Original Article

Crisis opportunism: Bailouts and E-SCADs in the GFC

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Abstract As a response to the 'junk debt'-inspired global economic crisis, governments, with supra-national organizational approval, have appropriated billions of taxpayers' dollars for bailouts, have set up special funds and underwritten depositors' savings in the desperate hope of alleviating the threat of rapid, economic decline and systemic destruction of value. Whether these governments have a democratic mandate for such unprecedented action is debatable. More importantly, though, is whether such decisions amount to good re-regulatory policy. First, it is known that some of the bailout money to large corporations has been squandered by oligarchic recipients and appropriated by them in their own interests. Second, special funds, set up supposedly to support particular industry sectors from liquidation, have been attacked on the basis that they have only served to support crony capitalism and attract oligarchic rent-seeking writ large. Third, Australian banks, for example, which have government, depositor account guarantees have made windfall gains. The worst-case scenario is that governments have used taxpayers' funds with a flagrant disregard for the consequences, including abusing inter-generational utility, and have actually committed economic, state crimes. Public policy in Neo-liberalism is fraught with crisis vulnerability. Crises, as 'created' opportunities, compound the situation. From US congressional 'earmarks', to 'Yankee and Met owners' scams siphoning billions in public funds, policy discourse around the world has been 'high-jacked' by opportunistic Neo-liberalism. This article seeks to deconstruct some of the hubris associated with corporate capitalism's creation of a new financial sector based on fraud – junk debt, credit default swaps and derivatives. How has it come to pass that fraud has become the basis of corporate performance and leadership remuneration? Is criminal fraud the heart of global capitalism and a criminogenic Neo-liberalism? This article explores these issues, qualitatively, through a 'forensic' examination of emerging re-regulatory policies in the United States and Australia. The conceptual framework of the article is located within the notion of economic, state crimes against democracy.

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Introduction

> The financial sector bail out has [n]ever been about fixing the problem, it's been about using the crisis as a pretext for the greatest transfer of public wealth into private hands in monetary history […]. It's straight up pillage. (Naomi Klein, quoted in Prins, 2009, p. 28)

> There was $1.4 trillion worth of subprime loans outstanding in the US by the end of 2007. We are talking about a system that […] took on $140 trillion in debt on the back […] of subprime loans. (Prins, 2009, p. 45)

> The Western model was an illusion […]. The global crisis demonstrates that leaders of major powers had missed the signals that called for a *perestroika*. The result is a crisis that is not just financial and economic […] it is political too. (Gorbachev, 2009)

Financial leveraging, executive remuneration and moral hazards (Kulp and Hall, 1928/1968; Heimer, 1985) are currently under intense scrutiny. During the global financial crisis (GFC) (2007/2009), the world watched the worst of a US financial derivatives meltdown (Giroux and Giroux, 2009, p. 1) and government, financial rescue packages lacked incentives to guard against future risk. Although many 'lapsed Keynesians' rhetorically committed to an agenda of change, repudiating unfettered free-market fundamentalism (Kouzmin, 2009), many underpinning issues remain.

The roots of the current GFC can be seen in the wave after wave of Neo-liberal ideological capture of government policy since the days of Thatcher and Reagan in the late 1970s. This capture of governance 'fostered a grim alignment among the state, corporate capital, and transnational corporations' (Giroux and Giroux, 2009, p. 2) in a manner not previously seen before. Apart from any other problems, Neo-liberalism is an ideology that breeds the supremacy of markets and leads to moral/ethical pervasions spawning rapacious greed and corruption (Giroux and Giroux, 2009, p. 2; Leopold, 2009).

The mantra among academics and practitioners has been that 'markets could, and should, do much better than the state' (Kouzmin, 2009, p. 1) – an ideological position indicating a collective amnesia about the failure of capitalism in the late 1920s, certainly a wilful disregard for corporate criminality by Enron (Munson, 2005) in the 1990s and, even, the recklessness now 'associated with the so-called "sub-prime," mortgage crisis masquerading as yet another version of "junk" debt' (Verrender, 2008, p. 45) – driven, financially engineered and fraudulently rated derivatives. According to Ralston Saul (2005, pp. 67–87), hegemonic economic/political/ideological fantasies involved the emergence of a 'Crucifixion Economics', involving the 'colonization of [management] by economic cannon […] and the "tribe", and chorus, of economic "fellow travelers" marching to yet another sect of economics, Public Choice Theory (PCT), invoking a creed-like economic parable in a devoted, liturgical, incantation of the virtues of the "free market"' (Kouzmin *et al*, 2009b, p. 427). Among key elements in 'Crucifixion Economics' (Ralston Saul, 2005, pp. 67–87) are:

