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Alternatives to high-risk securities fraud control: proposing structural transformation in an age of financial expansionism and unsustainable global capital

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Abstract This article is not about controlling high-risk securities frauds through improved identification and enhanced enforcement of existing (or new) administrative, civil, and/or criminal laws. Instead, it is about demonstrating the futility of these strategies and revealing the structural necessities for developing other strategies of social control. It proceeds by locating financial global capital within the world economy as a means of familiarizing discussions of crime control with the laws of capitalist development. To advance the argument for alternative policies, it first describes the contradictory forces of free-market capitalism as well as the failures of securities law to deter Wall Street like financial frauds, and then it appraises the inefficacies and non-controls of state-legal interventions into high-stakes financial frauds. Ultimately, within the framework of building a globally sustainable ecosystem, a number of policy prescriptions are presented. Collectively, these policies revolve around the redistributions of social, political, and economic power as a plan for avoiding future securities trading catastrophes caused primarily by the concentrations of global capital.

Introduction

Let me begin by saying that criminologists and students of law and political economy should carry out their studies of high-powered financial crime within the parameters of the social relations of global geopolitics and capital accumulation. What's more, in an age of globalization, if any policy adjustments are to make a material difference in curbing the crimes of the powerful, then these institutional recommendations need to take into account the current trends in the internationalization of criminal law and

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criminal justice. In the case of International Criminal Law, as Van Sliedregt [1] maintains, there has been a general trend to normalize complicity inside of a multitude of liability models. For example, "collective agency" or "co-perpetration" in criminal wrongdoing has resurfaced in the legal discourses about the *Joint Criminal Enterprise*, the *Organized Structures of Power*, and the *Joint Control of Crime*.

Unfortunately, these and other formulations of criminal wrongdoing and collective guilt are not without their own problems and contradictions. To date, the law has only narrowly and scarcely used these liability models. For example, models of collective agency have been primarily, if not, exclusively applied to social groups like those involved in drug or human trafficking rather than to social organizations like those involved in international securities frauds or other kinds of global financial harms and injuries [2]. More symptomatically, as one of the world's leading regulatory investigators, Stephen Platt, demonstrates in *Criminal Capital*: *How the Finance Industry Facilitates Crime* [3], not only does global banking act as one circulation system for criminal money involving drug trafficking, terrorism, piracy, human trafficking, proliferation and tax evasion, but it also participates routinely in miss selling, rate rigging, and sanctions evasion.

In the context of globalization, the commonweal, and International Criminal Justice, "the godfather of international criminal law" and the Editor of *Globalization and Its Impact on the Future of Human Rights and International Law*, M. Cherif Bassiouni [4]: Preface) has written: "We are living through a period of decline in the observance of and respect for human rights as they have evolved since the end of World War II. And we may well be witnessing a setback in the evolution of international criminal justice… in a curious, not to say perverse, way—our globalized world is becoming more interdependent and interconnected at the same time that it is becoming less committed to the identification and enforcement of the common good." Comparable conclusions have also been drawn from Gregg Barak's edited volume, *The Routledge International Handbook of the Crimes of the* Powerful [5]. Although Barak and Bassiouni's arguments may vary, they both agree that over the past couple of decades:

> Globalization has not only enhanced the power and wealth of certain states…it has also given these states a claim of exceptionalism. That claim has also extended to certain multinational corporations and Other non-state actors because of their wealth, worldwide activities, and their economic and political power and influence over national and international institutions. For all practical purposes, many of these multinational entities have grown beyond the reach of the law, whether national or international (4: Preface).

Probably nowhere is this statement truer than during the period that led up to and precipitated the Wall Street implosion of 2008, when the identification and enforcement of the criminal laws, national and international, were conspicuously absent from engaging with the epidemic of high-stakes looting and high-risks securities frauds committed throughout the financial services industry.

After all, not one of the top Wall Street bankers who were collectively responsible for the biggest financial crimes in United States history has ever been charged, let alone, prosecuted for or convicted of violating any criminal laws against securities fraud. On the other side of the enforcement ledger, more than a few of those financial

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crimes of the past were legalized through decriminalization and deregulation, such as the repeal of the 1933 Glass-Steagall Act in 1999. Other forms of high-risk gambling, such as credit default swaps have not been outlawed as obvious conflicts of interests, and they are still party to a derivative world of shadow banking subject to little in the way of state regulation. Historically, these types of enforcement contradictions circulate around the marketing of licit and illicit securities trades. At the same time, these securities fraud enforcement dilemmas cannot be detached either from their codependency on capital accumulation or from the development of an evolving capitalist state [6].

