Lawyers, Guns and Money: Wall Street Lawyers, Investment Bankers and Global Financial Crises, Late 19th to Early 21st Century

Thomas Ehrlich Reifer*[1]

Drawing on the work of Fernand Braudel, in *The Long Twentieth Century: Money, Power, & the Origins of Our Times*, Giovanni Arrighi argued that capitalism has unfolded over a series of long centuries.[2] During these periods, organizational revolutions resulted in the formation of new business and governmental organizations - under the auspices of a rising hegemonic power - that went on to lead system-wide material and then financial expansions of the global capitalist system. During these periods of intensified interstate competition, as during the very birth of capitalism as a world historical system, "[t]he separate states had to compete for mobile capital, which dictated to them the conditions under which it would assist them to power."[3] Concomitant with this recurrent cycle of intensified interstate competition for mobile capital beginning in the late 19th century was the growing interstate competition for mobile capital within the very confines of the US federated states. The fullest expression of this

* Department of Sociology, University of San Diego; Associate Fellow, Transnational Institute.

1. Thanks to Tom Dobrzeniecki for helpful suggestions. I, of course, am responsible for any errors.

2. Fernand Braudel,The Perspective of the World (Translated by Siân Reynolds, ., William Collins Sons & Co. and Harper & Row, Univ. of California Press 1979)(1984); Giovanni Arrighi, The Long Twentieth Century: Money, Power & the Origins of Our Times (2nd edition, 2010)[hereinafter Arrighi, Twentieth Century]; Giovanni Arrighi, Adam Smith in Beijing (2007) [hereinafter Arrighi, Adam Smith]. For an overview of Arrighi's work, see Tom Reifer, "Capital's Cartographer," *New Left Review* 60, November-December 2009, 119-132 available at http://www.newleftreview.org/?view=2814.

3. Max Weber, General Economic History 247-249 (1961).

was the amendment to the corporation law of New Jersey in 1889 and the subsequent capital flight from other states that ensued.

Up until this date there were still only a few large corporate combines over $10 million, except in railroads. The amended New Jersey corporation law designed by the lawyers of Sullivan and Cromwell and acceded to by the New Jersey State Legislature as a way to attract mobile capital to their domains, helped change all this. Businesses worth hundreds of millions of dollars fled from New York and other states to set up shop in New Jersey. By the dawn of the twentieth century, roughly seven hundred corporations worth some $1 billion had incorporated in the State of New Jersey. With the expenses of New Jersey now paid from corporate fees, and with other regions losing business, rival states adopted similar laws to attract capital, thus largely curbing state regulation of corporations.[4]

As Alexis de Tocqueville noted: "I am of the opinion, on the whole, that the manufacturing aristocracy which is growing up under our eyes is one of the harshest that has ever existed in the world; but at the same time it is one of the most confined and least dangerous. Nevertheless, the friends of democracy should keep their eyes anxiously fixed in this direction for it ever a permanent inequality of conditions and aristocracy again penetrates into the world, it may be predicted that this is the gate by which they will enter."[5] And enter they did, through the amendment to the New Jersey state law on corporations, helped along in escaping their confinement by the lawyers Tocqueville saw as aristocratic bulwarks against democracy.[6] And indeed, especially when combined with the role of Gatling-gun injunctions holding back the power of labor, private corporate power became increasingly ascendant in the American Republic.[7]

Here, the very interstate competition for mobile capital underscored by Max Weber as key to the power of capital over states in the interstate system displayed equal force in the power of capital over the federated states that made up the USA. The revamping of the New Jersey Corporate law and related legal changes were of truly world-historic significance here for, "If the private law of corporations—that is, the law regulating relations within the corporation as well as with private parties—had not changed after 1880, it is difficult to imagine how the enormous corporate consolidation of the next thirty years could have taken place," not to mention the equally important and intimately related financial innovations, including the burgeoning

4. MORTON J. HORWITZ, THE TRANSFORMATION OF AMERICAN LAW, 1870-1960, (1992); Thomas Ehrlich Reifer, *Corporations, in* INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL SCIENCES, 2ND EDITION 139-140 (2008).

5. 2 ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 169-171 (Alfred A. Knopf trans., Vintage Books ed. 1945) (1990).

6. *Id.* at 246-297.

7. WILLIAM E. FORBATH, LAW AND THE SHAPING OF THE AMERICAN LABOR MOVEMENT (Harvard University Press 1991).

stock market and the rise of speculative finance.[8] Much the same could be said of the wave of state-corporate globalization occurring at the turn of the late twentieth and early twenty-first centuries.[9] The proliferation of multinational corporations and related supranational institutions during this period is directly related to this early adumbration of transnational firms freed from territorial regulation in the late 19th century, with its earlier roots in the Madisonian emphasis on private property rights in the Constitution.[10] This was combined of course, with the Americanization of the common law, which provided for rapid capitalist development and the growing autonomy of corporate entities in the US, at the time the world's largest democratic republic – albeit a slaveholding one - that the world had ever seen.[11]