- Deregulation is seen as a form of libertarian freedom.
- Privatization is equated with entrepreneurship and innovation, rather than patronage.
- Financial markets and derivatives are deemed as being new, 'real' trade.
- Global corporatism and the 'utopia' of unlimited consumption prevail.
- The putative morality of balanced budgets and the 'ideological evil' of public debt carry the day.
- Corporate bankruptcy legally suspends lender and employment rights in favour of restructuring, thus violating contract law.

Ralston Saul (2005, p. 196) put it succinctly, 'globalization, as an ideology, declared itself as a market force for capitalism and risk. It was spoken for by tenured professors of economics, and management, whilst being led by technocrats – private sector bureaucrats, [employed] in joint-stock companies rarely owned by active shareholders – working to reduce competition'. 'Milton Friedman's free market assumptions were transposed into a global movement/[Neo-liberal] economics as a tool to weaken government, discourage taxes, force deregulation and entrench private monopolies' (Ralston Saul, 2005, p. 33) – privatize, privatize and suppress democratic accountabilities (Klein, 2007; Sussman and Krader, 2008) emerged as the normative framework for 'southern-gradient economies' while being implemented in 'northern-gradient economies' via Anglo-American, new public administration and governance discourses (Kouzmin, 2002, 2009).

Within an 'East–West gradient', one should add 'Template Revolutions' (Sussman and Krader, 2008) as efforts of US government and private foundations aimed at animating support for Western-oriented political, economic and cultural, institutional practices (Roelofs, 2003). These 'democratic/transitional' developments are conceived as aspects of the larger, Neo-liberal programme of opening the Eastern European region for commercial, strategic military, cultural and political domination by the G-7 countries (Kakabadse *et al*, 2010).

The Russians, for example, might be asked about the seriously anecdotal views that 'the authoritarianism and mis-begotten economic policies of many countries can be blamed on the Harvard Business School' (Walsh, 1994, p. 53, see also Klein, 2007; Sussman and Krader, 2008) and the Harvard-inspired, criminal privatization scheme overseen by President Yeltsin (Kouzmin and Korac-Kakabadse, 1997). 'Harvard business degrees are now "scarlet letters of shame" […]. Time after time and scandal after scandal, it seems that a school that graduates just 900 students a year finds itself in the thick of it. […] Harvard alumni include former CEOs of the failing Merrill Lynch, the ousted CEO of General Motors, Enron senior personnel and the former Chairman of the US Securities and Exchange Commission' (Mehra, 2009; Staley, 2009). The role of the 'Washington Consensus', applied in an ideological, checklist way to the Asian financial crisis (1997/1998), ignored the pivotal role of dysfunctional, corporate capital and further stressed the much-maligned public sector, which is also a notable example of the spectacular failure of the Chicago-based 'free-market, economic babble' converging in policy circles, and business schools, around the world (Klein, 2007).

The range of ideas considered in contemporary American public affairs is very limited, slanted, in many ways, to benefit elites. 'No serious observer of American politics, for example, expects President Obama to be able to re-cast this "consensus" and take US policy in radically, new directions' (deHaven-Smith *et al*, 2010, p. 137). 'Political-economic-[military] complexes pose moral hazards – criminogenic temptations – for top leaders in business and government because available assets can be used to wield dominant control over the national political agenda, which, in turn, is the primary factor affecting the long-term prospects of the political and economic interests involved' (deHaven-Smith *et al*, 2010, p. 140). From another frame, liberalization of trade through GATT/WTO, with Neo-liberal recipes pushed by the World Bank and the IMF, have empowered and engaged transnational corporations (Corpocracy) and weakened governments to the point where national economic policies can no longer be decided by elected officials alone but must take into account, if not favour, the interests of huge corporations (Kakabadse *et al*, 2006, p. 191; see also Klein, 2007).