A fundamental difference in the analyses of the roles of bourgeois legality in the development and implementation of the internationalization of criminal justice between Bassiouni and Barak has to do with their ways of coming to terms with the noncriminal intervention into human rights violations, high-risk financial frauds, and a host of other multinational corporate and/or state and state-corporate crimes. For example, Bassiouni [4] examines the present state of globalization and talks in terms of its positive and negative paradoxical effects on human rights violations and the lack of enforcement against these crimes. While Barak [5] examines the co-existence of the contemporary outcomes of the globalization of the crimes of the powerful and their noncontrol, and talks in terms of the historical contradictions between the enforcement of the criminal law, on the one hand, and the enforcement of capital accumulation and reproduction, on the other hand.

For several years now, the latter has argued that *the controlling crimes of financial capitalism or crimes of capitalist control* will remain more or less as they have always been—beyond legal incrimination and crime control [7]. Under the prevailing social practices and policy configurations of the global political economy Barak [5] adopts the position that criminal sanctions by any of the neoliberal capitalist states of the world will not be embraced as a strategy for stopping high-risk financial crimes. At the same time, he claims not to want to remove securities fraud from the criminal law or state-penal lexicon, if only for its moral or symbolic value rather than its deterrent value. Strategically, in terms of addressing the fundamental contradictions of capital accumulation, reducing the speculative risks associated with the next securities-based trading crisis, and engaging in alternative means to the criminalization of high-stakes financial instruments, Barak contends that there are no shortages of viable economic and social policies to reduce the financial crimes of the powerful. Likewise, he avers that when institutionalized supranationally these policies would comparatively speaking, enable a more balanced, stable, and sustainable growth for the nation-states of the world than is currently the case with respect to the prevailing policies of the global political economy.

Accordingly, Barak [5] is interested in long term revolutionary efforts that, on the one hand, are resisting the pathways to unsustainable capital expansion and, on the other hand, are supportive of social transformation, involving such changes as breaking up and/or turning those too big to fail (or jail) mega-banks of the global economy into public utilities. He is also interested in those other attempts to structurally change the distribution as well as the accumulation of capital as a strategy for addressing both the monetary disparities and the asymmetries of political and economic power. Historically, these expanding inequalities have been growing since the 1980s when the presidential era of Ronald Reagan ushered in a new wave of neoliberal rules of redistribution and inequality enhancement, including policies such as those associated with austerity, privatization, and deregulation, which over the last 35 years have increasingly enabled economic crimes that are deemed essential for global capital expansionism [8].

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Unsurprisingly, Barak [5] is not interested in those traditional alternative means to crime control used in particular for restraining high-risk financial harms, including those tinkering efforts in reregulation or self-regulation advocated by persons associated with lenient or softer criminal enforcement of corporate crime, such as enhanced self-monitoring, upgraded ethical conduct, or greater social responsibility. For decades now, these and other banal ideas and bankrupt practices have proven themselves inadequate for addressing all forms of corporate misbehavior. In short, these types of sanctions are of little value beyond their ideological or obfuscating appeal as each misses hitting the proverbial etiological nail with the criminological hammer.

In a similar vein, this essay is not interested in controlling high-risk securities frauds through better identification and enforcement of administrative, civil, or criminal laws. Instead, by first characterizing the contemporary world economy, it also makes the case for more fundamental changes. Thereafter, it describes the contradictory forces of free-market capitalism and the failures of securities law to prevent Wall Street financial frauds. Next, it appraises the inefficacies as well as the non-controls of state-legal interventions into fraudulent securities trades. Finally, it encapsulates and then identifies a number of alternative and related policy proposals for social change. These are not only anti-neoliberalism to their core, but they are also reflective of an emerging political-economic paradigm capable of both challenging the regimes of "free-market" capitalism and curbing the plethora of financially powerful crimes. Additionally, these prescriptions represent a viable option for managing the "state-finance" nexus [6] and for developing globally sustainable ecosystems [9, 10].

The world economy in an age of globalization

When contextualizing the contemporary state of global capital, most economists will agree that the complexities of forces shaping macroeconomic institutions today are a product of the fact that the rates of output growths have declined worldwide, a legacy in part of both the Eurozone and the supranational economic crises still prevalent in most countries today. With respect to these global forces, there are to varying degrees, high levels of debt—public, corporate, and household—that continue to weigh in on spending and growth, on failed and nonperforming loans, and on limiting the credit supply for new borrowers. Concerning the declining consumption and output growth that threatens the exponential expansion of capital reproduction in the advanced economies, these were occurring even before the global economic crisis made them worse by decreasing investment lending and weakening growth productivity.