Right after the passage of the amendment to the New Jersey law on corporations, from 1890-1893, the real rise of Wall Street as the securitization of finance and equity, such a big part of the financial boom both in the 1920s and again in our own time today, began. Corporate stock in the new industrial firms started being listed on the stock market and traded by brokerage firms, finally being publicly offered up for purchase on the stock exchange in 1897. Stock offerings rose and the corporate concentration of US capitalism, warned against by Tocqueville and others, gathered pace. Corporations were increasingly recognized in this climate as entities in their own right, in which the board of directors was the corporation, not the holders of stock.[12] From 1875 to 1904 approximately three thousand companies merged or consolidated as a full third of the country's largest firms evaporated through mergers and vertical integration. This is roughly the same percentage of Fortune 500 firms eliminated during the merger wave and corporate restructuring of the late twentieth century, as investment bankers and corporate lawyers once again ascended to the top of the corporate hierarchy.[13]

Although C. Wright Mills dated the supremacy of US corporate power to the elections of 1866 and the Supreme Court declaration of 1886 declaring the corporation a person under the Fourteenth Amendment, Horwitz argues:

> More probably, the phenomenal migration of corporations to New Jersey after 1889 made legal thinkers finally see that, in fact as well as in theory, corporations

8. Horwitz, *supra* note 4, at 85-87.

9. *See e.g.,* Saskia Sassen, Territory Authority, Rights: From Medieval to Global Assemblages (Princeton University Press 2006).

10. Jennifer Nedelsky, Private Property & the Limits of American Constitutionalism: The Madisonian Framework & its Legacy (1990).

11. Charles Sellers, The Market Revolution: Jacksonian America, 1815-1846 (1991).

12. Horwitz, *supra* note 4; William Roy, Socializing Capital: The Rise of the Large Industrial Firm in America (1997); Charles Perrow, Organizing America: Wealth, Power, & the Origins of Corporate Capitalism (2002); Lawrence E. Mitchell, The Speculation Economy: How Finance Triumphed Over Industry (2007).

13. Robert Sobel, *Hubris Humbled: Merger Mania, Retribution, Reform—Its all Happened Before*, Barrons, Apr. 13, 1998, at 24-25.

> could do virtually anything they wantedFalse[The] subsequent replacement of the] artificial entity theory [of the corporation which] represented a standing reminded of the social creation of property rights [by] the natural entity theory of the business corporation was to legitimate large-scale enterprise and to destroy any special basis for state regulation of the corporation that derived from its creation by the state.[14]

As in previous phases of the evolution of the world-economy, eventually increasing inter-enterprise competition drove down profits in material production, causing a financial expansion and the simultaneous decline and subsequent efflorescence of the existing hegemon, then Great Britain, as with the US today. The expansion of finance was further stimulated by the growing interstate competition for mobile capital and related arms race that eventually resulted in World War I. Here, the increasing migration of capital from London to New York and the growing indebtedness of the former to the latter signaled an ongoing hegemonic transition, including in the realm of high finance, as the US remade the global system on new and enlarged social foundations.[15] The inflationary financing of the war led the recently created US Federal Reserve to eventually engineer a recession that dramatically stimulated the expansion of finance, the growing stock market and the related real estate boom, as the Fed increased interest rates to curb inflation. This led to an intertwined boom and bubble that gave the era to the name, "the roaring twenties." As in the late nineteenth and early twentieth century, the supposed end of business cycle and triumph of endlessly rising stock prices were loudly heralded. A key aspect of this expansionary boom, then as today, was the runaway growth in housing construction and real estate prices, fueled by predatory mortgage lending and growing household debt, as US mortgage indebtedness from 1920-1929 "increased from \$12.1 billion to \$33.1 billion, or 174 per cent," from 10.2% of the wealth of households to 27.2%.[16]

The US stock market collapse of 1929 and the global economic depression that eventually ensued in the 1930s resulted in landmark legislation, notably the Glass Steagal Act. This act, by separating commercial and investment banking, along with a series of other productivist measures and the coming of the New Deal, World War II and the early Cold War, broke the stranglehold of the House of Morgan and other US financial institutions – the so-called Money Trust - over the capital markets.[17] This paved the

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14. C. Wright Mills, The Power Elite (1956); Horwitz, *supra* note 4, at 101-106; Reifer, *supra* note 4.

15. Arrighi, *supra* note 2.

16. Ernest M. Fisher, *Changing Institutional Patterns of Mortgage Lending*, *Journal of Finance*, J. Fin. 307-315 (1950); Steven Gjerstad & Vernon L. Smith, *Monetary Policy, Credit Extension, & Housing Bubbles: 2008 & 1929,* 21 Critical Review: A Journal of Politics & Society 2-3, 289 (2009)[hereinafter Gjerstad & Smith, *Monetary Policy*]; Steven Gjerstad & Vernon L. Smith, *From Bubble to Depression,* Wall St.*J*, April 6, 2009, available at http://online.wsj.com/article/SB123897612802791281.html; Robin Blackburn, *The Subprime Crisis*, 50 New Left Review 92-94 (2008).

