporting on European capital liberalization); see WILLIAM GREIDER, ONE WORLD, READY OR NOT: THE MANIC LOGIC OF GLOBAL CAPITALISM 227-229, 240-48 (1997) (arguing that although each crisis involved its own peculiar errors and misapprehensions, all were "expressions of the deeper disorders, but not its cause"); see also Timothy A. Canova, *The Swedish Model Betrayed*, 37 CHALLENGE, May-June 1994, at 36-40 [hereinafter Canova, *The Swedish Model*].

50. Canova, *Currency Contagion*, *supra* note 7, at 1597-1602.

51. See Canova, *Global Finance*, *supra* note 37 at 1556-1559. See also Jeffrey D. Sachs, *Calling the I.M.F. to Account*, N.Y. TIMES, Sept. 8, 1999 at A29 (describing how the IMF's lending policies have failed Russia).

shown very little variation in the range of SAP policies that it demands from victim countries as conditions for financial assistance.⁵²

The IMF's structural adjustment approach has been a kind of shock therapy, which effectively served to impose all of the burdens of adjustment on the weakest and poorest people of the victim countries. Throughout Latin America, Asia, and other regions, it has been common to see a wave of bankruptcies, sharply rising mass unemployment, and dangerous declines in public health and safety stemming from the IMF approach.⁵³ Such pain for the weak should also be contrasted with the gains for the powerful. Capital flight to off-shore bank havens⁵⁴ and privatization of industries at bargain-basement prices⁵⁵ further served to protect and enrich both the elite within submerging countries and powerful financial interests in the West. The severity of the IMF's structural adjustment programs led to unprecedented criticism by the World Bank (the IMF's sister institution) and other critics both at home and abroad, which has fueled

52. Despite all of its "exceptionalism" arguments, the IMF has pushed a one-size-fits-all approach to structural adjustment for deficit countries. See Joseph Stiglitz, *The Insider: What I learned at the world economic crisis*, THE NEW REPUBLIC, Apr. 17, 2000 (presenting a scathing critique of IMF "cookie-cutter" policy and policy-making processes).

53. See *id.* (reporting on frightening levels of depression in Asia and Latin America and calamity in Russia); see also Canova, *Neoliberal Contagion*, *supra* note 7, at 1643-44 n.305, 309 (reporting sharply rising levels of poverty, unemployment, and underemployment); see also Larry Rohter, *Brazil Collides With I.M.F. Over a Plan to Aid the Poor*, N.Y. TIMES, Feb. 21, 2000, at A9 (discussing the clash between Brazil and the IMF over the use of funds).

54. See Joseph Kahn, *15 Countries Named as Potential Money Laundering Havens*, N.Y. TIMES, June 23, 2000, at A4 (reporting that capital flight to "noncooperative" jurisdictions is disrupting financial markets). This suggests the need for "cooperative capital controls." See LINDA MCQUAIG, *THE CULT OF IMPOTENCE: SELLING THE MYTH OF POWERLESSNESS IN THE GLOBAL ECONOMY* 223-24 (1998) (noting that although John Maynard Keynes and Harry Dexter White, the two architects of Bretton Woods, agreed on need for cooperative capital controls, final agreement failed to include such responsibility).

55. See ROBIN HAHNEL, *PANIC RULES!: EVERYTHING YOU NEED TO KNOW ABOUT THE GLOBAL ECONOMY* 54-55, 58-59 (1999) (suggesting that through capital flight and privatization, private capital takes on a predatory nature); see also William Krehm, *Lowering the Curtain on Transparency*, 12 ECONOMIC REFORM 1, 2 (Toronto, Feb. 2000); see also Stiglitz, *supra* note 52 (implicating United States Treasury Secretary Lawrence Summers's association with Russian oligarchs who exploited privatization).

the anti-globalization movement.⁵⁶

For those countries, such as the advanced industrial economies, that dodged the bullet of IMF structural adjustment, the mere threat of currency contagion often leads to unilateral adoption of austerity measures as a strategy to placate the foreign exchange markets. As the world enters a new millennium, the central banks of those advanced economies may be entering a tug-of-war for scarce capital by raising interest rates to attract hot money.⁵⁷ Such rising and high levels of real (inflation-adjusted) interest rates constitute a check on the hopes of millions of people left behind by the new world order, at a time when "hidden" unemployment remains at dangerously high levels.⁵⁸

The IMF has been forced to acknowledge the widespread fear that the overall benefits of the world economy are not reaching those in developing countries.⁵⁹ For less interested observers, and to many of

56. See Canova, *Neoliberal Contagion*, *supra* note 7, at 1609 n.154 (reporting criticism of World Bank and International Labor Organization); see also Jacques Diouf, *Global Trade Alone Will Not End World Hunger*, INT'L HERALD TRIB., Feb. 18, 2000, at p. 8 (critiquing trade liberalization by director-general of the Food and Agriculture Organization); see also IN DEFENSE OF CAPITAL CONTROLS, INT'L HERALD TRIB., Feb. 18, 2000, at p. 20 (reporting United Nations Conference on Trade and Development endorsing capital controls on short-term capital flows, such as those that China successfully employed); see generally POOR COUNTRIES DRAFT PROPOSAL ON POVERTY, N.Y. TIMES, Apr. 12, 2000 at A3 (reporting the Group of 77 developing nations call on rich nations to forgive debt, share new technologies, and shift decision-making from IMF to the United Nations); see generally John Kifner and David E. Sanger, *Financial Leaders Meet As Protests Clog Washington*, N.Y. TIMES, Apr. 17, 2000 at A1 (reporting on Mobilization for Global Justice protests against IMF).

57. See *infra* note 70 and accompanying text (discussing the current state of scarce capital).

58. See *How Higher Interest Rates Affect the Economy*, 4 FOMC ALERT 5-7 (May 16, 2000) (stating that high real (inflation-adjusted) interest rates will eventually undermine economic growth, real wages, equitable distributions of wealth, and social stability).

59. See Louis Uchitelle, *Global Good Times, Meet the Global Glut*, N.Y. TIMES, Nov. 16, 1997 (reporting that globalization worsens the situation of millions by producing more goods "even as it suppresses wages at both ends of the world"); see also Mark Weisbrot et al., *Growth May Be Good for the Poor-But are IMF and World Bank Policies Good for Growth?* (Center for Economic and Policy Research, Washington, DC, 2000), reprinted at <<http://www.cepr.net>> (criticizing World Bank research report).

the neoliberal policy victims, the verdict on capital account liberalization and asymmetrical burdens of adjustment is even clearer. As a result of these two pillars of the new international economic order, there is less peace, less stability, less fairness and less justice around the globe today.⁶⁰ It is only among the relatively few who have benefited greatly by the new world economic order that we find greater peace — those who are still at peace with themselves and at peace with the declining levels of fairness and justice, while grasping at a fleeting stability.

II. CENTRAL BANK AUTONOMY AND TRANSPARENCY IN THE NEOLIBERAL STATE

Central bank autonomy is a particularly sacrosanct foundation of today's global economic order that undermines peace and stability.⁶¹ Neoliberal discourse claims that central bank independence is both good economics and necessary to ensure that monetary policy is pursued in a socially and politically neutral fashion.⁶² In reality, central bank autonomy is a euphemism for the capture of monetary policy by interested private banking and financial interests⁶³—it is a capture intentionally designed by law.⁶⁴ In addition, the undemocratic and secretive nature of central banking is at odds with notions of “transpar-

60. The increased levels of social insecurity should be seen as major externalities that are not paid for by those who enjoy the lion's share of globalization's benefit. See Canova, *Global Finance*, *supra* note 37 (amplifying the way the new international monetary order undermines peace, stability, fairness, and justice).

61. See *infra* note 105-117 and accompanying text (discussing the problems with today's global economic order).

62. See Bruce K. MacLaury, *The Fed: Reconciling Autonomy and Democracy*, in *THE ART OF MONETARY POLICY* 75-84 (D. Colander & D. Daane, ed. 1994) (arguing that a central bank needs separation from all political entities); see also Antonio Fazio, *Role and Independence of Central Banks*, in *THE EVOLVING ROLE OF CENTRAL BANKS* 121-39 (P. Downes & R. Vaez-Zadeh, eds. 1991) (explaining the importance of accountability for the actions of central banks).

63. See WILLIAM GREIDER, *SECRETS OF THE TEMPLE: HOW THE FEDERAL RESERVE RUNS THE COUNTRY* 392 (1987) [hereinafter GREIDER, *SECRETS OF THE TEMPLE*] (describing Federal Reserve accountability to private financial constituencies).

64. See Mark F. Bernstein, *The Federal Open Market Committee and the Sharing of Governmental Power With Private Citizens*, 75 VA. L. REV. 111 (1989) (arguing that the Committee's present composition is constitutionally flawed); see also GREIDER, *SECRETS OF THE TEMPLE*, *supra* note 63.

ency,” another one of the new world economic order’s legitimating justifications.⁶⁵

Contrary to popular opinion in the United States, interest rates are not set by the Board of Governors (“BOG”) of the Federal Reserve System (the “Fed”), but by the Federal Open Market Committee (the “FOMC”), which includes the BOG as well as the presidents of twelve privately-owned regional Federal Reserve Banks.⁶⁶ This arrangement rests on very dubious legal foundations⁶⁷ and has survived repeated constitutional challenges only because federal courts have repeatedly refused to rule on the merits and have dismissed such cases on narrow procedural grounds.⁶⁸

65. The dominant discourse often attacks public sector economic activity as lacking the efficiency and transparency of the private marketplace, except apparently when such government activity takes the form of delegating monetary policy to unaccountable and secretive central banks on behalf of private interests.

66. See generally THE FEDERAL RESERVE SYSTEM: PURPOSES AND FUNCTIONS 4-13 (Board of Governors of the Federal Reserve System, 8th ed., 1994) [hereinafter PURPOSES AND FUNCTIONS] (establishing that while only five of the twelve regional Federal Reserve Bank presidents vote on policy decisions, the other seven presidents take part in FOMC policy discussions).