In emerging markets, the effects have been even more pronounced, especially where ageing populations, lower capital accumulation, and slower productivity growth are combining to foreshadow a weaker overall potential for sustainable expansion in the future. In a few words, growth or the lack of growth is uneven at best and catastrophic at worst, especially as winners and losers are created ordinarily in relation to larger monetary movements and extraordinarily during international economic crises that precipitate global depressions. In the case of ordinary monetary relations, there are, for example, the relative prices between the exchange rates of the dollar, the euro and the yen or whether the price of oil or corn is increasing or decreasing, or in establishing the international prime borrowing and other benchmark interest rates. In response to

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those extraordinary debt crises brought about by the ripple effects of the Wall Street financial implosions of 2008, central banks around the world have spent more than $10 trillion trying to stimulate the economy.

As a result, a tidal wave of cheap money has been key to propping up or sustaining growth in many countries, to cutting unemployment, and to starving off, if not preventing, economic panic. Nevertheless, the prospects of Greece's default created a panic of sorts that reverberated in stock markets around the world as nervous investors sold off stocks pushing down the value in several major stock markets, including a decline of more than 20 % in China. Similar bear runs occurred in other stock markets as sellers turned to safer government bonds paying less and adding to the problem of tighter money. The point is that while Greece and Puerto Rico too represent extreme cases of borrowing, high borrowing by governments and corporations generally, is also bogging down the globally significant economies of Brazil, Turkey, Italy and China. In terms of the future economic climate, the question becomes: how long can credit be extended to member nations for unpayable debts?

In addition to the global economic slowdown, if not, outright stagnation in some geographical locales, there is the increasing competition between multinational corporations, coupled with the geopolitical and neoliberal economic policies of austerity and privatization that synergistically facilitate a "race to the bottom" between nation-states. These are sustained, for example, by the development of such asymmetrical international trading deals as the North American Free Trade Agreement in the 1990s or the recently authorized Trans Pacific Partnership Agreement of 2015. Not yet ratified, this agreement would set in motion the trading relations of some forty nations while reflecting the world's concentrating pockets of multinational corporate wealth that aspires exponentially to accumulate capital and to grow its transnational leverage—political, economic, and legal. There are, globally, however, other nations from varying geographic regions that are developing trading blocs and associations, such as the BRICS nations or the newly formed Regional Comprehensive Economic Partnership in 2015, which involves ten Southeast Asian nations, including China but excluding the United States. This partnership constitutes 50 % of the world's population compared to the TPPA's 40 %.

In the meanwhile, the more common asymmetrical trading agreements lower tariffs, depress wages, bring havoc to environments, and disenfranchise citizens as well as the sovereignty of states having the combined effects of minimizing corporate risks and of decriminalizing numerous kinds of institutionalized harms and injuries. Former U.S. Labor Secretary Robert Reich has described TPPA as NAFTA on steroids. As part of the newest generation of global trade agreements, TPPA and others such as the Trade in Services Agreement (TISA), which if universally adopted, would gut the abilities of democratic governments to protect their citizens en masse from multinational abuse. For example, investor arbitration clauses that have been inserted will have established specialized corporate courts and a framework of international corporate law, allowing multinationals to sue governments as well as regulators for laws that interfere with the growth of their corporate bottom lines.

Finally, all of this is occurring as developed nations are moving towards "irregular" economies where it is forecast, for example, that by 2020 and 2025 respectively, 40 and 50 % of the U.S. labor force will be dependent on uncertain work. That is to say, these workers will have no predictable earnings, hours or benefits. This rapidly growing group of contingent rather than permanent workers, inclusive of "software programmers,

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journalists, Uber drivers, stenographers, child care workers, TaskRabbits, beauticians, plumbers, Airbnb'rs, adjunct professors, or contract nurses" [11], and so on, will only depress consumer demand and slow down growth even further. In this age of globalizing capital and a shifting in the nature of labor, workers are finding themselves not only increasingly on their own to survive, but they are also increasingly bearing most, if not, all of the risks associated with a changing global political economy.