Anglo-American governance regimes invoke a heavy cloak of anonymity and secrecy on oligarchic activities. Obscuring 'realities' includes 30–50-year public release rules for suppressing 'confidential' documents of state and, even, confidential, 70-year intergenerational public/private partnerships agreements. National security rationales and narratives abound. A 'hermeneutic of suspicion' (Ricouer, 1970, pp. 32–35) is required about the pre-eminence of any norms of ethics and professionalism in the Neo-liberal state (Kouzmin *et al*, 2009a, forthcoming) and the fluxing of (in)visibility is crucial in any discourse of governance and accountability (Thorne and Kouzmin, 2006, 2007). Under Neo-liberalism, 'Principal/Agent' fictions legitimize a massive scale of out-sourcing, offshoring, partnering and privatization of programs and service delivery to private, unaccountable, contractors operating under invisible, 'commercial-in-confidence' provisions (Johnston, 2007; Klein, 2007; Shane and Nixon, 2007; Kouzmin, 2009).

Crises Opportunism

Corporate and agency failures are, often, deliberately created (Kouzmin and Jarman, 2004; Klein, 2007). Against the rhetoric of Liberal democracy, Crozier *et al* (1975, p. 113) have argued that, 'in many situations, the claims of "special talents" may override the claims of democracy as a way of constituting authority'

> Democratic institutions [are] *incapable* of responding to crises […]. Leaders with 'expertise; seniority; experience; *and special talents* [are] needed *to override the claims of democracy*' [accountability]. (cited in Marrs, 2001, p. 25) (emphasis added)

Reconciling economics, politics and public duty in crisis management maybe an ongoing, 'wicked' (Rittel and Webber, 1973) set of policy issues. 'Uncertainty', 'ambiguity' and 'risk' are inherent characteristics of 'tough' decisions (Nutt, 1989) in crises. However, *creating* political and economic crises involve other sets of capacities (Kouzmin and Jarman, 2004; Klein, 2007; Kouzmin, 2008).

Neo-liberalism is predicated on crises and is highly responsive to crisis creation and opportunity 'disaster capitalism' and 'Eminent Domain' situations afford (Klein, 2005, 2007; Garnett and Kouzmin, 2009). 'From Aceh to Iraq, a ruthless form of disaster capitalism is re-shaping vulnerable societies to its own design, with the so-called democracy builders making millions in the process' (Klein, 2005, p. 30). […] 'We used to have vulgar colonialism, now we have sophisticated colonialism […] called "reconstruction"' (Shalmali Guttal quoted in Klein, 2005, p. 30). Political and business elites continually create, and exploit, fear, danger and destruction incomprehensible to the people at large or local, political leadership (Witt and deHaven-Smith, 2008).

Friedman (1982, p. ix, emphasis added), himself, was not ready to wait for 'mother nature' and wrote:

> [O]nly a crisis – actual or perceived – produces real change. When that crisis occurs, the actions that are taken depend on the ideas that are lying around. That, I believe, is our basic function: to develop alternatives to existing policies [world-wide], to keep them alive and available until the *politically impossible becomes the politically inevitable.*

As Witt (2010, p. 924) points out, 'Eliot Spitzer, the defrocked governor of New York and formerly that state's attorney general, had, in 2003, joined 49 other states pressing litigation against scores of major subprime lenders underwriting predatory lending practices. State legislatures enacted laws intended to curb these practices'. According to Spitzer (2008, p. A25), the Bush administration did not merely do nothing in the face of the rising crisis, 'it embarked on an aggressive and unprecedented campaign to prevent states from protecting their residents from the very problems to which the federal government was turning a blind eye' (Spitzer, 2008, p. A25). Moreover,

> In 2003, during the height of the predatory lending crisis, the OCC [Office of Comptroller of the Currency] invoked a clause from the 1863 National Bank Act to issue formal opinions pre-empting all state predatory lending laws, thereby rendering them inoperative. The OCC also promulgated new rules that prevented states from enforcing any of their own consumer protection laws against national banks. The federal government's actions were so egregious and so unprecedented that all 50 state attorneys general, and all 50 state banking superintendents, actively fought the new rules. (Spitzer, 2008, p. A25)

Beyond 'Moral Hazards': Towards economic, state crimes against democracy (E-SCADs)

Using economic canon, a 'moral hazard' involves the lack of any incentive to guard against a risk when one is protected against such risk. Moral hazard involves the idea that when executives are protected, or excused, from punishment for their bad judgments and risk-taking, they will continue such behaviour in the future – regulation has unanticipated and dysfunctional consequences (Kakabadse *et al*, 2010). The emerging hazards are explained below.