17. Bradford J. De Long, *Money Trust,* in 2 The New Palgrave Dictionary of Money & Fin. 808-810 (Peter Newman et al. eds., 1992); Bradford J. De Long, *Did J.P. Morgan's Men Add Value? An Economist's*

way for the rise of vertically integrated US industrial firms along with their associated commercial banks in the 1930s and thereafter. Though FDR, as late as 1937, was still committed to the so-called Wall Street-Treasury view of cutting spending, the widely called Roosevelt recession of that year was the final death knell for deflationary economic policy.[18] The triumph of the industrial union movement during this era of the New Deal and the coming of World War II radically altered the balance of forces between private corporate power and public state bureaucracy. The result was widespread unionization, related policies of progressive taxation and financial repression – including strict ceilings on interest rates – and the subsequent vast expansion of production in the US and eventually worldwide, with the Korean War boom. This paved the way for the so-called golden age of global capitalism, replete with the dollar-gold standards codified in the Bretton Woods agreement on fixed exchange rates.[19]

With the passage of time, however, the growth of profits and surplus capital beyond the point where they could be profitably invested increased competition, drove down rates of profit and led to the increasing financialization of corporate America as a whole.[20] Simultaneously, the US escalation of the Vietnam War combined with the policy of guns and butter ushered in the fiscal crisis of the US warfare-welfare state, the end of the Bretton Woods system of fixed exchange rates, the related deregulation of interest rates, capital market liberalization, the ending of capital controls and concomitant heightened capital mobility worldwide.[21] In addition, the need to provide financing for the Vietnam War necessitated the rise in interest rates which helped drive investors from banks to the money market, leading to growing disintermediation from the banking system, the increased commoditization of high finance and the rise of institutional investors – most especially the pension, mutual funds and insurance companies – now worth tens of trillions of dollars.[22] Then, in the 1980s, with the US doubling of the military budget, regressively financed by borrowing on the capital markets at high interest rates, and subsequent surge in real estate prices with the lowering of interest rates – in significant part to offset the rising oil

Perspective on Financial Capitalism, in REPUTATION: STUDIES IN THE VOLUNTARY ELICITATION OF GOOD CONDUCT 191-224 (Daniel B. Klein ed., 1997).

18. ALAN BRINKLEY, THE END OF REFORM: NEW DEAL LIBERALISM IN RECESSION & WAR, (1995).

19. Thomas E. Reifer, *Globalization & the National Security State Corporate Complex (NSSCC) in the Long Twentieth Century*, *in* THE MODERN/COLONIAL CAPITALIST WORLD-SYSTEM IN THE 20TH CENTURY3-20 (Ramon Grosfoguel & Margarita Rodriguez eds. 2002).

20. Charles W. Calomiris & Carlos D. Ramirez, *Financing the American Corporation: The Changing Menu of Financial Relationships*, *in* THE AMERICAN CORPORATION TODAY128-186 (Carl Kaysen ed., 1996).

21. *See* John Eatwell, *The Global Money Trap: Can Clinton Master the Markets?*, *in* 12 THE AMERICAN PROSPECT 118-126 (1993)[hereinafter Eatwell, *Gloal Money*]; JOHN EATWELL & LANCE TAYLOR, GLOBAL FINANCE AT RISK (2000); CAPITAL MARKET LIBERALIZATION & DEVELOPMENT (Jose Antonio Ocampo & Joseph Stiglitz, eds., Oxford University Press 2008).

22. ALFRED STEINHERR, DERIVATIVES: THE WILD BEAST OF FINANCE (John Wiley & Sons 1998) (2001).

prices from $20 to $140 a barrel due to the Iraq War – and deregulation of finance, high finance was back in the saddle once again. The Iraq War played a critical role here, as the Fed encouraged the subprime real estate boom and increasing household indebtedness. Saving rates for households went into negative territory, the first time they had done so since the Great Depression of the 1930s, fueling the housing bubble and paving the way for its eventual bursting.[23] What Charles Kindleberger and others have revealed is the extent to which what we have been witnessing is not merely bubble after bubble bursting, but a series of interrelated bubbles, where once burst, money goes in search of new bubbles to invest in, fueling successive speculative booms.[24]

Again, a key turn here in the making of this global financial casino was the ending of the Bretton Woods system of fixed exchange rate and later US-led debt financed militarization. This cyclical resurgence of high finance and mobile capital which increased the power of the global capital market over states helped to temporarily prop up US violence, profits and power, but was an unmitigated disaster for the Second and Third Worlds. These states had borrowed money at variable interest rates during the 1970s for the purposes of "development."[25] During the 1960s and 1970s the Third World appeared to be gaining ground on many fronts. In the 1980s these gains were reversed as debt payments flowed from South to North and terms of exchange and trade turned dramatically against the Third World. Beginning in the 1980s the old ideology of development was to be increasingly discarded. States were now expected to liberalize, open their markets, export, and pay back their debts. Thus, the flip side of the resurgence of high finance was the ushering in of what analysts widely refer to as the "lost decade of the South," the growth of the so-called "Washington Consensus" and ultimately the Asian financial crisis of 1997, in which US-centered speculative financial capital, from derivatives to hedge funds, played central roles.[26]

The increasing hegemony of the "Washington Consensus" on a global scale and liberalization of capital controls that led to successive financial crisis from 1997 on was intimately related to what Jagdish Bhagwati called the rise of the

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23. Linda Bilmes & Joseph Stiglitz, *The Three Trillion Dollar War,* W.W. Norton & Co, 2009, 125-131. Joseph Stiglitz, *Anatomy of a Murder: Who Killed America's Economy*, *in* 21 Critical Review: A Journal of Politics & Society203, 329-339 (2009).

24. Charles Kindleberger, Manias, Panics & Crashes (4th ed. 2005); Timothy Canova, *The Legacy of the Clinton Bubble, in* Dissent (Summer 2008) available at http://www.dissentmagazine.org/article/?article=1229.

25. *See* Tom Reifer, *Development Theory, in* The Cambridge Dictionary of Sociology133-135 (Bryan Turner ed., 2006).