The contradictory forces of free-market capitalism and securities law failures to curb Wall street financial frauds

State-legal criminalization of security fraud hangs in the balance of the contradictory forces of free-market capitalism. For example, when similarly dominant interests and behaviors of the political economy are both illegal and highly profitable as numerous financial transactions were in the run up to the Wall Street meltdown, then the capitalist state finds itself in the contradictory position of trying both to chastise and to excuse at the same time these criminal violations. During the recent financial implosion, these contradictions were reconciled through the selective enforcement of civil and regulatory law rather than the criminal law, where for example, in a pre-adjudicated civil case JP Morgan Chase was fined $13 billion to settle state and federal claims of securities fraud. Similarly, five other major U.S. banks agreed to pay some $25 billion to settle claims surrounding their fraudulent and illegal mortgage practices rather than face criminal or civil litigation.

Cognitively, the omission of the application of the criminal law happens through the cultural and social denial of the intentionality of the financial institutions responsible for the crisis and the corresponding lack of moral accountability for those powerful people in charge of those institutions. In the US, these denials are also reinforced by a capitulation of the mass media as well as by the academic fields of law, economics, and crime. For example, whether one is examining the Wall Street fiasco from the lens of criminology, economics, or jurisprudence, the traditional orientations in each of these disciplines have been disengaged ideologically from the political and socio-legal realities of the capitalist state.

In the case of mainstream criminology, David Matza, underscored more than 45 years ago that among "their most notable accomplishments, the criminological positivists succeeded in what would seem the impossible. They separated the study of crime from the workings and the theory of the state" (12, p. 143). Matza was careful to point out that this separation was not necessarily a conscious or a deliberate action. Rather, he contended that these scholars or scientists' partial blindness was due to the fact that these fields structured their studies "in such a way as to obscure obvious connections or to take the connections for granted and leave the matter at that" (Ibid.). As both an iconoclast among sociological positivists and an integrationist among legal scholars, Donald Black's holistic method to the study of legal behavior stands apart from most mainstream theorists of the law.

In particular, Black [13] discusses and identifies four styles of law or governmental social control: (1) penal, (2) compensatory, (3) therapeutic, and (4) conciliatory. All but the therapeutic mode, which aspires toward achieving normality for the deviant violator, is applicable to securities fraud. In the case of Wall Street looting and federal

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regulatory colluding, there were multiple expressions or overlapping exercises in compensatory (e.g., the victim takes the initiative as plaintiff without the assistance of the state) and conciliatory (e.g., the state takes the initiative to negotiate a resolution of the wrongdoing without civil litigation) control [7]. Predictably, according to Black's theory of the law in action, at the very height of the Wall Street pyramid of securities fraudsters, the "high rollers" were not subject to any criminal or penal control. Further down the financial "food" chain, a relatively small number or handful of inside traders or hedge fund dealers were subjected to criminal arrests, indictments, and convictions. Even further down the network of financial illegalities, a few thousand petty mortgage fraudsters were criminally prosecuted and sanctioned (Ibid.).

Structurally speaking, theoretical bases underpinning the "too big to fail" bailouts or the bourgeois state failure to efficaciously address the financial crimes of capitalist accumulation, concentration, and centralization in the banking industry arises from the fundamental contradictions of and processes of capitalist survival [14–16] as these economic dynamics intermingle with the institutionalized patterns of control frauds (W. [17], influential market corruptions [18], and crime control system incapacities [19]. These political economies of capitalist crime and crime control as well as the constituent workings of the legislative and judicial bodies were incorporated, elaborated upon and synthesized by Barak [7] into his reciprocal model of Wall Street securities fraud that explains not only the etiology of the Wall Street financial implosion of 2008, but also why these types of global investment banking collapses are no less likely to occur in the future than they were before the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

Securities frauds versus the efficacy of state-legal controls

Concerning what is currently being done to prevent Wall Street securities frauds and for the purposes of curtailing these financial menaces and otherwise assisting the stabilization of the productivity of financial markets, policymakers, politicos and enforcers have availed themselves of a myriad of economic and legal strategies. At the start of the recent financial crisis in early 2009, the realpolitik of capital hegemony had considered the idea of disbanding the mega-economic institutions of global banking. In an Oval Office debate, Lawrence Summers, the Director of the National Economic Council for President Obama, argued for the breakup and Timothy Geithner, Obama's first U.S. Secretary of the Treasury, argued against the breakup [7]. In the not too distant past, circa 1933 to 1998, as a strategy of preventing high-risk trading and speculation that contributed to the Wall Street Crash of 1929, the United States had simply precluded the mixing of commercial and investment banking transactions; to do so was a criminal felony.