67. See *infra* note 68 and accompanying text (discussing cases in which the Federal Reserve System was challenged as unconstitutional delegation and violation of appointments clause). The Federal Reserve System is also exempt from many of the provisions of the Federal Advisory Committee Act, Sunshine in Government Act, and Freedom of Information Act, and is the only federal agency that entirely evades Congressional budgetary oversight. See Bernstein, *supra* note 64; see also Howard J. Kent, *Fragmenting the Unitary Executive: Congressional Delegations of Administrative Authority Outside the Federal Government*, 85 N.W. UNIV. L. REV. 62, 84-85 n. 66 (1990) (explaining how private groups exercise administrative authority); see also Richard Stevenson, *Study Criticizes Federal Reserve as Lax Manager*, N.Y. TIMES, Mar. 26, 1996 at A1 (reporting that the General Accounting Office concluded that the Fed had amassed slush fund of \$3.7 billion for unexplained purposes).

68. See *Melcher v. Federal Open Mkt. Comm.*, 836 F.2d 561, 565 (D.C. Cir. 1987) (holding that the district court had equitable discretion to decline to hear the case and that the doctrine of equitable discretion is not dependent upon the ability of a plaintiff to bring suit); see also *Committee for Monetary Reform v. Board of Governors of the Fed. Reserve Sys.*, 766 F.2d 538, 542 (D.C. Cir. 1985) (holding that the court lacks competence and the authority to decide such precise economic questions); see also *Riegle v. Federal Open Mkt. Comm.*, 656 F.2d 873 (D.C. Cir. 1981) (“We hold that Senator Riegle has standing to bring this action but exercise our equitable discretion to dismiss the case on the ground that judicial action would improperly interfere with the legislative process”); see also *Reuss v. Balles*, 584 F.2d 461 (D.C. Cir. 1978), *cert. denied*, 439 U.S. 987 (1978) (upholding the

Neoliberal discourse claims that the Federal Reserve's⁶⁹ independence from elected branches of government ensures that monetary policy-making will remain apolitical. If the regional bank presidents who sit on the FOMC are not accountable to Congress or the President, then to whom are they accountable? To which constituencies? By law, they are accountable to the private commercial banks that own the shares of each regional Federal Reserve Bank.⁷⁰ It is therefore not surprising that as the Fed has gained more and more independence from the elected branches of government, it has increasingly followed policies that distinctly favor the interests of financial capital over industrial capital and labor,⁷¹ namely, a strong bias in favor of price stability and near-zero inflation over the goals of full employment and the financing of public sector programs.⁷²

The Federal Reserve's autonomy has long been the model for central bank independence around the world – from the Bundesbank in Germany to the IMF's demands for central bank independence as a conditionality of its structural adjustment and financial assistance programs.⁷³ But today's orthodoxy of central bank independence is based on flawed narratives of history, such as the officially-sanctioned story of Germany's inter-war hyperinflation which has since been used to justify central bank independence everywhere,⁷⁴

district court's finding that appellant lacked standing to sue).

69. Hereinafter, the entire Federal Reserve System, including its Board of Governors and Federal Open Market Committee, will be referred to as "the Fed" or "Federal Reserve".

70. See Bernstein, *supra* note 64; see also PURPOSES AND FUNCTIONS, *supra* note 66; see also Kenneth M. Casebeer, *The Empty State and Nobody's Market: The Political Economy of Non-Responsibility and the Judicial Disappearing of the Civil Rights Movement*, 54 U. MIAMI L. REV. 247, 249 (2000) (arguing that any "deployment of power in society must be judged by the democratic accountability which such force demands in any authentic . . . participatory democracy").

71. In the Treasury-Federal Reserve Accord of March 1951, the Federal Reserve System achieved independence from Treasury control without any legislative action by Congress. See MILTON FRIEDMAN & ANNA JACOBSON SCHWARTZ, *A MONETARY HISTORY OF THE UNITED STATES, 1867-1960* 13, 612 (1963).

72. Federal Reserve autonomy has also contributed to that agency's ratification of marketplace evasions of regulatory controls. See *infra* note 73 and accompanying text (discussing the autonomy of the Federal Reserve).

73. See Canova, *Neoliberal Contagion*, *supra* note 7, at 1610-1615 (noting that the autonomous central bank structure has served as a model around the world).

74. With the myths supporting the Bundesbank's independence, we see yet an-

and particularly independence for the new European Central Bank.”

The great myth supporting the Bundesbank’s independence is born from a truth (the colossal hyperinflation in Germany),⁷⁶ but lives on by ignoring context and historical fact to arrive at a flawed conclusion: that government control of Germany’s central bank led to the Weimar republic’s hyperinflation, which led directly to Hitler’s rise to power.⁷⁷ Among other important historical facts that the dominant

other disturbing example of “the consequences of flawed history.” See Gloria Valencia Weber, *American Indian Law and History: Instructional Mirrors*, 44 J. LEGAL EDUC. 251, 261 (1994).

75. During the hey-day of the Bretton Woods System, monetary policy was vested in national central banks that were largely accountable to elected national governments throughout Europe. The new European Central Bank is now unaccountable to member states or to the European Parliament and European Commission. See Etienne De Lhoneux & Jean-Victor Louis, *Towards a European System of Central Banks*, 5 J. INT’L. BANKING 8, 14 (1990); see also W. MAX CORDEN, THE ADJUSTMENT PROBLEM, IN EUROPEAN MONETARY UNIFICATION AND ITS MEANING FOR THE UNITED STATES 161 (1973). The governing Executive Council of the European Central Bank consists of six board members (with eight year terms) and the governors of the independent national central banks. See Christopher A. Whytock, *Eurofed: Toward a European System of Central Banks and a European Central Bank*, 23 LAW & POL’Y INT’L. BUS. 469, 472-76 (1992) (suggesting that mere ratification of such central bank structures by national parliaments somehow ensures future democratic accountability).

76. I was taught, like millions of American high school students, how German workers had to run to the factory gates on payday to throw their earnings over the fence to their waiting wives, who in turn had to run to the market to purchase loaves of bread before the prices were raised again. See FREDERIC S. MISHKIN, THE ECONOMICS OF MONEY, BANKING, AND FINANCIAL MARKETS 55, 495, 682-85 (1995) (reporting that “workers were paid and given time off several times during the day to spend their wages before the money became worthless” because German inflation exceeded 1 million percent in 1923).

77. See PAUL TSONGAS, THE ROAD FROM HERE: LIBERALISM AND REALITIES IN THE 1980S 229 (1982) (relying on Milton Friedman and Rose Friedman, FREE TO CHOOSE (1980)). Tsongas, a former United States Senator and my former employer, wrongly argued that hyperinflation led to “the downfall of the Weimar Republic in Germany leading to Nazism.” *Id.* See also Kohl Casts Europe’s Economic Union as War and Peace Issue, N.Y. TIMES, Oct. 17, 1995 at A10 (arguing for tight fiscal controls because history shows hyperinflation led to the rise of Hitler). More recently, former Chancellor Kohl defended his comparison of the investigations of his corrupt and illegal campaign fundraising to Nazi persecution of Jews during the holocaust. He rejected calls that he resign from Parliament for making such comparisons, saying that he “requires no history lessons.” See *Germany: Kohl Attacked*, N.Y. TIMES, June 24, 2000 at A5. See also Ralph Atkins, *Kohl investigated over secret party funds*, FIN. TIMES, Dec. 30-31, 1999 at 1. But at least with regards to his amnesia about the monetary and economic history

narrative fails to tell is that the Weimar hyperinflation peaked in 1923 and was completely over by 1924.⁷⁸ While the hyperinflation did undermine faith in the Weimar Republic and in German democracy, the hyperinflation was ended, not by the creation of an independent central bank, but by the introduction of a new currency and the Dawes plan, which granted Germany a temporary moratorium on its World War I reparation payments.⁷⁹ Instead, it was a policy of deflation, based on tight money and wage austerity that created the conditions of mass unemployment, which consequently led to Hitler's rise to power.⁸⁰ Nearly a decade after the hyperinflation ended, fascism was thriving on the misery of soaring unemployment (as high as forty percent) and extremely high real interest rates (which were masked by low inflation rates).⁸¹

Perhaps more importantly, the dominant orthodoxy suggests that Weimar hyperinflation resulted from politicians controlling the central bank, then called the Reichsbank. This is a fairy tale that leads to one conclusion: monetary policy is too important for public politics. Politicians will give the people what they want, more money and jobs, without sufficient concern for future consequences, i.e. hyperin-

leading to Hitler, Kohl apparently could use a history lesson.

78. Inflation peaked in 1923, the same year that Hitler was given a lenient sentence for his Bavarian coup attempt—the so-called Munich putsch of October 1923. ADAM FERGUSON, *WHEN MONEY DIES: THE NIGHTMARE OF THE WEIMAR COLLAPSE* 214 (1975). In between the lenient prison sentence and Hitler coming to power a decade later, there was a global depression, severe price deflation, and years of mass unemployment. See WILLIAM L. SHIRER, *THE RISE AND FALL OF THE THIRD REICH: A HISTORY OF NAZI GERMANY* 99 (1985).

79. See STEVEN B. WEBB, *HYPERINFLATION AND STABILIZATION IN WEIMAR GERMANY* 124 (1989); see also BROADUS MITCHELL, *DEPRESSION DECADE: FROM NEW ERA THROUGH NEW DEAL 1929-1941* 6 (1947) (reporting that the Dawes plan of 1924, which included a loan of 800 million gold marks to help Germany meet its reparations payment, ended the inflation in Germany).

80. See TURGEON, *BASTARD KEYNESIANISM*, *supra* note 13 (describing how the German policy of reducing wages ten percent contributed to high unemployment); see also LYNN TURGEON, *STATE AND DISCRIMINATION: THE OTHER SIDE OF THE COLD WAR* 20 n.7, 115 (1989) (explaining that the Germans took a 10 % pay cut and ended up with over 30% unemployment); see also TURGEON, *ADVANCED CAPITALIST SYSTEM*, *supra* note 35.