Government intervention – 'Too big to fail'

Moral hazard is held to be inherent in bailouts, loose credit and financial leniency, in general, as these practices appear to contain the harm caused by profligacy, excessive risk-taking, unwise investment and, in turn, further perpetuating the very behaviours causing risks. Government, as the 'bank of last resort,' is very evident in policy responses to the GFC. The US and the UK Government have given banks an unprecedented amount of support, including capital injections, purchases of bank assets and Treasury-backed support from central banks (Kakabadse *et al*, 2010). In the United Kingdom, for example, the price of this support amounted to approximately 47.5 per cent of UK GDP.

Gate keeping failure – Auditors, rating agencies and regulators

Bear Sterns, Lehman Brothers, Merrill Lynch, Maddof and others, all operated under the watch of external gatekeepers. The leveraging situation was ignored by regulators, accrediting agencies, auditors and governments. Regulators focus on structural elements of corporate governance such as board structure and composition, exemplified by the *Sarbanes-Oxley Act*, 2002, whereas softer elements, such as role definitions and board dynamics are ignored (Cutting and Kouzmin, 1999, 2000, 2001, 2002; Kakabadse and Kakabadse, 2008; Kakabadse *et al*, 2010).

Failures in corporate governance

Can remuneration committees balance short- and long-term risks with short- and long-term incentive schemes with regard to remuneration (Kakabadse *et al*, 2010)? How can one, avoid paying bonuses upfront and move closely to an effective, long-term incentive plan that generates value for the shareholders, while being consistent with the bank's obligation to manage risk – by more closely linking it to share price and shares paid with lengthy restriction periods (Walker, 2009)? Boards do manifest considerable asymmetry of information as the 'controlled' (the executive management) provide the controlling information to the 'controllers' (the non-executive directors) and as the controlled ultimately decide on the information level of controllers (Schillinger, 2009).

Groupthink and leadership

Groupthink is extreme concurrence-seeking in group decision making, producing anticipatory compliance and excessive loyalty. Symptoms of groupthink include dysfunctional illusions of invulnerability and unanimity, leading to risk negligence, recklessness and entrapment (Kouzmin, 2008, p. 169). Groupthink, with a belief in invincibility, becomes a lethal combination. Groupthink is still a controversial subject, even after critiques of original groupthink theory and framed new theories ('t Hart, 1994; 't Hart and Kroon, 1997; Garnett and Kouzmin, 2007, p. 174; Kouzmin, 2009). One of the yet-to-be-explored dimensions of groupthink is the extent to which groups become caught up in acting in accordance with excessive 'loyalty' (Hirschman, 1970, 1991) and the fluxing of 'visible' and 'invisible' power in the board room (Kouzmin, 2008, p. 170)

Hence, when there is a very articulate hero-CEO, supported by the full Board and advisors all supporting the same course of action, it is very difficult to voice adverse opinion (Kakabadse and Kakabadse, 2008; Pearce, 2009).

The myth of 'hero-leader creates a self-reinforcing, vicious spiral of dramatic changes imposed from the top, increasing fear and diminishing leadership within the organization, leading eventually to new crises and calls for more heroic leadership' (Senge, 1999, p. 74). As hubris is not based on reality, hubris is confronted by posing evidence to the contrary (Hillman and Dalziel, 2003), as exemplified by the board of Lehman Brothers when they thought that they 'knew it all' (Mehra, 2009; Pearce, 2009; Kakabadse *et al*, 2010).

Invisibility and the 'commercial-in-confidence' sanctuary

De Maria (2002) has argued that the 'commercial-in-confidence' clause is an obituary to transparency, as confidentiality clauses and the public's right to know create tensions for public accountability (Thorne and Kouzmin, 2006, 2010).

Collusion between business and politics

The praxis of huge bailouts to banks and platinum parachutes to those who wrecked the economy certainly needs to change (Mehra, 2009; Kakabadse *et al*, 2010). But a paradigm change discourse is likely to be more important, more urgent. Stakeholder concepts of corporate governance, and capitalism, have yet to be fully, and adequately, canvassed (Gorbachev, 2009; Reeves-Knyght *et al*, forthcoming).