Short of legally dissolving the mega-financial institutions, we also know that neither the common civil regulations nor the uncommon criminal sanctions have ever historically leveraged enough control or a big enough wallop to make a substantial difference in the conduct of Wall Street. When it comes to enforcing the vast majority of laws governing capitalist markets and the financial services industry today, the numerous investigations by the Securities and Exchange Commission each year, overwhelmingly result in steering these illegal transactions away from the criminal law and towards the civil law [20]. Here are some interesting statistics and findings on this matter of noncriminal enforcement.

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With respect to the transgressions involving the banking cartels of Wall Street, roughly 98 % of these cases are settled civilly with the respondents having neither to admit nor deny illegal wrongdoing [21], paying some kind of token fine representing a fraction of the ill gotten gains, and promising to clean up their future business dealings. Not only do these settlements, representing between 650 and 700 per year (Ibid.), not deter banking fraud, they also notably prohibit the filing of class action lawsuits by millions of financial victims. Lastly, because these settlements do not require the submission of consent degrees that would reveal the facts upon which the agreements were reached, it is basically impossible for U.S. district judges to determine whether the proposed judgments are fair, reasonable, or adequate, and, most importantly, whether or not these settlements are in the public interest [22].

From numerous vantage points, the state-social control panoply of legal powers have rarely, if ever, measured up to the political and economic powers wielded by those financially respectable criminals in their struggles to control their monetary transactions vis-à-vis the dominant ideology of "free" markets. Since the passage of the Wall Street Financial Reform and Consumer Protection Act of 2010, otherwise known as Dodd-Frank, for example, legislators and lobbyists—even before these rules had had a chance to settle in or be implemented—were working nonstop on behalf of Wall Street to exchange, alter, overturn, and block the formation of the vast majority of the new rules to reregulate financial transactions involving consumers, investors, and shareholders [7].

The political irony is that this material and ideological resistance to the regulatory reforms of Dodd-Frank not only effectively preserves a private banking system that is dependent on the nation-state for its very viability, but it also reinforces the same kinds of crony capitalism that contributed to the financial meltdown of 2008. These bourgeois legal-social relations have been characterized by an array of negotiated bailouts, exemptions, and waivers worked out between the investment oligarchy of Wall Street and the Federal Reserve System, the U.S. Department of Justice, and the U.S. Securities and Exchange Commission to avoid, at any and all costs, the criminal culpability for between $13 and $20 trillion dollars in lost wealth not to mention the liability to the tens of millions of people worldwide who lost their homes and/or jobs. The important point to grasp is that the legislation of Dodd-Frank as well as most economic analyses of the financial meltdown leave these accumulative social harms and other contradictions of finance capitalism and the capitalist state unacknowledged and unaddressed [7].

The absence of law or social control as an explanation for a variety of crimes has a long tradition in both criminological and socio-legal circles [23]. For more than a century psychologists and sociologists have used the concept of social control to explain the conduct of people in organizations, neighborhoods, public spaces, face-to-face encounters, and for our purposes, in trusting financial relationships. When dealing with money transactions in particular, this has meant that there must "be trust in rules" and "trust that others one hardly knows will uphold the rules" [24]. Thus, market exchanges have always had to disconnect their financial dealings from personal relationships by formalizing these legal dealings into agreed upon rules and regulations. Unfortunately, these legal relations of social or criminal control have rarely been separated from the structural needs of developing political economies. In turn, the absence of criminal or penal control of high-risk securities fraud has often followed. This absence is also part of the underlying rationale for an alternative paradigm to criminal, civil, or self-control approaches to Wall Street looting and federal regulatory colluding.

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As Black [13], p. 105) demonstrates, in the world of criminality both high and low, social control "divides people into those who are respectable and those who are not; it disgraces some, but protects the reputations of others." Within these legal dynamics of social control, criminality and respectability are defined at one and the same time as polar opposites. Black further reveals that social respectability also helps to explain the behavior of the law: "to be subject to law is, in general, more unrespectable than to be subject to other kinds of social control. To be subject to criminal law is especially unrespectable" (Ibid. p.111). As one of Black's legal principles maintains, when all else is constant, the amount of criminal law varies inversely with the respectability of the offender's socioeconomic standing.

These heretofore characteristics of the law's behavior and of social control beg another kind of and yet related question: "How far will agents of law enforcement and academia or policy wonks go to whitewash the financial crimes of Wall Street in order to protect the fraud minimalist reputations of some of the most successful banking cartels in the world?" In the summer of 2011, for example, there was the rather alarming and prominent whistle-blowing Congressional testimony of SEC attorney Darcy Flynn about how the state's top financial police had illegally demolished more than a decade's worth of intelligence gathered on some of Wall Street's most conspicuous offenders. These included both insider trading and securities fraud investigations involving such financial heavies as Goldman Sachs, Lehman Brothers, AIG, Deutsche Bank, and many others.