81. See SIDNEY HOMER AND RICHARD SYLLA, *A HISTORY OF INTEREST RATES* (1991) (enumerating, in their historical study of interest rates, that even with the absence of inflation, the Reichsbank's discount rate rose to 15% in 1931, and the open market discount rate rose to 10%).

flation. A supposed overindulgence in democracy therefore justifies central bank autonomy from democratic institutions. Thus, if we do not want future hyperinflation and a future Hitler, then we should take monetary policy out of the hands of the self-interested politicians (who only understand immediate gratification) and hand it to the stoic bankers and technocrats (who will look out for our long-term interests).⁸²

The problem with this narrative is that the Reichsbank was not accountable to Weimar politicians during the period of hyperinflation. Rather, it was already largely independent of German political control.⁸³ Despite the so-called independence of the Reichsbank, Germany suffered from the greatest hyperinflation in modern history, largely because of the monetary expansion to pay war reparations dictated by foreign interests.⁸⁴ In fact, the hyperinflation was brought to an end during a period in which the Reichsbank's autonomy was compromised by the declaration of a state of emergency.⁸⁵

82. The dominant narrative presents a particularly outrageous false dichotomy, namely that hyperinflation is the only alternative to an autonomous central bank. See Richard Michael Fischl, *The Question That Killed Critical Legal Studies*, L. & Social Inquiry 779, 820 (1993) (warning of false dichotomies).

83. In May 1922, at the behest of allied creditor nations, Germany made the Reichsbank autonomous from government control. See STEVEN SOLOMON, *THE CONFIDENCE GAME: HOW UNELECTED CENTRAL BANKERS ARE GOVERNING THE CHANGED WORLD ECONOMY* 545 n.17 (1995) (reporting that the Reichsbank's formal legal autonomy was undermined by its obligation to finance government debt issues" to pay reparations burden). See also DAVID MARSH, *THE MOST POWERFUL BANK: INSIDE GERMANY'S BUNDESBANK* 81-82 (1992).

84. The 1924 Dawes plan also required the appointment of foreign commissioners for the Reichsbank. See Mitchell, *supra* note 79, at 8. With the Reichsbank unaccountable to Weimar institutions, but instead to foreign creditors, it became an easy target for Hitler. After his rise to power, Hitler made sure that the Reichsbank was accountable to German institutions, albeit totalitarian ones. See CHARLES P. KINDLEBERGER, *THE WORLD IN DEPRESSION 1929-1939* 177, 200, 239, 286 (1973) (noting that Hitler dictated monetary policy by lowering interest rates to finance a jobs program and economic recovery from the Depression); see also DAN P. SILVERMAN, *HITLER'S ECONOMY: NAZI WORK CREATION PROGRAMS, 1933-1936* (1998). Since German reunification, rising mass unemployment—particularly in eastern Germany—has coincided with a dramatic rise in Neo-Nazi activity and violence. Roger Cohen, *New Attacks Raise Fears About Anti-Semitism in Germany*, N.Y. TIMES, Aug. 8, 2000, at A4.

85. See Shirer, *supra* note 78, at 99 (stating that the Emergency Act placed all executive powers in hands of Defense Minister and Army Commander—making them "virtual dictators"—from Sept. 26, 1923 until Feb. 1924).

The continuing dominance of such flawed historical narratives serve to crowd out alternative narratives that are based on fact and not myth. Proponents of central bank independence generally favor "tight" monetary policies to keep inflation in check. They claim that price stability is the best policy to ensure long-term economic growth.⁸⁶ Today it is considered heresy to endorse our alternative history of America's great successes and accomplishments that were made possible by political direction of the Federal Reserve. For more than a decade, from 1941 to 1951, the executive branch directed the Federal Reserve to purchase Treasury debt obligations in whatever quantities and at whatever price necessary to keep short-term interest rates pegged at 3/8ths of one percent and long-term rates at about two percent.⁸⁷ As a result of this "pegged period" of monetary policy, the United States Government was able to finance the military build-up and mobilization that brought victory in Europe and Asia. When World War II began, the country was still mired in the doldrums of prolonged depression. By war's end, the United States gross national product had more than doubled in only four years and the unemployment rate had fallen from double-digits to less than two percent.⁸⁸ After the war, the Fed's accommodation of the elected branches helped to finance the G.I. Bill of Rights and the post-war boom to the suburbs.⁸⁹ The revving up of the United States economic engine during the 1940s remains truly unprecedented in world history, far surpassing the performance of the today's economy both in terms of growth, and the wide distribution of its benefits. Yet, throughout the entire "pegged period," there was no hyperinflation. Rather, the elected branches of government did a better job of regulating price stability than the central bank could have in such a high

86. See McQuaig, *supra* note 54, at 91 (suggesting that Milton Friedman pioneered such arguments).

87. See Canova, *Free-Market Receivership*, *supra* note 9, at 1300-01 (discussing the Fed's low interest rate policy during the "pegged" period).

88. See JOHN BLUM, ET. AL., *THE NATIONAL EXPERIENCE: A HISTORY OF THE UNITED STATES SINCE 1865* 683 (4th ed. 1977) (describing the economic effects of WWII).

89. See Blum, *supra* note 88, at 721-22 (describing the conversion process from a wartime economy to a peaceful one without propelling the nation into depression).

growth environment.⁹⁰

When critics of central bank independence bring up this hidden history of the great accomplishments of the pegged period, they are usually confronted with the argument that war-time justified this transgression, this political manipulation of monetary policy. While the orthodoxy is quick to raise the “War on Drugs” rhetoric to justify incarceration of drug offenders, it refuses to tell the nation’s central bank—the single most important institution for economic good or ill—that a war exists at all. This is at least the third war (recall the “War on Poverty” and the “War on Crime”) lost since the Federal Reserve carved out greater autonomy from the elected branches. Instead of a mobilization of the nation’s credit, central bank autonomy means the privatization of the nation’s financing, the neglect of a large part of the potential labor force, and its mobilization into prisons and jails—a virtual gulag that should shame the cheerleaders of today’s new economy.⁹¹

The Neoliberal State is destined to fail in providing peace and prosperity for all⁹² precisely because central bank autonomy ensures

90. Wartime wage and price controls ensured price stability. Later, in the early 1960s, the Kennedy administration also managed to maintain price stability by brokering a wage and price accord (an “incomes policy”) between labor and management, and then enforcing it with the threat of antitrust prosecution for price fixing by the steel companies who had violated the accord. See “LET THE WORD GO FORTH”: THE SPEECHES, STATEMENTS, AND WRITINGS OF JOHN F. KENNEDY 1947-1963 156, 159-63 (Theodore C. Sorensen, ed. 1988) (providing Kennedy’s Apr. 11, 1962 speech entitled *The Preservation of Price Stability*). In contrast, President Jimmy Carter rejected re-authorization of wage-price controls. See ALEXANDER COCKBURN, *THE GOLDEN AGE IS IN US: JOURNEYS AND ENCOUNTERS*, 264 (1995) (stating that Carter rejected the reauthorization, preferring instead to let the market take care of itself). Three years later, Carter may have wished that he still had such emergency wage and price control authority, because inflation contributed greatly to his reelection defeat in 1980. *Id.*

91. See Michael A. Fletcher, *Criminal Justice Disparities Cited*, WASH. POST, May 4, 2000 at A2 (reporting that nearly 70 % of the 2 million Americans in prisons or jails are black or Hispanic); see also MARC MAUER, *RACE TO INCARCERATE* 162-70 (1999) (stating that a lack of proper funding to attack urban unemployment has led to higher incarceration rates).

92. In the international human rights context, “failed states” have been defined “as states which are incapable of protecting individuals within their territories,” in contrast to those states “that are unwilling though able, to provide such protection or those which actively deny protection through affirmative violations of human rights.” Jennifer Moore, *From Nation State to Failed State: International Protec-*

that monetary and economic policies will favor the few over the many. The empirical evidence bears this out. Real interest rates remain at the highest sustained level of the century,⁹³ and this remains one of the least recognized causes of today's top heavy distribution of wealth and income⁹⁴ both directly, by redistributing income from debtors to creditors, and indirectly, by keeping down the real wage rate in many industries, thereby reinforcing the hierarchies of power that dominate the modern corporation.⁹⁵

The orthodoxy of central bank independence infects and diminishes our politics. In early 2000, President Clinton nominated Alan Greenspan to a fourth term as Federal Reserve Chairman—nearly six months earlier than necessary.⁹⁶ The powers-that-be wanted to make sure that neither Mr. Greenspan's nomination nor the Fed's monetary policy would become an issue in election year politics.⁹⁷ Mr. Greenspan basked in the glow of a booming bull market, proclaiming that the nation was enjoying the greatest prosperity in world his-

tion from Human Rights Abuses by Non-State Agents, 31 COLUM. HUMAN RIGHTS L. REV. 81, 84 n.6 (1999). It can be argued that the neoliberal state falls into the category of "unwilling, though able" to provide its citizens with decent employment opportunities. The surrender of the Federal Reserve to private financial constituencies can also be seen as sanctioning a certain kind of non-state economic violence against the dispossessed and underemployed.

93. See Homer & Sylla, *supra* note 81, at 429-32 (describing real interest rates in the United States between 1946 and 1990); see also JAMES MEDOFF AND ANDREW HARLESS, *THE INDEBTED SOCIETY: ANATOMY OF AN ONGOING DISASTER*, 68 (1996) (defining real interest rates).

94. See "HELLO, DOLLY!" (Ernest Lehman & Michael Stewart, 1969) ("Money is like manure. Pile it in one place and it stinks; spread it around and it does a lot of good").

95. See *How Higher Interest Rates Affect the Economy*, *supra* note 58; see also STANLEY ARONOWITZ AND WILLIAM DiFAZIO, *THE JOBLESS FUTURE: SCI-TECH AND THE DOGMA OF WORK* (1994) (discussing the effects of recent economic trends on the United States workforce).