SCADs, E-SCADs and Political-Economic Opportunism

According to deHaven-Smith (2006), state crimes against democracy (SCAD(s)) are actions, or inactions, by government insiders intended to manipulate democratic processes and popular sovereignty. 'SCADs differ from graft, bid-rigging, voting fraud and other, more mundane, forms of political criminality in their potential to subvert political institutions, entire governments or branches of government' (deHaven-Smith, 2006, p. 333). They are 'high crimes and misdemeanors' that attack democracy itself. Anti-democratic patterns are repeated either because political elites have similar motives regardless of the systems they are in and/or because they copy one another's tactics – oligarchic isomorphism (Thorne and Kouzmin, 2010).

> The lawlessness of the Bush-Cheney Administration [(2001–2009), for example], is a paradigm-shattering anomaly for political and administrative theory […]. Elected officials and public administrators are assumed to be law-abiding,

> ethical and professional. In theory, official criminality is possible but it should be rare (deHaven-Smith *et al*, 2008, p. 1). 'The Bush-Cheney Administration, however, has been highly resistant to transparent accountability (Loo and Phillips, 2006; Wolf, 2007) […]. This breakdown of democratic accountability is nothing new; it is the culmination of tendencies seen in Watergate, Iran-Contra, and other scandals in previous decades'. (deHaven-Smith, 2006; deHaven-Smith *et al*, 2008, p. 1)

Political and administration scholars need to determine how SCAD(s) were able to reach present levels of development without critique, within a republic with much hubris about the role of the 'free media'. Many public administration scholars are loath to recognize that anti-democratic politics can and do happen within the contemporary body politic. 'Other venues are required for examining how the genre of elite theory needs to move towards "gluing" together an ontology of "invisible" and, "conspiratorial," politics, "oligarchic isomorphism" and "SCADs" which other elite theorists have been unable, or "patriotically" unwilling, to provide' (Thorne and Kouzmin, 2010, p. 913).

The role of the media in the Neo-liberal, 'hollowed-out', 'no-bid' (Frederickson, 2007) contracting state (Kouzmin, 2007) has not been adequately discussed. Does the 'over reporting' of 'rape, pillage and looting' in New Orleans, for example, correlate with the fact that a model for privatized, police security [Blackwater] (Scahill, 2007) displaced public resources and other public legitimacies (Garnett and Kouzmin, 2009)? Crisis, as opportunity, rather than threat, revealed itself in Katrina's New Orleans. Natural disaster's 'eminent domain' (Epstein, 1985) opportunities provide glimpses of a new political 'ontology' manifest in the outsourcing state – '[New Orleans] will be re-built in *a completely different way* […] demographically, geographically, politically' (Scahill, 2007, p. 331, emphasis added).

Outsourcing, as the newer legitimization for down-sizing, de-skilling public sector competencies and reducing agency mandates, should be construed as a form of long-term 'capture' of the public sector. Outsourcing needs to be construed as asset-stripping, a form of fiscal 'corruption' in the hands of oligarchs within the private sector who remain prime beneficiaries of such arrangements and, more disconcertingly, by public sector oligarchs pressed into the legitimization services for such 'corrupt' practices – all in the name of effecting efficiencies in globalized public sectors. As Korten (1995) argues, neo-classical economic policies accommodate profit motives and greed as primary objectives of strategic governmental activity and act as tools of indoctrination for the rest of the polity. To further consider some of the issues related to strategic outsourcing, bailouts and colluding re-regulating initiatives, and the likelihood that economic SCADs (ESCAD(s) have been committed, the analytical lens moves to critiques of collusion and apparent corruption within the public-private partnership (PPP) narrative.

Collusion in Neo-Liberal Partnerships

At a time of GFC, the Australian federal government, like many others around the world, took unprecedented actions with multi-billion dollar economic stimulus packages and bank guarantees, and embarked upon a countrywide, major infrastructure development programme to create, and secure, jobs (Prime Minister of Australia, 2008, 2009). A fair percentage of these initiatives have been or will be outsourced proceeding as some form of PPP, a generic term that applies in Australia to PPPs, as well as privately financed initiatives (PFIs) (Johnston and Gudergan, 2007). The Australian government's fast-track approach to PPPs in infrastructure development is likely to occur in around 10 per cent of total projects, if precedent is any guide, which means that the extensive worth of current and near-future projects is at stake in a highly contestable environment. In late 2008, A$76 billion of government funds were allocated to infrastructure development.