26. Gordon De Brouwer, Hedge Funds in Emerging Markets (2001); Peter Gowan, The Global Gamble: Washington's Faustian Bid for World Dominance (1999); Branko Milanovic, Worlds Apart: Measuring International & Global Inequality (2005); Carmen M. Reinhard & Kenneth S. Rogoff, This Time is Different: Eight Centuries of Financial Folly (2009).

US Wall-Street Treasury complex. Akin to the military-industrial complex of yesteryear, to which it was intimately related, this group was once again led by the corporate lawyers and investment bankers that C. Wright Mills rightly saw as the key element of the US power elite.[27] Growing in tandem with the mergers and acquisitions boom, including through debt-financed leveraged buyouts, Wall Street lawyers and investment bankers once again ascended to the top of the corporate hierarchy, beginning in the 1980s. So, for example, the firm of Drexel-Burnham, Lambert, whose origins go back to the Drexel-Morgan alliance of the late nineteenth and early twentieth centuries, rose to the commanding heights of the corporate structure by supplying liquidity to the market. In this it was aided by leading leveraged buyout law firm, Skadden, Arps, Slater, Meagher, and Flom, whose lineage also goes back to the godfathers of the US Establishment, notably the law firm of Elihu Root, Jr., and Grenville Clark, leaders of the Anglo-American war preparedness movement of World War I, so instrumental in passing the baton of financial hegemony from the City of London to New York's Wall Street.

Crucial in the rise of Anglo-American high finance and return to power of Anglo-American corporate lawyers and investment bankers was the development of offshore money markets in the 1960s and 1970s. The increasing mobility of capital flows seeking ever higher speculative profits were hallmarks of the US economic boom and concomitant bubble, including in the housing market. Especially crucial in fueling this bubble was the ending of limitations on interest rates and the repeal of Glass Steagal with the Financial Services Modernization Act of 1999. Mortgage debt, in particular, as during the roaring 1920s, rose exponentially, from \$4.1 to \$6.8 trillion under Clinton, to \$13 trillion by 2006 under Bush, as did consumer debt and foreign ownership of US stocks and bonds.[28]

The current crisis of global capitalism – seen in comparative world-historical perspective – has eerie similarities with the earlier long downturn and decline of British hegemony in the late nineteenth and early twentieth centuries. The Washington Consensus is also reminiscent of the dominance of the Wall-Street-Treasury view that ended in the financial crash of 1929 and the subsequent Great Depression. The late 19th and early 20th centuries were characterized by the simultaneous decline of British hegemony and the rise of the US as a new hegemon, the latter serving increasingly as the new

27. JAGDISH BHAGWATI, THE WIND OF THE HUNDRED DAYS: HOW WASHINGTON MISMANAGED GLOBALIZATION (2000); FRANCIS ANTHONY BOYLE, FOUNDATIONS OF WORLD ORDER: THE LEGALIST APPROACH TO INTERNATIONAL RELATIONS, 1898-1922 (1999); Yves Dezalay & Bryant G. Garth, *Law, Lawyers & Empire*, *in* 3 THE CAMBRIDGE HISTORY OF LAW IN AMERICA 718-758 (Michael Grossberg & Christopher Tomlins eds., 2008); YVES DEZALAY & BRYANT G. GARTH, THE INTERNATIONALIZATION OF PALACE WARS: LAWYERS, ECONOMISTS, & THE CONTEST TO TRANSFORM LATIN AMERICAN STATES, (2002); TERENCE C. HALLIDAY & BRUCE G. CARRUTHERS, BANKRUPT: GLOBAL LAWMAKING & SYSTEMIC FINANCIAL CRISIS (2009).

28. Canova, *supra* note 24.

workshop of the world and as a money-box brimming with wealth, as with Chinese-led East Asia today. Once again, inter-enterprise and interstate competition for mobile capital led to the vast expansion of financial markets and the resurgent power of Wall Street lawyers and investment bankers, as in the 1980s. During this time roughly a third of US Fortune 500 companies were eliminated or consolidated through mergers and investments. As in the past, this signaled the "rise [of] a class of pecuniary experts whose business is the strategic management of the interstitial relations of the system."[29]

The current conjuncture is characterized by the rise of Chinese-led East Asia as the world's new workshop and as money boxes brimming with wealth – with trillions of dollars in surplus capital, primarily invested in US Treasury securities and other dollar denominated assets, including the multi-trillion dollar subprime mortgage market, as well as the related decline, temporary efflorescence and now seemingly rapid plummet of US hegemony. Global investments in US Treasury Securities were recycled back as loans via subprime mortgages, which rose from $18 billion in 1995 to nearly half a trillion dollars in 2005.[30] Moreover, the crucial innovation in housing finance were a new breed of unregulated derivatives called collateralized debt obligations (CDOs) – with issues averaging $500 billion in 2006 and 2007 – and credit default swaps (CDS), which grew from a mere $631.5 billion to over $62 trillion in notional value between 2001 and 2007.[31] In 2007, as in 1928, there were vast declines in the flow of mortgage funds into housing finance, followed by significant falls in the stock market and freezing of liquidity, most recently to the tune of $24 trillion, almost double total US GDP.[32]

What we have been witnessing is nothing less than the simultaneous bursting of the financial super-bubble and the related popping of what George Soros calls the "bubble of American supremacy," that rose to astonishing heights after the collapse of the Soviet empire in Eastern Europe and the subsequent breakup of the USSR. The other side of these trends has been the capturing of various regulatory agencies, institutions and rating firms by private financial interests, including the Treasury, the Federal Reserve, the Commodity Futures Trading Commission, and the

29. THORSTEIN VEBLEN, THE THEORY OF THE BUSINESS ENTERPRISE (1958); *see also* ARRIGHI, ADAM SMITH, *supra* note 2; ARRIGHI, TWENTIETH CENTURY, *supra* note 2.