96. See Richard W. Stevenson, *Greenspan Named to a Fourth Term as Fed Chairman*, N.Y. TIMES, Jan. 5, 2000, at A1 [hereinafter Stevenson, *Greenspan Named*] (describing the positive reaction to Clinton's nomination of Greenspan to an additional term of office); see also Richard W. Stevenson, *Senate Ratifies Nomination of Greenspan to 4th Term*, N.Y. TIMES, Feb. 4, 2000, at C2 [hereinafter Stevenson, *Senate Ratifies*] (discussing Greenspan's confirmation to another term as Fed chairman).

97. See Stevenson, *Senate Ratifies*, *supra* note 96 (discussing Clinton's re-nomination of Greenspan as Fed Chairman).

tory⁹⁸—although soon after his coronation, the fear began to spread through financial circles that it could be a prosperity built upon sand.⁹⁹

There is no doubt that the prosperity of which Mr. Greenspan boasted has been a very top-heavy prosperity for the few. Most Americans may feel better off by concentrating on rising stock prices and their growing private wealth, but such prosperity is an illusion based upon a wealth that can never be touched and could ultimately prove temporary and fleeting. While distracted by living inside the giant financial bubble—creating a kind of collective hypnosis and infatuation with the big bull market—most Americans fail to notice that they are much poorer in all things public.¹⁰⁰ The impressive, but potentially ephemeral gains in private wealth should be contrasted with our growing public squalor—with the losses to the commons¹⁰¹—resulting in part from the Fed's monetary stance which constrains government financing for a host of social and economic objectives.¹⁰² On a number of important social issues, governments at

98. Gerald Baker, *Greenspan hails U.S. Economic System*, FIN. TIMES, Sept. 9, 1999, at 3; Eileen Glauton, *Mixed Signals Puzzle Market; Greenspan Praises High-Tech Economy*, CHI. SUN-TIMES, Sept. 9, 1999, at 50.

99. See *infra* notes 112-117 and accompanying text.

100. See Noam Chomsky, *Taking Control of Our Lives: Freedom, Sovereignty, and Other Endangered Species*, Keynote Address to the Interhemispheric Resource Center's 20th Anniversary Celebration, (Feb. 26, 2000) 13-14 (transcript available at <<http://www.irconline.org/chomsky/index.html>>) (arguing that public education is based on the premise of caring about whether someone else's child is getting an adequate education). Declining commitments to public education display a "turning away" from such cares. See *id.* (discussing corporate participation in American education). See also Pink Floyd, *On The Turning Away*, on A MOMENTARY LAPSE OF REASON (1987) ("Don't accept that what's happening /Is just a case of others' suffering /Or you'll find that you're joining in /The turning away").

101. See Nicholas Timmins, *U.S. Health System Ranks Just Ahead of Cuba, says WHO*, FIN. TIMES, June 21, 2000, at 1 (finding that the United States has the highest level of child poverty in the advanced industrial world, millions of Americans are without any health insurance and that the system as a whole ranks 54th in fairness); see also JULIET SCHOR, *THE OVERWORKED AMERICAN: THE UNEXPECTED DECLINE IN LEISURE*, 1-15 (1991) (detailing the increase in work-time and decrease in leisure time reported over the past two decades); Elizabeth Olson, *America's Lead the World in Hours Worked*, N.Y. TIMES, Sept. 7, 1999, at C9; Stephen S. Roach, *Working Better or Just Harder?*, N.Y. TIMES, Feb. 14, 2000, at A27 (questioning whether the U.S. productivity miracle may be a mirage).

102. See BOB WOODWARD, *THE AGENDA: INSIDE THE CLINTON WHITE HOUSE*

all levels turn policy over to the private sector because of a supposed lack of financial resources.¹⁰³ Meanwhile, we are publicly poorer: public health, public education, and public transport systems all suffer in large part from the lack of long-term public investment.¹⁰⁴

The neoliberal state is one that dashes hopes and dreams on a mass scale, and silently impoverishes the public sector, while delivering great wealth to a small minority of global citizens. Yet even for those enjoying the riches of the booming stock market, these are times of fear and even paranoia about the future prospects of the high-tech bubble.¹⁰⁵

91-92 (1994); see also James K. Galbraith, *The Surrender of Economic Policy*, 25 THE AM. PROSPECT 60, 64-67 (Mar.-Apr. 1996) (arguing that since conservative economic policy currently prevails, liberals are left with few funds to spend on social programs). The Federal Reserve has become one of the most vocal mouthpieces of neoliberal "can't": the idea that the government can't do anything significant to contribute to social progress, and that progress depends first, last, and always on individual effort.

103. The privatization of prisons and the use of vouchers for private schools provide two prominent examples of this trend. In the 1960 Presidential Debates, John Kennedy called for the federal government to subsidize local teacher salaries. See "LET THE WORD GO FORTH," THE SPEECHES, STATEMENTS, AND WRITINGS OF JOHN F. KENNEDY, *supra* note 90, at 152 (calling for investment in human resources through increased emphasis on education to provide economic opportunity to the unemployed and depressed areas). Such federal subsidies could attract better teachers, permit local schools to have smaller class sizes, and reduce the disparities between local school districts. See also Bob Herbert, *Room to Learn*, N.Y. TIMES, May 8, 2000, at A23 (arguing that smaller class sizes are beneficial to students' learning experiences); Jodi Wilgoren, *National Study Examines Reasons Why People Excel*, N.Y. TIMES, July 26, 2000, at A14 (citing smaller class size and pre-school access as important factors for educational achievement).

104. See Timmins, *supra* note 101 (describing the failing of the American health care system); see also Herbert, *supra* note 103, (describing the poor state of American public education). Compare Robert Pear, *Clinton Asks Congress to Raise the Limit on Visas for Skilled Workers*, N.Y. TIMES, May 12, 2000, at A16 (calling for more foreign skilled workers to fill job openings in high-technology industries); with Jesse Jackson, Commencement Address to University of New Mexico School of Law (May 13, 2000) (calling for federal funding to educate and train Americans for high-tech jobs, rather than throwing them away into vast prison system).

105. See Holman W. Jenkins, Jr., *Bursting the Intellectual Property Bubble*, WALL ST. J., Mar. 29, 2000, at A23 (finding the "internet bubble" threatened by increased competition and dimming prospects of patent protection for internet technologies); see also Daniel Gross, *Desperation of the Dot.Coms*, N.Y. TIMES, Apr. 7, 2000, at A23 (describing the financial ups and downs of the newly developed dot.com industries); see also Floyd Norris, *Technology Stocks Join Steep Market*

In the days and weeks preceding this International Economic Law Conference, computer hackers shut down a number of prominent web sites through "denial of service" attacks, including those of Amazon.com, Yahoo, CNN.com, E-Bay, the Federal Bureau of Investigation, the Environmental Protection Agency, and H&R Block during tax season.¹⁰⁶ Federal investigators alternatively suspected hackers from Seattle to Chiapas with an anti-WTO, anti-globalization agenda to short-sellers seeking to profit on the decline in internet stock prices (before finally having a fifteen year-old Canadian boy arrested).¹⁰⁷ There was fear of such hackers, the so-called "losers" from globalization, bringing down the entire Nasdaq high-tech stock boom.¹⁰⁸ It seemed, at times, that fear and insecurity

Decline, N.Y. TIMES, Feb.12, 2000, at C1 [hereinafter Norris, *Technology Stocks*] (reporting that technology stocks fell much the same way as other industry stocks); see also Sabra Chartrand, *Federal Agency Rethinks Internet Patents*, N.Y. TIMES, Mar. 30, 2000, at C12.

106. See Andrew Marshall and Charles Arthur, *E-Vandals Make Coordinated Attack on World's Top Websites*, INDEP., Feb. 10, 2000, at 11 (detailing the aftermath of the computer attacks on popular websites); see also *Computer Vandals Disrupted F.B.I. Site*, N.Y. TIMES, FEB. 26, 2000, at C4 (discussing the damages done to the FBI's web site). In addition, Internet hecklers either breached a filter system or hacked their way onto President Clinton's first live internet broadcast, only one day ahead of a major White House conference on computer security. See *Clinton Gives Online Interview, and Hecklers Have a Field Day*, SEATTLE POST-INTELLIGENCER, Feb. 15, 2000, at A3 (at least two ribald remarks were posted under Clinton's name and image in manner that suggested the words were Clinton's).

107. See Matt Richtel, *Canada Arrests 15-Year-Old In Web Attacks*, N.Y. TIMES, Apr. 20, 2000 (describing how one 15-year-old boy was suspected in computer attacks that crippled some of the Internet's biggest web sites in February 2000); see also Barnaby J. Feder, *Online Fingerpointing Finds Suspects Everywhere*, N.Y. TIMES, Feb. 11, 2000, at C6 (describing the chat room, electronic bulletin boards and e-messaging fingerpointing occurring after the web attacks); see also *Cybercrime: Hearings Before the Subcomm. on Commerce, Justice, State and the Judiciary of the Senate Comm. on Appropriations*, 106th Cong. (2000) (statement of Louis J. Freeh, Director FBI) (discussing cyber threats facing the United States); see also Raymond Bonner, *Web Attacks Have Government Revisiting Laws and Security*, N.Y. TIMES, Feb. 11, 2000, at C5 (reporting on the FBI's resources used in the manhunt to arrest the cyber hacker); see also Matt Richtel & Sara Robinson, *Web Attacks Might Have Many Sources*, N.Y. TIMES, Feb. 11, 2000, at C1 (discussing the theory that groups, not an individual, were responsible for the internet attacks); see also Seth Mydans, *Computer Vandals Disrupted FBI Site*, N.Y. TIMES, Feb. 26, 2000, at B4 [hereinafter Mydans, *Computer Vandals*] (reporting the release of a suspected hacker in Manila).