What transpired was shortly after the financial implosion, the SEC conveniently eliminated the records of some 9000 investigations of wrongdoing or "Matters Under Inquiry" dating from 1993 to 2008. There were also a cozy number of cases involving high-profile firms that were never graduated into full-blown criminal investigations because of what has been referred to as an "obstruction of justice" by misbehaving attorneys caught up not only in the revolving personnel doors of government regulation and high-stakes banking, but within what has also been described as the Stockholm Syndrome of Wall Street. A condition where investors and regulators alike not only harbor warm fuzzy feelings towards fund managers, but also find themselves hostages of Wall Street where over and over they make fresh capital commitments to the hostage-takers newest fund [25].

The problem of controlling securities fraud goes far beyond the revolving doors that are not really conflicts of interests per se. As Matt Taibbi formerly of *Rolling Stone* wrote at the time of Flynn's testimony before Congress, the "SEC could have placed federal agents on every corner of lower Manhattan throughout the past decade, and it might not have put a dent in the massive wave of corruption and fraud that left the economy in flames three years ago" [26]. Actually, the FED and the SEC have always been embedded throughout Wall Street financial institutions. The same could also probably be said about the widespread use of systems of automated, real time monitoring of trades and trading patterns that have been around since the 1990s. At the same time, maybe the time has come to empower forensic accountants and law enforcement as well as regulatory officials so that they may both "routinely use 'panoptic' surveillance" methods and "digitally mine the online activities of CEOs" (27, p. 155). After all, banking firms are already "tapping a cottage industry of software companies that use complex algorithms to monitor traders' calls and emails—looking for catch phrases as well as changes in tone—to try to detect signs that traders may be colluding or placing unauthorized bets" [28].

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Ultimately though the *intent* is more important than the means used. In the case of the aftermath of the Wall Street implosion, the state's intent was never to criminalize but always to normalize the criminal behavior of the mega financial institutions as evidenced, for example, by the nonenforcement or implementation of the Fraud Enforcement and Recovery Act, signed into law by President Obama on May 20, 2009. This law was designed to "improve enforcement of mortgage fraud, securities and commodities fraud, financial institutional fraud, and other frauds related to Federal assistance and relief programs, for the recovery of funds lost to these frauds, and for other purposes" (Pub. L. No. 111–121, 123 Stat. 1617). With respect to the two fraud enforcement teams established in 2009 and 2012 respectively by U.S. Attorney General Eric Holder to specifically address the securities-financial institutional frauds of Wall Street, not a single criminal investigation, let alone a criminal prosecution or criminal conviction, ever materialized. "Further on down the fraudulent food chain, however, the Department of Justice [had] been busy busting and prosecuting 'low-level' mortgage fraudsters" that resulted in 1517 criminal arrests and 525 indictments (7, p. 14).

Treating high-risk securities fraud as noncriminal matters

Since the financial meltdown of 2008, people are quick to point out that the Wall Street of today is not your father's Wall Street from a generation ago, let alone your grandfather's Wall Street from the 1930s. In a world of fully digitized trading where super-sized Wall Street firms are enabled by the latest algorithmically based software programs, these insiders can make millions in microseconds from high-volume trades. Moreover, the players of the new Wall Street are in the business of constantly developing innovative instruments and securing advantages over their investors as well as other competitive traders. Whether or not these state-of-the art securities transactions are noncriminal or criminal, civilly legal or illegal, they have not been subject to adjudication, to interpretation, or to differing rules of law. In the case of the recent financial implosion, neither the instruments old or new have been subject to criminal or even civil adjudication, not to mention judicial review on the merits rather than on the settlements. Instead, at the end of the day it is the U.S. banking oligarchy with its capitalist state allies that decides what does or does not constitute a "crime" in the world of securities based market transactions while the U.S. Department of Justice usually responds in kind.

To recapitulate, by the end of 2015, some seven years after the Wall Street debacle, no senior executives from any of the major financial institutions has been criminally charged, prosecuted or imprisoned for any type of securities fraud. This is in stark contrast to the Savings and Loans scandals of the 1980s when special governmental task forces referred some 1100 cases to prosecutors, resulting in more than 800 bank officials going to prison [29]. Comparatively, some critics have argued that there has been a lack of collective governmental resolve to criminally pursue these offenses. Other critics have argued that a collective governmental resolve not to hold these offenders criminally accountable has succeeded. Both of these claims are sustained by an examination of the available evidence.