30. KAREN HO, LIQUIDATED: AN ETHNOGRAPHY OF WALL STREET 300 (2009); HERMAN M. SCHWARTZ, SUBPRIME NATION: AMERICAN POWER, GLOBAL CAPITAL, & THE HOUSING BUBBLE (2009).

31. *The First Global Financial Crisis of the 21st Century*, CTR. FOR ECON. POLICY RESEARCH (Andrew Felton & Carmen Reinhart eds., 2008), available at http://www.voxeu.org/reports/subprime/report.pdf; Gjerstad & Smith, *Monetary Policy*, *supra* note 16, at 285.

32. Gjerstad & Smith, *Monetary Policy*, *supra* note 16, at 291-91; Peter Gowan, *Crisis in the Heartland*, 55 NEW LEFT REV. 5,5 (2009); MARK ZANDI, FINANCIAL SHOCK (2009). On the enormous money made from fees for CDO's, including by those buying them, reselling them and betting against them by shorting, see NPR's "Inside Job," April 9, 2010, available at http://www.thisamericanlife.org/radio-archives/episode/405/inside-job

Security and Exchange Commission, not to mention what analysts refer to as "the best Congress money can buy."[33]

Concomitantly with this growing capture of regulatory agencies and public-private institutions like the Federal Reserve by high finance has been the ascendance of high finance in value streams in the economy, with finance now accounting for over 40% of total corporate profits. A key aspect of this has been the dismantling of the Bretton Woods system of fixed exchange rates and the related stagnation of US wages since the 1970s.[34] Indeed, in a 2006 report, "[a]ccording to Goldman Sachs. . .more than 40 percent of record corporate profit growth over the past five years was due to the historically low share of national income going to labor."[35] 2006 also saw the profits of the Fortune 500 reach their highest ever levels - with average margins of almost 8% - rising to a total of $785 billion at the height of the bubble.[36] Soon thereafter in 2007 the Congressional Budget Office revealed that the *increase* in the incomes for the richest 1 percent of the US population from 2003-2005 was greater that the total combined income of the poorest 20 percent of Americans, for a change of 42.6%. The *increase* in income of the top 1 percent of the US population during these years came to $524.8 billion, a figure 37% higher than the total combined income of the poorest fifth of US households, which came to only $384.4 billion. Total income in 2005 for the top 1.1 million households rose to $1.8 trillion, making up a full 18.1 % of the total US income, rising from 14.3 % in 2003. Total income of the three million richest Americans was equal to the bottom 166 million.[37]

Dramatic rises in inequalities, globally and within what Citigroup called the plutonomies, is increasingly recognized as having played key roles in financial instability, contributing to the stock market crash of 1929 and the subsequent Great Depression, and today's global economic crisis. Not surprisingly, the 2005 figures also reveal that the richest 10%, 1% and smaller fraction thereof, have household wealth greater than at a time since 1928-1929.[38] Figures for 2007 show that the top decile of the US population

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33. Aaron Lucchetti & Serena Ng, *How Rating Firms' Calls Fueled Subprime Mess: Benign View of Loans Helped Create Bonds, Led to More Lending,* WALL ST.J., Aug. 15, 2007, at A1, 9; *see also* TIMOTHY J. SINCLAIR, THE NEW MASTERS OF CAPITAL: AMERICAN BOND RATING AGENCIES & THE POLITICS OF CREDITWORTHINESS (2005); Stiglitz, *supra* note 23.

34. Eatwell, *Global Money*, *supra* note 21; Tom Reifer, *Blown Away: U.S. Militarism & Hurricane Katrina,* in RACING THE STORM: RACIAL IMPLICATIONS AND LESSONS LEARNED FROM HURRICANE KATRINA 197-223 (Hillary Potter ed., 2007).

35. Gene Sperling, *A Pro-Growth, Progressive Economic Agenda*, *in* CHANGE FOR AMERICA: A PROGRESSIVE BLUEPRINT FOR THE 44TH PRESIDENT 62, 63 (Mark Green & Michele Jolin, ed., 2009), citing Goldman Sachs Econ. Research, *The Macro Effects of Rising Income Inequality*, U.S. ECON. ANALYST, June 30, 2006.

36. Shawn Tully, *Pop*! *Went the Profit Bubble*, FORTUNE, May 4, 2009, at 137.

37. David Cay Johnston, *Report Says the Rich Are Getting Richer Faster, Much Faster*, NEW YORK TIMES, December 15, 2007, at B3.