108. See Marshall and Arthur, *supra* note 106 at 11 (describing how some at-

united winners and losers alike.¹⁰⁹ The alienated often might be poor, but they might also be intelligent, capable of resistance, and possessing the “competitive skills necessary for future success.”¹¹⁰ If their resistance were to bring about the failure of today’s winners, that would be quite a turnaround from the present reality.¹¹¹ And indeed, the cyber-vandalism of February 2000 coincided with some

tackers deliberately sought to induce economic hardships); *see also* *Attacking E-Commerce*, CHI. TRIB., Feb. 11, 2000, at 24 (discussing the vulnerability of e-commerce). Historians may some day conclude that the American high-tech stock market craze was one of history’s giant bubbles, on par with the Dutch tulip mania and South Sea Bubble of centuries ago. *See* CHARLES P. KINDLEBERGER, *MANIAS, PANICS, AND CRASHES: A HISTORY OF FINANCIAL CRISES* 7, 38-42, 73-75, 92-94 (1989) [hereinafter KINDLEBERGER, *MANIAS, PANICS, AND CRASHES*]; *see also* CHARLES P. KINDLEBERGER, *A FINANCIAL HISTORY OF WESTERN EUROPE*, 271-73 (1984) [hereinafter KINDLEBERGER, *A FINANCIAL HISTORY*]. Of course, prophets of such doom are almost always ignored or attacked in their own time. *See* PAUL TILICH, *THE SHAKING OF THE FOUNDATIONS* 8 (1948) (concluding that prophets of doom are often charged with pessimism and defeatism by majority of people).

109. *See* Vernon Loeb, *Cyber Defenders*, *NEWSDAY*, Feb. 16, 2000, at C3 (reporting Clinton’s program to train cyber security guards); *see also* Matt Richtel, *Official’s Testimony Hints at Slow Progress on Internet Attacks*, *N.Y. TIMES*, Mar. 1, 2000, at A16 (reporting that Clinton Administration requested additional \$37 million to hire and train law enforcement to fight cybercrime). Now here’s a potential jobs program for alienated youth lost in cyber space.

110. *See* Mydans, *Computer Vandals*, *supra* note 107 (detailing the release of a suspected computer hacker in Manila); *see also* Seth Mydans, *Suspect Held In Virus Case is Free for Now*, *N.Y. TIMES*, May 10, 2000, at C1 (describing the Philippine reaction to a local boy’s ability to unleash a virus felt throughout the world); *see also* John Markoff, *A Newer, Lonelier Crowd Emerges in Internet Study*, *N.Y. TIMES*, Feb. 16, 2000, at A1 (reporting that internet creating broad new wave of social isolation).

111. According to Professor Linda Longmire, the fear of alienated hackers bringing an end to the high-tech bubble was reminiscent of the fall of the Roman Empire and the suddenly futile boast that “all roads lead to Rome”: when the hords of Visigoths invaded and sacked Rome, they entered by those same roads that had been constructed from its center in all directions to the far-reaches of the empire. Likewise, in February 2000, investors worried whether a horde of hackers would bring an end to their empires by entering on the cyberroads that had previously promised prosperity. John Markoff, *The Strength of the Internet Proves to Be Its Weakness*, *N.Y. TIMES*, Feb. 10, 2000, at C1 (observing that the open nature of the internet makes it vulnerable to attacks); Mark Leibovich, *Pranksters, or Barbarians at the Gate?; Attack Leave Internet Denizens Wary*, *WASH. POST*, Feb. 10, 2000, at E1 (questioning the fate of e-commerce in the after math of the internet attacks); *The Key to Growth, Clinton Says, Is New Markets and the Internet*, *N.Y. TIMES*, Feb. 25, 2000, at A14 (promising riches to follow from the internet highways).

sharp drops in the financial markets.¹¹²

Nearly every time the FOMC has met over the past year, beginning in mid-1999, it has raised interest rates. To many market participants and observers, this seemed like a dangerous time to raise interest rates, even in incremental steps.¹¹³ Widespread fears existed because many stocks appeared tremendously overvalued¹¹⁴ and many investors purchased stocks with borrowed money.¹¹⁵ To raise interest

112. See Gross, *supra* note 105 (discussing the rise and falls of high-tech stock prices); see also Norris, *Technology Stocks*, *supra* note 105 (detailing the sharp drop in high-tech stocks); see also Gretchen Morgenson, *A Onetime Highflying Hedge Fund Appears Likely to Shut Down*, N.Y. TIMES, Mar. 30, 2000, at C1 (reporting that losses at Tiger Management hedge fund will likely cause company's closing); see also Danny Hakim, *Huge Losses Move Soros to Revamp Empire*, N.Y. TIMES, Apr. 29, 2000, at A1 (reporting on losses at Tiger Management hedge fund); see also Rhodes Fisburne, *The Shadow in Silicon Valley*, N.Y. TIMES, Apr. 29, 2000, at A13 (describing the fear felt by newly-formed high-tech companies); see also David Leonhardt, *Technology Share Plunge Hurting Stock Options*, N.Y. TIMES, at C1 (describing the effects on the stock prices of high-tech companies)

113. See Richard W. Stevenson, *Fed May Still Raise Rates When and If Stock Slump Fades*, N.Y. TIMES, Apr. 5, 2000, at C11; see also Timothy A. Canova, *Can Mr. Greenspan Tame the Big Bull?*, ECON. REFORM 10-11 (Apr. 2000) (reporting on enormous rise in margin debt—to highest percent of market value under current rules, which date back twenty-five years).

114. See Gross, *supra* note 105, at A25 (arguing that high valuations of stock prices of internet companies means that investors will demand that such companies start making profits); see also Gretchen Morgenson, *Analysts Talk and Amazon.com Shares Reel*, N.Y. TIMES, June 24, 2000, at C1 (discussing the fall of Amazon.com's stock following the release of a report questioning the company's financial health); see also Floyd Norris, *Palm's Saga: A Tale of Vanishing Profits and Absurd Prices*, N.Y. TIMES, Apr. 14, 2000, at C1 (describing the "transitory success" experienced by one dot-com company); see also Richard W. Stevenson, *Conference on the New Economy Gives Clinton a Chance to Glow*, N.Y. TIMES, Apr. 6, 2000, at A22 (reporting that much of the informal conversation at the conference concerned the stock market). But see Frank Partony, *Strange New Math of Palm, Inc.*, N.Y. TIMES, Mar. 15, 2000, at A23.

115. See Gretchen Morgenson, *Buying on Margin Becomes a Habit*, N.Y. TIMES, Mar. 24, 2000, at C1 (reporting on worries of Arthur Levitt, chairman of the Securities and Exchange Commission, about high level of margin debt); see also David Barboza, *Swings in Markets Push Some Margin Buyers Out on a Limb*, N.Y. TIMES, Apr. 7, 2000, at C1 (discussing several accounts of investors buying on the margin); see also *Margin Debt*, 3 FOMC ALERT 13 (Dec. 21, 1999) (reporting that the first 11 months of 1999 witnessed a 46% increase of investors purchasing stocks on the margin); see also *The Big Board and Nasdaq Wave a Flag on Margin Buying*, N.Y. TIMES, Feb. 27, 2000, at C8 (reporting that chairmen of New York Stock Exchange and Nasdaq issued unusual joint statement urging their

rates in such a financial environment might seem a bit like lighting a match¹¹⁶ (if not a blow torch) in the middle of a gas station.¹¹⁷ Since the Federal Reserve operates largely in the dark (thanks to its vaunted autonomy), the investing public, as well as so-called experts, are often ill-informed and left playing a guessing-game.¹¹⁸ The lack of transparency in the Federal Reserve's conduct of monetary policy deprives the electorate of an opportunity to intelligently discuss and debate important issues impacting private wealth holdings, the course of the stock market, and the future value of the dollar.¹¹⁹ Or-

member brokerage firms to review amount of credit they extend to investors and to consider voluntarily raising their margin requirements).

116. See Alex Berenson, *Stock Prices Fall as Fears of More Interest Rate Increases Grow*, N.Y. TIMES, May 20, 2000, at C1 (describing Wall Street's fear of the effects of rising interest rates); see also Richard W. Stevenson, *Greenspan Treads Softly After Market's Gyration*, N.Y. TIMES, Apr. 6, 2000, at C1 (detailing Greenspan's consistent increase in interest rates and the reaction by Wall Street); see also Leonhardt, *supra* note 112 (explaining how the drop in stock prices created an adverse effect on the value of stock options for corporate executives); see also Floyd Norris, *Founder Resigns Conseco Post, Under Pressure of Falling Prices*, N.Y. TIMES, Apr. 29, 2000, at C1 (discussing how the founders of one company were forced to resign due to falling stock prices).

117. Each time the Federal Reserve has raised interest rates during the past year, investors have turned bearish and the stock markets have dropped, sometimes significantly. But after a short time, the markets usually come roaring back even stronger. Frederick Lewis Allen described well the tension between policy and mass psychology when he wrote that the Federal Reserve:

. . . waited patiently for the speculative fever to cure itself and it had only become more violent. Things had now come to such a pass that if they raised the rate still further, they not only ran the risk of bringing about a terrific smash in the market – and of appearing to do so deliberately and wantonly.

Frederick Lewis Allen, *ONLY YESTERDAY: AN INFORMAL HISTORY OF THE NINETEEN-TWENTIES*, 306 (1931). See also *id.* at 308 (concluding that “[t]he lesson was plain: the public simply would not be shaken out of the market by anything short of a major disaster.”). Allen, of course, wrote about the 1929 Market Crash. See also Robert Sobel, *THE GREAT BULL MARKET: WALL STREET IN THE 1920S*, 49-76.

118. See Richard W. Stevenson, *Pondering Greenspan's Next Move*, N.Y. TIMES, Mar. 21, 2000, at C1 (questioning the forces driving Greenspan's consistent raising of interest rates); see also Carl E. Walsh, *Uncertainty and Monetary Policy*, FEDERAL RESERVE BANK OF SAN FRANCISCO ECON. LETTER, No. 2000-08 (Mar. 17, 2000) <<http://www.frbsf.org/econsrcch/wklyltr/2000/el2000-08.html>> (arguing that lack of knowledge about policy forecasts may prove harmful to the economy).