The strong support given to PPPs by the public and corporate sectors needs to be questioned. Although PPPs are a popular option with key stakeholders, the development of economic infrastructure has not been particularly successful (Johnston and Gudergan, 2007, 2009; Kouzmin, 2007, 2009). There is now a consistent and negative commentary from the media and the community about the process (Ferguson, 2009). Australia, on average, has a higher failure rate (around 7.0 per cent) than the average for developed economies (around 1.0 per cent) for these arrangements (Johnston and Gudergan, 2007). Yet business and government continue to promote PPP expansion, even though the problems of the model are well known (Infrastructure Partnerships Australia, 2007; Prime Minister of Australia, 2008).

Infrastructure Partnerships Australia (2007) identified some of the fundamental problems of PPPs: under-bidding, optimistic forecasts, poor risk allocation, the higher cost of private capital versus government finance, the lack of disclosure and transparency of arrangements, and citizens' distrust of infrastructure development through PPPs. This strongly suggests that the privatizing/outsourcing state is aware of these PPP problems but continues to support them. Thus, PPPs clearly have a potential to facilitate the commission of E-SCADs as an inevitable and inherent systemic consequence of neo-liberal-driven public policymaking.

The current federal government's multi-billion dollar infrastructure initiative seems to be opening the way for the likelihood of an increasing number of state-sponsored, white-collar E-SCADs to be committed through PPPs. These PPP-driven E-SCADs are clearly not in the spectacular league of military conflict or assassinations (deHaven-Smith, 2006), but can be significant, economic crimes against democracy through outsourcing and privatization policies. The factors that may enable the likelihood of E-SCADs should include the following categories: colluding oligarchs and political elites;

tendering and contract opportunism; failed projects and management of risk; incompetence and unintended E-SCADs; and politicization within PPPs (Johnston and Gudergan, 2007, 2009).

Of course, the outcomes of these 'market transactions' are often obscured from public and regulatory understanding given the complexity of competing policy developments. One example is the 'too big to fail' relationship between Australia's big-four banks; some of the largest, and dirtiest, energy producers; and the Australian government. TRU Energy and International Power paid billions for two significant coal-fired power stations in 2000 at a time when climate change and emissions trading debates were raging. The two stations are loaded with debt with loans secured against the local assets (Verrender, 2010) rather than being directed back to Head offices in London and Hong Kong. The debt levels meant that neither power station would survive any increase in costs, which could emerge from an emissions trading scheme and the result has been that both producers and the major banks have been strident critics of the recently flagged emissions trading scheme. Subsequently, the government sought to compensate the producers for any loss to the tune of A$3.5 billion. However, even this was not enough and the latest compromise is A$7.4 billion, a figure once again rejected by the producers as too low.

Although the final outcome is far from settled, the gun is clearly being held at the Federal Government's head. The producers have threatened to shut down the power plants if the emission trading scheme goes ahead without compensation because they would no longer be economically viable. The Australian government cannot allow this to happen given that these stations provide such a large proportion of the total energy supply. Equally, the banks will face significant debt risk if the stations close down, and, as such, they too are pressuring the government. Hence, it is likely that billions in taxpayer dollars will be handed over to compensate the producers and, by default, the banks and both parties will avoid any risk.

Moral hazard in this situation is no longer a defining element of commercial activity; and given the way this particular example has emerged, the question needs to be asked as to whether the government was outflanked by clever corporate strategy. Given that the emission trading scheme debate was so strong, to what extent did these international energy giants consider their ability to politically manipulate the situation to their benefit? One may assume that in building scenarios around the purchase of these major assets the impact of any emissions trading scheme would have been carefully considered, as would the tactical response. Equally, to what extent did the provision of loans provided by the banks consider the likelihood that any changes to the emission trading environment would ultimately be underwritten by taxpayer? The banks must have recognized the risks associated with heavy debt burdens as new policy was being established around emissions trading. Perhaps, in both cases, the experience in Europe, and an understanding of the political reality facing governments, led to the adoption of a strategy based, in part, on a public bailout.