38. *See, e.g.,* Robert Wade, *Income Inequality Had a Role in Creating Crisis*, FINANCIAL TIMES, October 12, 2009 at A8; UNU Conversation Series: The Economic Crisis with Robert Wade (UNU Media Studio broad-

owned roughly 50% of the wealth, amazingly similar to 1929 levels.[39] With the bursting of the bubbles in housing and the Fortune 500, much of this wealth vanished, as Fortune 500 profits plummeted down to under $100 billion from a 2006 high of $785 billion, a fall of 87%.[40] Despite the enormous rises in wealth before the fall, the financial and economic meltdown and bursting of the speculative bubble, especially in the housing market, has seen trillions more of taxpayer money – $17.5 trillion according to Nomi Prins - and borrowed capital go into the hands of the very Wall Street institutions and superrich responsible for the crisis, thus pushing up the national debt to anywhere between $10 to $20 trillion.[41] In this context, the former Chief Economist of the International Monetary Fund, Simon Johnson, goes so far as to say that "the U.S. is unique. . .just as we have the world's most advanced economy, military, and technology, we also have its most advanced oligarchy."[42]

The US abuse of its privilege of seigniorage to shore up its military and financial power had for a time led to the temporary efflorescence of US hegemony but ultimately reconfigured US power on increasingly narrow and unsustainable socioeconomic foundations, including via unstable forms of (increasingly corrupt) financialization, as Enron and subsequent financial crises have so dramatically revealed.[43] This in turn paved the way for the slow but uneven formation of alternative regionalisms that today pose significant challenge to US power, from Europe to Latin America to East Asia. The limits of America's unsustainable expansionist path have become increasingly obvious over the last few decades. The result is that the Washington Consensus of the late twentieth century now faces increasing challenges from the "Beijing

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cast June 26, 2009), http://unu-ony.blip.tv/file/2540367/ ; Citigroup, *Equity Strategy. Plutonomy: Buying Luxury, Explaining Global Imbalances* (2006); Milo Vandemootele, *Within-Country Inequality, Global Imbalances and Financial Instability*, (2009) available at http*://www.odi.org.uk/resources/download/4165.pdf.*

39. Emmanuel Saez, *Striking it Richer*, PATHWAYS MAGAZINE August 5, 2009 available at http://elsa.berkeley.edu/~saez/saez-UStopincomes-2007.pdf.

40. Tully, *supra*, 2009, at 137.

41. *See e.g.*, Nomi Prins, *It Takes a Pillage: Behind the Bailouts, Bonuses, & Backroom Deals from Washington to Wall Street*, (John Wiley & Sons 2009); Linda Bilmes & Joseph Stiglitz, *The Ten Trillion Dollar Hangover: Paying the Price for Eight Years of Bush*, HARPER'S MAGAZINE, January 2009 at 31.

42. Simon Johnson, *The Quiet Coup,* THE ATLANTIC, May 2009, available at http://www.theatlantic.com/doc/200905/imf-advice. *See also* Simon Johnson and James Kwak, *13 Bankers: The Wall Street Takeover and the Next Financial Meltdown*, Pantheon, 2010.

43. *See e.g.,* Malcolm S. Salter, *Innovation Corrupted: The Origins & Legacy of Enron's Collapse* (Harvard University Press 2008); Bethany McLean & Peter Elkin, *The Smartest Guys in the Room*, (Penguin 2004); DVD: *Enron*: *The Smartest Guys in the Room* (Magnolia Studios 2006) ; Frank Partnoy, *Enron and Derivatives* (2002) available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=302332; Frank Partnoy, *FIASCO: The Inside Story of a Wall Street Trader* (Penguin Books 1999) (1997); *Frontline*: *Bigger Than Enron*(PBS video 2002). Available at http://www.pbs.org/wgbh/pages/frontline/shows/regulation/ The ability of Enron to cause blackouts in California, the largest state in the US, for the sole purpose of manipulating the market for energy so as to make money off arbitrage has received too little comment in the analysis of the remaking of US capitalism.

Consensus" of the twenty-first.[44] Few today dare to speak of any gains posted by the policy currents making up *The Project for the New American Century*. Today, commentators are instead already talking about the role of "America in the Asian Century." Indeed, in early October 2009, the dollar fell rapidly in international markets after rumors spread that select Gulf States in association with some Western European and East Asian states were going to move to offer an alternative to the denomination of oil in dollars, by introducing a basket of currencies which could be traded for oil, a process that would take a decade long. This rumor comes on top of various proposals to scrap the dollar as the world's key reserve currency, including by China.[45]

Joshua Cooper Ramo has outlined the "new physics of power and development behind the Beijing Consensus. . .[that] replaces the widely-discredited Washington Consensus [which] left a trail of destroyed economies. . .around the globe."[46] The Beijing Consensus emphasizes "equitable, peaceful. . .growth," innovation, multilateral cooperation, and global interdependence.[47] Though the Beijing Consensus is still relatively undeveloped, China's rejection of unilateralism, support for independence of sovereign states (putting aside here the special questions of Taiwan and Tibet), and emphasis on the governance of capital markets, has been welcomed by states fed up with Washington's emphasis on opening others markets. For meanwhile, the US continues to subsidize private corporations with massive public subsidies, including through military spending designed to prop up violence, profits and power, via massive infusions of money to high technology industry via the Pentagon.

Today the rise of Chinese-led East Asia and with it the growing influence of the Beijing Consensus signals the reemergence of a region whose relatively low labor, consumption, and protection costs pose world-historic challenges to the unsustainable foundations of the US-dominated global system and its militarized form of state-corporate capitalism, with its high consumption and protection costs.[48] To be sure China's present path is arguably unsustainable socially, environmentally, and politically. Yet a China transformed by social movements such as its leadership repressed in 1989 and larger regional and global social movements, and by its new links with the global South, may mount more effective

44. The Washington Consensus Reconsidered: Towards a New Global Governance (Narcis Serra & Joseph Stiglitz eds., 2008).

45. The Future of the Dollar (Eric Helleiner & Jonathan Kirshner eds., 2009).

46. Joshua Cooper Ramo, *The Beijing Consensus: Notes on the New Physics of Chinese Power*, Foreign Policy Centre (2004), available at http://fpc.org.uk/fsblob/244.pdf.