119. See William Greider, *Ducking For Cover*, 4 FOMC ALERT 1-2 (Feb. 1-2, 2000) (noting that the closed nature of Federal Reserve policymaking favors dis-

thodox discourse recognizes that there may be significant social costs when foreign governments, other United States government agencies, or private corporations fail to provide adequate and timely information to the investing public.¹²⁰ But the same orthodoxy turns a blind eye to the costs of the Federal Reserve's power and secrecy,¹²¹ and often those costs—such as to the quality of our public discourse—are hard to quantify, but no less important or real.¹²²

The present guessing game about the Federal Reserve's intentions offers a wide range of theories. Supporters of the Federal Reserve's

creet exchanges with interested private financial traders). The closed, secretive, and undemocratic nature of policy-making institutions is a common characteristic of the new international economic order. See Steven Greenhouse, *Trade Ministers Sidestep A Sticky Issue: Secrecy*, N.Y. TIMES, Dec. 4, 1999, at A6 (reporting on veil of secrecy surrounding the World Trade Organization and its ministerial meeting in Seattle).

120. See Bhala, *supra* note 30 (contemplating mere publication of rules to satisfy requirements of transparency); see also Floyd Norris, *Asleep at the Books: A Fraud That Went On and On and On*, June 16, 2000, at C1 (reporting on financial losses stemming from lack of transparency of accounting practices).

The IMF considers transparency for central banking to be satisfied by publishing the bank's goals and policy instruments and practicing "good governance," which "calls for central banks and financial agencies to be accountable, particularly where the monetary and financial authorities are granted a high degree of autonomy." See IMF, *Code of Good Practices on Transparency in Monetary and Financial Policies*, (Sept. 26, 1999) (reprinted at <<http://www.imf.org/external/np/mae/mft/index.htm>>). [hereinafter IMF, *Code*] (providing an overview of the IMF's Code for sound financial policies). Of course, the IMF regularly pushes autonomy for central banks. By accountability, the IMF foresees that central bankers should be available to report on monetary policy and comply with ethical accounting and financial standards, not a very high standard of transparency in the formulation of policy by boards that lack diversity and meet in private. See IMF *Code* (finding that monetary and financial policies can be more effective if not made in private and central banks and financial agencies should be made accountable).

121. See Richard W. Stevenson, *Fed Reconsiders Policy of Disclosing Tilt on Rates*, N.Y. TIMES, Oct. 8, 1999, at C7 [hereinafter Stevenson, *Fed Reconsiders*] (reporting that Fed considering earlier disclosure of policy).

122. See Canova, *Global Finance*, *supra* note 37, at 1578 n.128 (noting that for all of its sophistication, the present generation has little understanding of financial and economic matters); see also Geoffrey P. Miller, *The Role of a Central Bank in a Bubble Economy*, 18 CARDOZO L. REV. 1053, 1069-76 (1996) (second-guessing Bank of Japan's handling of Japan's bubble economy without questioning the premise of central bank secrecy); cf. Michael Hutchinson, *Japan's Recession: Is the Liquidity Trap Back?*, FEDERAL RESERVE BANK OF SAN FRANCISCO ECON. LETTER, No. 2000-19 (June 16, 2000).

interest rate increases seem to accept, at face value, Mr. Greenspan's most widely reported justifications of a pre-emptive strike against any future inflation in consumer prices.¹²³ Some of his critics wondered if the Fed was not actually more concerned with asset price inflation and trying to prick the stock market bubble before it got any larger.¹²⁴ Other critics wondered if the Fed was not trying to influence the 2000 Presidential election by engineering an economic slowdown that would damage Vice President Al Gore's election prospects.¹²⁵

The Federal Reserve's lack of transparency serves to obscure the way that today's neoliberal monetary order undermines the long-term prospects of the United States economy. For instance, Mr. Greenspan had spoken repeatedly about the dangers of the so-called "wealth effect" stemming from the rise in stock prices.¹²⁶ As reported by the

123. See Richard W. Stevenson, *Greenspan Warns of Another Rise in Interest Rates*, N.Y. TIMES, Feb. 18, 2000, at C1 [hereinafter Stevenson, *Greenspan Warns*] (detailing Greenspan's testimony before the House Banking Committee in which he hinted that the Fed would continue to raise interest to avert an inflation buildup); see also Robert T. Parry, *Why Has the Fed Been Raising Interest Rates?*, FED. RESERVE BANK OF SAN FRANCISCO ECON. LETTER, No. 2000-17 (May 26, 2000) <<http://www.frbsf.org/econsrc/h/wklyltr/2000/el2000-17.html>> (agreeing with Greenspan's decision to gradually increase interest rates since last summer).

124. See Richard W. Stevenson, *Fed Isn't Aiming at Markets, Greenspan Says in a Letter*, N.Y. TIMES, Mar. 31, 2000, at C1 [hereinafter Stevenson, *Fed Isn't Aiming at Markets*] (reporting on Greenspan letter to Representative Jim Leach, chairman of House Banking Committee); see also Bill Barnhart, *Stock Trading Process Under Fire; Greenspan Warns of the Hidden Costs*, CHI. TRIB. Apr. 14, 2000, at N5 (reporting that Senator Jim Bunning sternly questioned whether Federal Reserve Board was exceeding its authority by trying to "jawbone" stock prices lower); see also Lawrence Kudlow, *Greenspan, Through the Looking Glass*, N.Y. TIMES, Mar. 10, 2000, at A21 (questioning whether the Fed's interest rate policy is not doing more harm than good); see also Jacob M. Schlesinger and Glenn Burkins, *Greenspan Clarifies View on Stock Market*, WALL ST. J., Apr. 6, 2000, at A2 (discussing recent speculation that Fed was moving interest rates to adjust stock prices).

125. See James Galbraith, *Putting in the Fix?*, 4 FOMC ALERT 1-7 (Mar. 21, 2000) (arguing that the Federal Reserve's decision to raise interest rates may serve as an implicit backdrop during the 2000 presidential election).

126. See Stevenson, *Fed Reconsiders*, *supra* note 121 (describing Greenspan's testimony before the House Banking Committee); see also Richard W. Stevenson, *Tracking the Wealth Effect; Imbalance of Supply To Demand Causes Greenspan to Fret*, N.Y. TIMES, Feb. 24, 2000, at C1 [hereinafter Stevenson, *Tracking the Wealth Effect*] (describing Greenspan's testimony before the Senate Banking Committee).

mainstream financial press, this wealth effect threatens to ignite United States consumer price inflation.¹²⁷ It is rare to see any mention that the wealth effect also contributes to the consumer spending that is fueling the sharply rising American trade and current account deficits, and the resulting dangers to the dollar.¹²⁸ Americans import much more than they export—and at all-time record levels¹²⁹—for a variety of reasons, not the least of which is that every currency other than the dollar took a sustained speculative beating over the past decade.¹³⁰ Frightened foreign capital—neoliberalized capital—fled to the United States, pumping up the value of the dollar, as well as our stock and bond markets. In addition, the surging dollar has kept inflation low by flooding our shores with cheap imports.¹³¹

But as Mr. Greenspan knows all too well, the trade and current account deficits—this “imbalance”—is precisely what is “not sustainable” and the gaping United States payments deficit can only be financed by “ever-larger portfolio and direct foreign investments in the

127. See Stevenson, *Tracking the Wealth Effect*, *supra* note 126 (describing how the “wealth effect” may lead to an outbreak of inflation).

128. See Alan Beattie, *Warning of global hard landing*, FIN. TIMES, June 6, 2000, at 1 (warning that the United States dollar and stock markets could drop sharply in tandem); see also Richard W. Stevenson, *Economy May Have a Soft Spot*, N.Y. TIMES, June 10, 2000, at B1 (reporting that the swelling United States trade deficit worries some experts and policymakers); see also Jane D’Arista, *Assessing the U.S. Capital Account*, CAP. FLOWS MONITOR, (Financial Markets Center, Philomont. Va., Dec. 6, 1999); see also William Greider, *Shopping Till We Drop*, THE NATION, Apr. 10, 2000, at 11-15 [hereinafter Greider, *Shopping Till We Drop*] (reporting that “cumulative net [United States] obligations to foreign creditors reached an astonishing 18 percent of [gross domestic product] by the end of 1998, and by now may be 20 percent or higher”); see also Richard W. Stevenson, *Clinton Views Economy With Careful Pride and Calm Concern*, N.Y. TIMES, Feb. 2, 2000, at C1, C6 [hereinafter Stevenson, *Clinton Views Economy*] (reporting on President Clinton’s concern about the growing U.S. trade deficit).

129. See *Growth in Industrial Sector Was Less Robust in February*, N.Y. TIMES, Mar. 16, 2000, C30 (stating that the record United States merchandise trade deficit surpassed \$338 billion for 1999, a 53 percent increase from \$220 billion for 1998).

130. See *infra* notes 49-50 and accompanying text.

131. The United States helped stave off disaster in Asia by acting as the “importer of last resort.” See Gerard Baker, *Where the buck stops*, FIN. TIMES, Apr. 14, 2000, at 20 (arguing that only structural reform will ease the overvalued dollar); see also Christopher Swann, *Dollar resists stock market volatility*, FIN. TIMES, Apr. 18, 2000, at 39.

United States, an outcome that cannot continue without limit.”¹³² Traditionally foreign exchange traders start selling a currency short when a country's current account deficit reaches five percent of its gross domestic product (GDP).¹³³ By April 2000, the United States trade deficit rose to \$389 billion and the current account deficit to \$367 billion over the previous twelve months.¹³⁴ The current account deficit of the United States was over four percent of GDP and growing larger.¹³⁵

Mr. Greenspan also knows that the only way to entice foreign money in order to finance our deficit is to maintain the dollar at a clearly overvalued level.¹³⁶ Not surprisingly, the Fed first started raising interest rates last June, the same time that the Bank of Japan began to intervene in foreign exchange markets in order to slow the rise of the yen.¹³⁷ This is the dilemma that many other deficit coun-

132. See Chairman Alan Greenspan, *The Revolution In Information Technology*, Remarks Before the Boston College Conference on the New Economy (Mar. 6, 2000) reprinted at <<http://www.bog.frb.fed.us/BoardDocs/Speeches/2000/2000306.htm>>. See also STEPHEN MARRIS, *DEFICITS AND THE DOLLAR: THE WORLD ECONOMY AT RISK* 85-88 (1987 ed.) (providing early warning of huge capital inflow needed to sustain value of dollar).