The non-prosecution of securities fraud is precisely what the economic elites of Wall Street and the political elites from the Bush II and Obama Administrations as well as from the majorities of both the U.S. Senate and House of Representatives had desired

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since the collapse of Wall Street. The outcome of zero criminal prosecutions is neither by accident nor conspiracy but mostly by consensus or collusion. Even before the economic crisis, a concerted effort not to prosecute "big time" financial fraud had begun in 2003; a reaction to the "overzealous" prosecution in the early years of the new millennium of several corporate fraudsters in the USA. The movement not to criminalize picked up momentum in 2005–06 when the U.S. Supreme Court overturned the criminal fraud conviction of Arthur Anderson for helping to cook the accounting records of Enron [7].

From that point on, instead of strategies to "better" control these financial crimes, strategies were developed to control the damage done to the faith of Wall Street investors in the financial system. The outcomes of this non-penal strategy of not controlling financial fraud resulted in: (1) conciliatory efforts by the government, mainly between the Security and Exchange Commission and the Department of Justice, to restore these institutionalized practices rather than to change them, and (2) compensatory efforts by private investors, individual or corporate, to seek damages for their losses. In terms of those conciliatory efforts, these have been pretty successful in reinforcing the "business as usual" relations of Wall Street. It is these structural market relations, unfortunately, that are at the center of the financial securities crisis confronting both the USA and the world today. In terms of the compensatory efforts, these have included dozens of successful cases against every major Wall Street investment firm for securities fraud, amounting to hundreds of billions of dollars in corporate fines and payments. Either way, however, these financially respectable crimes of Wall Street remain outside the purview of criminal prosecution and any deterrent value that might represent.

An emerging paradigm and a manifesto for financial change

At the end of Alan Greenspan's *The Map and the Territory*: *Risk*, *Human Nature*, *and the Future of Forecasting* [20], the longest serving Chairman of the Federal Reserve Board (1987–2006) reveals that he no longer believes in the "free market" assumptions that he once believed in. Unfortunately, he has nothing to replace those assumptions with, including those of Keynesian economics that he once upon a time bought into. Reflecting on the banking crisis of 2008 and the Great Recession that followed, Greenspan had this to say: "I have come to a point of despair where, if we continue to make banks wards of the state through TBTF policies, I see no alternative to forcing banks to slim down to below a certain size threshold where, if they fail, they will no longer pose a threat to the stability of American finance" (30, p. 298). Of course, as everyone knows, the same Wall Street banks that brought about the recent financial implosion are much bigger institutions today than they were then.

What most people, however, do not know, including U.S. legislators on both sides of the political aisle who voted for the Financial Services Modernization Act of 1999, which eliminated the separation between commercial and investment banks institutionalized by Glass-Steagall, is that the same law also permitted the newly merged banking concerns to delve into any and all economic activities that are considered "complimentary to a financial activity." As a consequence of this ambiguous legal clause, banks like Morgan Stanley, JPMorgan Chase, and Goldman Sachs now "own oil tankers, run airports and control huge quantities of coal, natural gas, heating oil,

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electric power and precious metals" (31, p. 34). Meaning that these banks are also now buying and trading in entire industries.

For example, giant financial firms are "buying oil that's still in the ground, the tankers that move it across the sea, the refineries that turn it into fuel, and the pipelines that bring it to your home. Then, just for kicks, they're also betting on the timing and efficiency of these same industrial processes in the financial markets – buying and selling oil stocks on the stock exchange, oil futures on the futures markets, swaps on the swaps markets," and so on (31: Ibid.). Naturally, allowing a handful of banks to control the supply of crucial physical commodities and to trade in the financial products that might be related to those markets, such as aluminum in the case of Goldman Sachs, is not only a furtherance of the financial services industry's dominance of the political economy and a concentration of wealth, but also an open invitation to commit mass manipulation and fraud when necessary.

These concentrations of wealth reinforce the manufacturing of speculation and the neoliberal polices of privatization, austerity, and securitization—all of which exacerbates economic inequality and class stagnation for the deteriorating middle and working classes. The expanding wealth gap and the developing irregular economy also worsen the asymmetries in social and political power. As these intensify the probability is that the crimes of the powerful will be less controllable in the future than they are today. Therefore, without a fundamental shift in the power relations of the global political economy and without a paradigmatic shift in economic thought and legal intervention from the present model based on a false duality of internal versus external controls of "free" markets to an economic model of capitalism based on a genuine understanding of the laws of capital and capitalist state development, which have always been inseparable institutions tied into the well being of the other [32], then the crimes of the most powerful financial entities will remain as marginal to incrimination as they always have been [7].