47. *Id.* at 4.

48. Fernando Fajnzylber, Unavoidable Industrial Restructuring in Latin America (1990); Fernando Fajnzylber, *The United States and Japan as Models of Industrialization*, in Manufacturing Miracles: Paths of Industrialization in Latin America and East Asia 323-352 (Gary Gereffi & Donald L. Wyman eds., 1990).

challenges to the present configuration of power in the world system than all the radicalism of the Bandung generation, as Giovanni Arrighi has argued. For China's newly acquired market power and wealth may provide an opportunity for East Asia, in conjunction with other Southern forces and their Northern counterparts, to overcome historic divisions between global North and South and within East Asia that have played a critical role in shoring up the inequalities of the global system.

Still today, US seignorage privileges still find expression in the massive reserve holdings of dollars and recycling of this money into the US Treasury and other dollar denominated assets, by US client states in the Persian Gulf, in the London financial markets, and most especially in East Asia. China today is playing an ever-greater role as what leading Wall Street analyst Joe Quinlan calls "America's financial sugar daddy," with the US falling ever-deeper in debt to China—more than it ever has to a single country.[49] US military power and related powers seignorage are crucial here, as the ability to both print dollars and borrow money in its own currency—notably from China and other East Asian and Persian Gulf money-boxes—frees the US to a greater degree than all other states from balance of payment constraints.

A host of structural conditions led to the East Asian crisis, many of which have already been mentioned. But perhaps the most neglected factor in the Asian crisis was the rise in Chinese exports from the region, the depreciation of the Yuan and appreciation of the dollar, all of which put pressure on the other economies and rendered their currencies (pegged to the dollar) more vulnerable.[50] Yet most importantly the crisis gave additional impetus to East Asian-Pacific trade and monetary integration blocked at the time by the United States. And as Injoo Sohn argues, the continuation of this process may eventually give East Asia the power to remake the rules of the global system.[51]

Today China boasts some $5 trillion in financial assets, over three-fourths of which are in bank deposits, while India holds assets totally roughly $1.4 trillion. The emergence of East Asia as the holder of the lion's share of the world's surplus capital has come with moves toward independence, even as Asia's dollar reserves holdings shows its continuing dependence on the US. For the moment the latter is, along with Europe, still one of the consumers of last resort, though becoming less so as intra-regional trade in Asia,

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49. JOSEPH P. QUINLAN, CHINA: AMERICA'S FINANCIAL SUGAR DADDY (2007); *see also* DAVID E. SPIRO, THE HIDDEN HAND OF AMERICAN HEGEMONY: PETRODOLLAR RECYCLING & INTERNATIONAL MARKETS (1999).

50. Joseph Kahn, *China's Overcapacity Crimps Neighbors: Glut Swamps Southeast Asia's Exports, Roiling Currency*,Wall ST.J., July 14, 1997, at A10.

51. Injoo Sohn, *Asian Financial Cooperation: The Problem of Legitimacy in Global Financial Governance,* 11 GLOBAL GOVERNANCE 487-504 (2005); Injoo Sohn, *East Asia's Counterweight Strategy: Asian Financial Cooperation & Evolving International Monetary Order*, *in* G-24 DISCUSSION PAPER SERIES 2007 (G-24 Discussion Paper Series No. 44, 2007) available at http://g24.org/unsoh07.pdf.

especially with China, expands rapidly. And the global capital market as a whole has reached unprecedented levels, standing at $167 trillion. Only four areas, the US, the UK, the Eurozone, and Japan, are responsible for over 80% of this. The US remains world's biggest financial market with some $56.1 trillion in assets, almost 33% of the world total. It is followed by Europe (including the UK) with some $53.2 trillion, Japan with $19.5 trillion, with the UK alone accounting for $10 trillion. In 2005 the financial stocks of the Eurozone increased 21% or by some $3.3 trillion, more than the comparative growth of US financial stocks, which grew $6.3% for a total of $3 trillion in gains.[52]

The over-the-counter (OTC) derivative market remains by far the largest of all financial markets, rising from $415 trillion in 2006 to $516 trillion at the end of the following June, to $683.7 trillion dollars in the first half of 2008, and then declining for the first time ever to $592 trillion by December, a fall of over 13%.[53] Some $126 trillion of this is held by US commercial "money-center" banks, with a mere five banks holding 97% of this total notional amount.[54] Europe holds $42 trillion of commercial bank assets, 65% of global totals, almost four times that of the US, with its $11 trillion comprising only 17% at the end of 2005.[55]

As for world equity market capitalization, accurate figures are hard to come by. Nevertheless, it is clear that East Asia shows some signs of strength here. For instance, the Japanese equity market increased by some $1.5 trillion in 2005, the highest such increase in the world. Even more significantly, these increases have been driven by higher corporate earnings rather than "higher price-earnings valuations."[56] Yet Asia and the Eurozone still have far to go to match or surpass the breadth and depth of US financial markets.[57] For all of the power of the yen and Japan's role as the world's third largest financial market, its capital ties are "overwhelmingly with the U.S., Britain and Europe, not with its own neighbors. At the end of 2004, Japan held $1.5 trillion of U.S. and European equities and bonds, but only $29 billion of

52. McKinsey Global Inst., Mapping the Global Capital Markets: Third Annual Report 8 (2007); McKinsey Global Inst., Mapping the Global Capital Markets: Third Annual Report 8 (2008); Diana Farrell, *Tremors Shake Global Capital Markets*, in Bus. Wk., March 5, 2007.