133. Scott E. Pardee, *Speculator hunt begins at home*, J. OF COMMERCE, Jan. 10, 1997, at 9A. See Denise Caruso, *How Traders In Futures Decide to Buy Or Not to Buy*, N.Y. TIMES, Mar. 25, 2000, at A17, A19 (fund managers exhibit herd mentality on when to buy or sell by relying on same computerized predictive models).

134. See *Financial Indicators: Trade, Exchange Rates and Budgets*, THE ECONOMIST, June 24, 2000, at 121 (illustrating trade deficit and current account deficit figures).

135. See *To Boldly Go . . .*, THE ECONOMIST, Mar. 25, 2000, at 29, 30 (finding that the rising trade deficit and increasing debt-service payments to foreigners, the United State's current-account deficit, which is now over 4% of GDP, will grow even larger).

136. See Jonathan Fuerbringer, *In the Seesaw of Currencies, the Dollar Stands Tall in the Middle*, N.Y. TIMES, Nov. 30, 1999, at C1 (explaining that the dollar is strong against the Euro and weak against the Yen).

137. See *Market Intervention by Japan Sends Yen Down vs. Dollar*, N.Y. TIMES, Apr. 4, 2000, at C19. Unlike the United States and Europe, Japan was trying to depress its currency to improve its export position – a sign of the weak Japanese economy. See Paul Krugman, *The Japan Syndrome*, N.Y. TIMES, Feb. 9, 2000, at A29; see also U.S. DEPT. OF TREASURY, *ANNUAL REPORT TO CONGRESS ON INTERNATIONAL ECONOMIC AND EXCHANGE RATE POLICY* (Sept. 3, 1999) (reporting that the Bank of Japan intervened in currency markets to prevent the appreciation of the yen); Rebecca Bream, *AfDB returns to yen market*, FIN. TIMES, Mar. 14, 2000, at 28 (stating that African Development Bank issued a 50 billion yen, 10-

tries have had to face over the past decade: in a world of free flows of private portfolio capital, the overvalued dollar can be maintained *vis a vis* other major currencies only by raising interest rates.¹³⁸

There now appears to be a global tug-of-war for hot money between the major financial powers of the advanced capitalist system.¹³⁹ In the first ten months of 1999, the Euro-zone experienced a current account surplus of approximately \$38 billion, but much larger net outflows of direct investment (about \$99 billion) and portfolio investment (about \$51 billion).¹⁴⁰ As a consequence of this speculative outflow away from the Euro, the European Central Bank was repeatedly forced to bid up its interest rate, often in response to similar interest rate increases by the Federal Reserve.¹⁴¹

Similarly, when American stock markets experienced frightening drops in prices, fear and panic selling have often spread quickly around the globe.¹⁴² Yet, on occasion that was good news for the

year note, "reflecting the rising popularity of yen-denominated bond deals").

138. See *Europe's Central Bank Raises Interest Rates*, N.Y. TIMES, Mar. 17, 2000, at C4 (reporting an increase in interest rates from 3.25 to 3.5%); see also Keith Bradsher, *Dollar's Four-Day Plunge Halts; Greenspan Hints at Higher Rates: Action Could Prop Up Currency but Cause Economy to Slow*, N.Y. TIMES, Mar. 9, 1995, at A1, D8 (reporting as early as 1995 that Greenspan might raise interest rates to encourage investors to purchase dollar).

139. See Edmund L. Andrews, *Europe's Central Bank Acts to Raise Inflation Barrier: Half-Point Rise in Rates Aids Euro, Briefly*, N.Y. TIMES, June 9, 2000, at C4 [hereinafter Andrews, *Europe's Central Bank*] (reporting that the European Central Bank raised interest rates to help insulate Europe against inflation). See also Floyd Norris, *Through The Looking Glass: Europe Raises Interest Rates*, N.Y. TIMES, June 9, 2000, at C1; Edmund L. Andrews, *The Metamorphosis of Germany Inc.*, N.Y. TIMES, Mar. 12, 2000, §3, at 1 (reporting that total market capitalization of German's New Market technology sector has skyrocketed); Terzah Ewing, *Foreign IPOs Are Seducing U.S. Investors With Their Allure of Untapped Potential*, WALL ST. J., Mar. 20, 2000, at C13 (reporting that IPO's from foreign companies are an attractive category for investors).

140. See *The puzzle of Euro weakness*, FIN. TIMES, Jan. 29, 2000, at 14.

141. See Andrews, *Europe's Central Bank*, *supra* note 139 at C4; see also Edmund L. Andrews, *Rate Increase Fails to Halt Euro's Slide Against Dollar*, N.Y. TIMES, Apr. 28, 2000, at C1; Norris, *Through the Looking Glass*, *supra* note 139. To the extent that the European Central Bank lags behind the Federal Reserve in raising interest rates, the American dollar could soar, along with the United States trade and current account deficits. To the extent that the Federal Reserve lags behind, the dollar could fall, threatening American financial markets.

142. See Michael Morgan, et al., *Wall Street sharply down on rate fears*, FIN.

United States stock market as European and Asian losses meant that hot money was once again seeking refuge in the strong dollar.¹⁴³ For instance, on April 25, 2000, after one of the worst months in stock market history, the Dow Jones Industrial Average rose about two percent and the Nasdaq index rose 6.6 percent, all in one day.¹⁴⁴ While the news report in the New York Times called it a “curiously excellent day” for most United States stock market indexes,¹⁴⁵ any reader could look at the bottom of the same page for clues: the European currency – the Euro – plunged more than two percent on the same day.¹⁴⁶ With each round of such financial turmoil, as with each round of interest rate increases, the dollar became stronger and more dangerously overvalued.¹⁴⁷

It seems clear that the Federal Reserve has had little choice but to raise interest rates in the middle of an overvalued stock market and an overvalued currency.¹⁴⁸ Few want to speak it, but today’s “un-

TIMES, Jan. 7, 2000, at 1; see also Christopher Swann, *Dollar revival puts yen on defensive*, FIN. TIMES, Jan. 7, 2000, at 29.

143. See Mark Landler, *Asian Technology Stocks Fall, Echoing Nasdaq Dive*, N.Y. TIMES, Apr. 6, 2000, at C12; see also Craig S. Smith, *Sporting a Wall Street Hangover, Asian Markets Fall Sharply*, N.Y. TIMES, Apr. 18, 2000, at C18.

144. See Kenneth N. Gilpin, *Broad Rally Lifts Nasdaq to 6.6% Gain*, N.Y. TIMES, Apr. 26, 2000, at C1.

145. See *id.*

146. See Jonathan Fuerbringer, *Gains in European Stocks Being Swept Away by the Sinking Euro*, N.Y. TIMES, Apr. 26, 2000, at C1 (reporting the plunging of the Euro). Those United States stock market gains may also have been at the expense of recent steep Japanese stock market losses. A week earlier, Nasdaq had an identical 6.6% gain in one day while Asian markets were slumping. See Gretchen Morgenson, *Nasdaq Closes 6.6% Advance, But the Result Proves Mixed*, N.Y. TIMES, Apr. 18, 2000, at C1; see also Smith, *Sporting A Wall Street Hangover*, *supra* note 143; *Stocks Off Nearly 4% in Tokyo*, N.Y. TIMES, Apr. 22, 2000, at B2.

147. The “hot money” inflows prop up the overvalued dollar, which in turn fuels a rising U.S. payments deficit, necessitates future inflows of foreign capital, and keeps the dollar rising. Such a cycle is far from “virtuous”; it merely postpones the inevitable “correction” in the dollar, because it’s the only type of adjustment that the deregulated global financial system permits. Compare Gerard Baker, *Inflation live, warns Greenspan*, FIN. TIMES, July 22, 1998, at 3 (discussing Greenspan’s argument that a strong United States economy is product of a “continuing ‘virtuous cycle’ of high-productivity, low-inflationary growth which has bolstered confidence in securities markets, which in turn improves consumer and business confidence and leads to higher investment and consumption”).

148. Despite its concerns with the wealth effect from a rising stock market, the

precedented prosperity” could turn into a future currency contagion that pulls down the dollar, and along with it, American financial markets and the economy itself.¹⁴⁹ When a country comes to rely almost exclusively on private short-term portfolio investment in highly liquid securities, then its prosperity is sure to be both top-heavy and unsustainable. That is the price our generation may suffer for forgetting that long-term economic development and social progress depends largely upon our commitment of long-term public capital investment to the future.

This is the legacy of the complete lack of genuine accountability among leading central banks: high real interest rates, stagnant real wages for most, a top-heavy distribution of wealth and income, severe constraints on public sector investment that only intensifies the reliance on a speculative, financial bubble. As fear stalks both the labor and stock markets, there is a willing blindness and a deafening silence in our politics about such money matters.

III. WE HAVE OTHER ALTERNATIVES¹⁵⁰

The new world economic order has created a world that is less peaceful, less stable, and less just than what we are capable of having. Yet the proponents of this new order claim that there is no alternative, and that if we want the benefits of globalization, we are stuck

Federal Reserve refuses to raise margin requirements. See Stevenson, *Fed Isn't Aiming At Markets*, *supra* note 124. Is this because higher margin rates would cause serious financial disruptions to large investors? See also Gretchen Morgenson, *Stock-Trading Cheerleader Now Faces \$45 Million Debt*, N.Y. TIMES, Apr. 19, 2000, at A1 (reporting on losses stemming from margin calls). Or because higher margin requirements, like higher wealth taxes, could drive “hot money” away to foreign markets? See Timothy A. Canova, *Can Mr. Greenspan Tame the Big Bull?*, ECO. REFORM 10-11 (Apr. 2000) (citing Will Lyons, *Greenspan's Choice*, N.Y. TIMES, Mar. 9, 2000, A28 (calling for higher wealth taxes to siphon off the wealth effect)). Once again, the lack of significant oversight permits the Federal Reserve to dismiss alternatives as ineffective.