Consequently, what are called for are alternative policies to those of neoliberalism that contribute to unenlightened self-interest, unregulated financial trading, unfettered victimization, and unsustainable capital reproduction. The alternative policies to be recommended below are reflective of a slew of circulating ideas and an emerging paradigm based on a restructuring of financial markets as well as the relationships between governments and the people. This alternative economic-legal-social paradigm encourages finance capital to move away from speculative investments that exist primarily to enrich the very few and to expand capital in the near term, and toward large-scale public and private investments for the long term, in such things as commonly shared goods and services, infrastructural development, and greener economies.

Furthermore, this "new" paradigm is grounded in changing the existing system of ownership, in democratizing wealth and work, and in building community-sustaining economies from the ground up, inclusive of co-ops and of both old and new forms of employee stock ownership plans, which currently involves some 10.5 million people in virtually every sector of the U.S. economy. As Gar Alperovitz [33], p. 41 argues: "new forms of ownership are important not only on their own, but also in that they begin to offer handholds on a new longer-term vision, a set of ideas about democratization that—if they were to become widespread, embraced, refined, and widely understood—form the basis, potentially, of bringing people together, both to challenge the dominant hegemonic ideology and to build a democratized economic basis for a new vision and new system."

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Lastly, this utopian paradigm of the possible understands that the material expansion of finance capital for the sole intent of maximizing financial capital rather than for the purposes of expanding sustainable material economies is counterproductive to global well being for numerous reasons, not the least of which is that the former tends to harm earthly environments at the same time as it expands deprivations around the globe. In a similar way, an alternative "regulatory regime" tackles or encourages a prohibition against speculating in hospitable environments, in unsustainable debt, and in economic bubbles, or in what Susan Will [34] has referred to more generally as the Ponzi Cultures of advanced capitalism. Nearly all of the policy changes advocated here have either some kind of contemporary political backing or have been implemented in one form or the other somewhere in the developed world:

- Break up and/or turn the too big to fail banks into public utilities;
- Ban the speculative use of credit default swaps;
- Exempt securities trading, insurance operations, and real estate transactions from the Federal Deposit Insurance Corporation;
- Reign in the shadow banking industry;
- Standardize derivatives and trade them openly on public exchanges;
- Institute a financial transaction tax to discourage excessive trading and risk;
- Tax earned, unearned, and carried interest income at the same rates;
- Establish independent auditing and rating systems of corporate financial affairs;
- Develop high-tech tagging systems able to monitor and track algorithmic trades;
- Make companies and individuals admit wrongdoing as a condition of settling all civil charges or be forced to fight the charges in court;
- Initiate the empowerment of the Financial Stability Oversight Council under Dodd-Frank to reign in the problem of excessive risk taking by the "shadow banking" industry or by those non-banking financial institutions like AIG;
- Institute tougher restrictions and require more long-term debt, vis-à-vis the Volcker Rule, on speculative trading throughout the banking industry, especially those which include securities and derivatives trading as a part of their "casino banking" activities, to further prevent banks from engaging in proprietary trading or making risky bets with their own money;
- Amend the Volcker Rule adopted on December 10, 2013, which now positively makes it more difficult for banks to buy and sell securities on behalf of clients, to trade with their own cash, and restricts them from investing in risky hedge and private-equity funds, but it also needs to require bank executives not only to guarantee that their firms are in compliance with the Rule, but to hold them liable for such assurances;
- Resurrect a modernized version of Glass-Steagall and/or build stronger firewalls around insured deposits involving commercial banking;
- Integrate financial market incentives with climate change adjustments;
- Support environmental defense organizations like the Business Alliance for Local Living Economies or the American Sustainable Business Council;
- Form state-owned banks and create Benefit or not-for-profit "B″ corporations;
- Pass a comprehensive infrastructure-human development fund and Americans job act, appropriating $1 trillion over the next decade;

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- Pass a forgive student loan debt and/or payback schedule based on income and/or ability to pay;
- Establish for all working people a livable wage and affordable housing;
- Establish a single-payer health care system in which the government rather than private insurers pay for all health care costs.

Of course, none of these policies changes will come easily or without challenges and resistance, especially in light of the expected pushback from the very powerful interests that benefit from the prevailing political economy.

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