53. Bank for International Settlements, OTC Derivatives Market Activity in the Second Half of 2006 (2007) available at http://www.bis.org/publ/otc_hy0705.pdf?noframes=l; Bank for International Settlements, Foreign Exchange & Derivatives Market Activity in 2007 (2007) available at http://www.bis.org/publ/rpfxf07t.pdf?noframes=1; Bank for International Settlements, OTC Derivatives Market Activity in the Second Half 2008 (2009) available at http://www.bis.org/publ/otc_hy0905.pdf?noframes=1.

54. Comptroller of the Currency, OCC's Quarterly Report on Bank Derivatives Activities: Third Quarter 2007 (2007), available at http://www.occ.treas.gov/ftp/release/2007-137a.pdf.

55. Int'l. Fin. Services, London, Financial Market Trends: Europe vs. U.S. 2006 (2006), available at http://www.ifsl.org.uk/uploads/Europe_vs_US_2006.pdf.

56. Farrell, *supra* note 45.

57. Ronald McKinnon, Exchange Rates Under the East Asian Dollar Standard: Living With Conflicted Virtue (2005).

bonds and equities from other Asian countries."[58]

Yet with China's growing monetary reserves, increased cooperation between ASEAN+3+3, and China's sustained outreach to countries and regions including the Middle East, South Africa and Latin America, the Chinese-led East Asian region may increasingly develop track laying vehicles that not only gives it more independence but also allows it to transform the global system as a whole. The direction of such a transformation remains an open question certain to be influenced by social movements. Of course, if a truly regional or global fund with enough resources were established, drawing on the huge foreign exchange reserves in East Asia and beyond, it could very likely thwart currency attacks and help to prevent or resolve financial crises, as might sovereign wealth funds – the new wealth of nations – with agreements with their central banks that they can call on funds in a crisis. This would be especially true if these funds were made available in conjunction with stricter capital controls and other restrictions on financial capital. Moreover, if Asian nations begin to more actively manage their growing pools of surplus capital, as many believe they will increasingly do, rather than depositing them in Western currencies where they can be used as instruments of Northern domination of the South, this could lead to a radical shift in power in the global system.

Today China and Japan hold most of their foreign reserves in dollar holdings and U.S. Treasury securities, with Japan's investments in these assets coming to 90% of its total holdings.[59] East Asia accounts for some 45% of the current account surpluses globally and 55% of the US deficit.[60] The ongoing efforts to increase the breadth and depth of Asia's financial markets are designed to reduce their dependence on the US and Western Europe. This is seen as especially urgent as many in the region, notably Hong Kong Monetary Authority Chief Executive Joseph Yam, have noted the irony of Asian savings being deposited in the West only to be used in financial warfare through speculative attacks on Asian currencies.

The move toward regional monetary cooperation and currencies is a direct outgrowth of the rise of alternative regionalisms, part of the larger dissatisfaction with the US-dominated international monetary system and related supranational financial institutions. In an amazing change, the influence of these institutions appears to be rapidly declining today after reaching new heights of power in the 1980s and 1990s. Indeed, a host of countries have recently repaid their IMF debts, with Argentina and Brazil paying off all their loans early in 2006. And today, Venezuela's Banco del Sur

58. Farrell, *supra* note 45.

59. Patrick Bennet, *Why Asian Investment Shift Looms*, WALL ST.J., July 13, 2007, at C2.

60. Masaru Yoshitomi, *Global Imbalances & East Asian Monetary Cooperation*, *in* TOWARDS AN EAST ASIAN EXCHANGE RATE REGIME (Duck-Koo Chung & Barry Eichengreen eds., 2007).

(Bank of the South) would bypass the IMF altogether. Such moves come at a time when IMF lending has substantially declined and private capital inflows as well as funds flowing from states such as China into so-called developing countries dwarfs that of the IMF.[61] Early repayment is steadily reducing funds flowing into the IMF, with a recent estimate projecting that payments of charges and interest to the fund will drop from roughly $3.19 billion in 2005 to $635 million in 2009.[62]

These changes point toward the possibilities for remaking the global system on more sustainable foundations. Yet to truly remake the world and incorporate previously excluded constituencies in the global South, social movements, and the Southern states and their Northern counterparts, requires engagement with questions of environmental and other related global inequalities and world security. A key question is, what are the possibilities for the remaking of the global system today on new, enlarged and more environmentally sustainable social foundations. Hopefully that answer will draw on our deep knowledge of the history of the making of loose finance and the wisdom needed to harness money and power to the making of a more stable, just and peaceful global society.

61. Eric Helleiner & Bessma Momani, *Slipping Into Obscurity? Crisis & Reform at the IMF* 2,11 (Ctr. for Int'l Governance Innovation, Working Paper No. 16, 2007), available at http://www.cigionline.org/sites/default/files/Paper16_Helleiner_Momani_0.pdf.

62. Jo Marie Griesgraber & Oscar Ugarteche, *The IMF Today & Tomorrow: Some Civil Society Perspectives*, 12 GLOBAL GOVERNANCE 351, 352 (2006).