149. See Floyd Norris, *When Will Stocks Really Crumble? After the Dollar Does*, N.Y. TIMES, Apr. 28, 2000, at C1; see also JOHN KENNETH GALBRAITH, *THE GREAT CRASH, 1929* (1961), at xxi (“It is evident that the capacity of the financial community for ignoring evidence of accumulating trouble, even of wishing devoutly that it might go unmentioned, is as great as ever”).

150. See Canova, *The Disorders of Unrestricted Capital Mobility*, *supra* note 20, at 228 n.43 (contesting artificial limits on reform); see also *id.* at 203 n. 52 (detailing other possible alternatives for reform).

with some of the costs. They promise that the costs are only short-term and that globalization will lead to increased living standards in the long-run.¹⁵¹ The only alternative, they claim, is protectionism and declining living standards. But this is a fool's choice. There are other paths that would permit the benefits of globalization (increased trade, travel, communications), while throwing out the worst aspects of the neoliberal model, including unrestricted and speculative "hot money" capital flows, asymmetrical adjustment burdens, and central bank irresponsibility.

Likewise, the cheerleaders of today's neoliberal order offer another false dichotomy: that the only alternative to keeping the IMF essentially unchanged (with its agenda of free hot money capital flows, asymmetrical burdens of adjustment, and central bank irresponsibility) is to scrap the IMF completely. Once again, this allows even regressive reform to appear as progressive.¹⁵² Until the political vision and will is found for genuinely progressive reform of the new international order, we must call for strengthening the policy tools that already exist.¹⁵³

For instance, countries must be permitted to use their powers (under Article VI of the IMF Articles of Agreement) to control short-term capital flows. Such restrictions on hot money can take many forms, from outright controls (such as in Malaysia) to tax incentives that favor long-term over short-term investments (such as the "speed-bumps" that worked effectively for a time in Chile), to a possible turnover tax on foreign exchange transactions (the so-called Tobin

151. See JOHN MAYNARD KEYNES, *MONEY REFORM* 88 (1924) ("In the long run we are all dead"). For those suffering from the injustices and failures of the neoliberal policy, the long run can not arrive too soon.

152. See Joseph Kahn, *Treasury Secretary Offers A New Vision for the I.M.F.*, N.Y. TIMES, Dec. 15, 1999, at C4 (reporting on Treasury Secretary Lawrence Summers's proposal to require IMF to phase out low-interest-rate financing and to force deficit countries to raise money from private sources at prevailing (i.e., higher) interest rates); see also Joseph Kahn, *Treasury Secretary Wants New Stress on Latin Poverty*, N.Y. TIMES, Mar. 28, 2000, at C4 (stating that the Secretary of Commerce advocates changes in how international aid agencies combat poverty in Latin America).

153. See Christine Zuni, *Strengthening What Remains*, 7 KAN. J. L. & PUB. POL'Y 17, 27 (1997) (arguing that we must assume the responsibility for preserving "the strength and good that is in our indigenous thought and refuse to blindly mirror the Anglo-American model").

Tax proposal).¹⁵⁴ Such authority for capital controls should be strengthened to require affirmative obligations on nations to track down and return capital that fled in violation of lawful restrictions.¹⁵⁵ Such “cooperative capital controls” would require the development of a closed-circuit international payments system, which uses computer technology to enforce the new rules of the game.¹⁵⁶

As nations reduce their reliance on short-term private capital flows, there must be a revival in official public capital transfers—such as the recycling of surpluses that were so successful during the Marshall Plan.¹⁵⁷ We should not wait until there is another dire foreign or domestic threat to adopt such measures. We must reclaim our history by remembering that such transfers of public capital and recycling of surpluses are also good for the giver.¹⁵⁸ Some of the tools to accomplish those ends already exist. The “scarce currency clause” (Article VII of the IMF Articles of Agreement)¹⁵⁹ along with Article 12 of the World Trade Organization charter¹⁶⁰ should be used aggres-

154. See Canova, *Neoliberal Contagion*, *supra* note 7, at 1622-33 (discussing restrictions on short term capital inflows).

155. See *id.* at 1622-33 (discussing need for cooperative capital controls); see also Isabella D. Bunn, *The Right to Development: Implications for International Economic Law*, 15 Am. U. Int'l L. Rev. 1425 (2000) (calling for cooperative efforts to retrieve money stolen by corrupt leaders).

156. See Canova, *Neoliberal Contagion*, *supra* note 7, at 1631 n.251 (citing Stephen Zamora, *Remarks*, 86 AM. SOC'Y INT'L L. PROC. 188, 201-04 (1992)).

157. A common type of financial assistance in today's monetary order consists of IMF loans to support a central bank's foreign reserves. But such assistance can easily disappear in capital flight to offshore banking havens. In contrast, Marshall Plan-type lending can be tied to tangible projects that produce real public goods and infrastructure, including human capital. See David W. Jones and Christine Dolan, *Kenyan president envisions a “Marshall Plan” for Africa*, WASH. TIMES, Feb. 20, 2000, at C1 (reporting that the Kenyan president welcomed a leading role for the United States to help improve life for the African people). See also ROBERT B. REICH, *THE NEXT AMERICAN FRONTIER* 235-82 (1983) (recognizing the need for public investment in human capital).

158. See Canova, *Neoliberal Contagion*, *supra* note 7, at 1638-41 (comparing Marshall Plan's benefits to the United States economy with failure of Japanese economy by failing to recycle its surpluses).

159. See *id.* at 1642-43 (discussing the Scarce Currency Clause).

160. See Thomas, *supra* note 48 (advocating use of WTO Art. 12 to encourage surplus countries to open their markets to deficit countries); see also Greider, *Shopping Till You Drop*, *supra* note 128.

sively to encourage surplus countries to open their markets to deficit countries and to recycle their surpluses through outright grants. As the leading deficit country, the United States has a strong interest in shifting the burdens of adjustment from deficit to surplus countries, sooner rather than later, before we feel the currency contagion and the awful discipline of a crashing dollar.

By shifting the burdens of adjustment to surplus countries, we recognize that successful countries have an obligation to share their success with those left behind. Such a change could be monumental—it could permit a race-to-the-top, because higher labor, environmental, and human rights standards would no longer present the same threats to the competitiveness of reforming countries.¹⁶¹ The grand bargain should be that labor, human rights, and green standards be explicitly recognized in the World Trade Organization,¹⁶² in return for a complete reform of the adjustment burdens from deficit to surplus countries and sizable increases in aid from rich to poor countries. Such an arrangement should start with the forgiveness of debts of the poorest countries¹⁶³ and the strengthening of the IMF by authorizing it to issue more global liquidity in the form of additional Special Drawing Rights.¹⁶⁴

161. See Canova, *The Disorders of Unrestricted Capital Flows*, *supra* note 20, at 230 n.51 (discussing the threats upon reforming countries and the WTO Seattle meetings in which American labor unions urged the Clinton administration to impose trade sanctions on nations violating labor rights). See also *infra* note 162 and accompanying text.

162. See Adelle Blackett, *Whither Social Clause? Human Rights, Trade Theory and Treaty Interpretation*, 31 COLUM. HUMAN RIGHTS L. REV. 1 (1999) (advocating that a link between human rights and trade provisions be recognized by the WTO). See also Bunn, *supra* note 155 (arguing that United Nations declarations and covenants provide for right to development that includes right to work and to standard of living adequate for health and well-being of each person and his or her family, including food, clothing, housing and medical care and necessary social services); see also International Convention on Economic, Social and Cultural Rights, adopted Dec. 19, 1966, 999 U.N.T.S. 3 (recognizing in articles 6 and 7 the right of everyone to work and to fair wages, and in articles 11-13 the right of everyone to adequate standard of living, health, and education).

163. See Canova, *Neoliberal Contagion*, *supra* note 7, at 1636 n.274 (explaining that debt relief could relieve some of the burden of adjustment from deficit countries); see also Bunn, *supra* note 155.

164. See Canova, *Neoliberal Contagion*, *supra* note 7, at 1633-36 (discussing the possibility of increasing global liquidity with special drawing rights).

Some orthodox voices will argue that these alternatives are not politically feasible, even while conceding that reforms are necessary for a more peaceful, stable and just world. Ultimately we are confronted not with an economic or scientific problem, but rather, a challenge to reform a political system that institutionalizes a silencing of our public discourse. While the mass media becomes more concentrated in fewer corporate hands,¹⁶⁵ and as debate is limited to a choice between two political parties that share complicity in maintaining a closed society,¹⁶⁶ other avenues of resistance and reform are opening.

The "Spirit of Seattle" shows that important activity and discourse is taking place, through the internet and one-on-one exchanges, to build a civil and open society in which more global citizens will learn to speak a new language about the way globalization impacts our lives.¹⁶⁷ It points the way to a new politics in which new possibilities will open. We must cast aside our fears that articulating a genuine progressive reform agenda will fall on deaf ears. We must make the case, and we must replace today's neoliberal can't with a progressive "can do" vocabulary that unites today's excluded constituencies.

165. Lili Levi, *Reflections on the FCC's Recent Approach to Structural Regulation of the Electronic Mass Media*, 52 FED. COMM. L.J. 581, 614 (2000) (warning that demise of low power radio access would "retard the goal of providing an alternative to increasingly consolidated commercial broadcasting"); Lili Levi, *Rationales & Realizations: Regulating the Electronic Media*, 38 JURIMETRICS 515, 544 (1998) (suggesting need for alternatives to "concentrated private decision-making in the media").

166. See Stephen Labaton, House Clears Bill to Curb Plans for FM, N.Y. TIMES, Apr. 14, 2000, at C1 (reporting that the House of Representatives, while prodded by the nation's largest broadcasters, approved legislation that would curtail ambitious plans to open FM radio airwaves to hundreds of new low-power stations for schools, churches and community groups).

167. Soros, *supra* note 2.