There is other evidence, beyond reasonable doubt, of numerous seamless transitions of elites, and collusion, between public and private domains in the arena of privatization and major economic infrastructure developments in Australia (Hansard NSW, 2006). Two months after resigning his office in August 2005, the Premier (the elected leader of the parliamentary party voted into office in a state election) joined Macquarie Bank as a part-time advisor on privatization, purportedly earning twice as much as he did as a full-time Premier. Macquarie, encompassing its diverse portfolio of companies, is one of the dominant Australian and global infrastructure companies in the world, including infrastructure interests in the United States. However, Macquarie's operations, overall, apart from what is required in official disclosure, are extraordinarily opaque (Hoy and Johnson, 2008). There are other examples that confirm a similar pattern of movement and exchange, especially of key actors involved in major economic infrastructure development (Johnston and Gudergan, 2007).

It is obvious, as a result of these ongoing practices and arrangements that proceed essentially unchallenged, that strategic exchange of privileged insider information occurs routinely. This suggests that intellectual capital surrounding the complexities of privatized and partnered projects is not contained but is shared between the public and private sectors by elites/oligarchs. Strategic knowledge is readily transferred from one sector to the other, which disadvantages anyone not part of the oligarchic core. This leaves continuing opportunities for rent-seeking behaviour and conflict of interest to be played out. The environment in which economic infrastructure is developed, and the processes for initiating and enacting tendering and contract development, poses considerable risk and provides opportunities for E-SCADs to occur. It is known that private stakeholders in transport infrastructure continue to be donors to the party in power. Similar to other jurisdictions, at the highest level of potential crime, there are suspected invisible or silent oligarchies in which protectionism and mutual self-interest appear to be in existence, but exact details remain unknown (deHaven-Smith, 2006).

Taking the shadowy evidence of oligarchic arrangements and power structures that are in the public domain, there are disconnected pieces of evidence which suggest that E-SCADs are being committed or, at the very least, there are gaping failures of governance, which would easily allow for political and corporate elites to commit E-SCADs. Failure of public governance and ethical guidelines to potentially control such exploitation could seriously be regarded as an E-SCAD of itself (Johnston and Gudergan, 2007, 2009). A relatively unrestricted arena of high, oligarchic opportunism against the public, towards commercial, self-interest prevails and this situation will remain because, from a public governance and ethics perspective, it supports, rather than restrains, actions and behaviours that predispose oligarchs and elites towards E-SCADs. There is a systemic weakness of governance of the most basic kind, which opens the way for E-SCADs. Owing to 'commercial-in-confidence' provisions and the lack of public disclosure, it is impossible to quantify the value of tax-payer's money foregone, but it is likely to be in billions of dollars. If E-SCADs are being committed more universally within the PPP model around the world, a much greater and higher-level series of E-SCADs is at play.

E-SCADs on Wall Street: Default on Main Street

The breathtaking extent of the systemic collapse of the financial and banking system must be considered as an inevitable consequence of the deliberate destruction of government and regulatory oversight by the interlocked economic/ideological and political/propaganda components of Neo-liberalism. Keynesian economics and other supporters of activist government economic and social policy were eliminated in order for 'free markets' to thrive without hindrance. Over the last 40 years, 'the theoretical revolution begun by Milton Friedman in the economics profession and the political revolution symbolized by the rise to power of Margaret Thatcher and Ronald Reagan were explicitly pitched against Keynes and his ideas' (Bateman, 2006, p. 286). Government's function was restricted to protect freedom from internal and external enemies, to protect citizens from each other, to maintain law and order, to enforce private contracts and 'to foster competitive markets' (Friedman, 1982, p. 2, cited in Klein, 2007, p. 5).

This new 'fundamentalist' version of capitalism (see Klein, 2007) was responsible for the monetarist 'colonization' of the World Bank and the IMF was essential to the worldwide reach of the 'Washington Consensus'. These institutions were moved away from the original democratic intentions and were dominated by the absolute economic power of the larger nations. This allowed not only the United States to dominate these institutions but also 'highly ideological administrations such as Reagan and Thatcher to turn them into primary vehicles for the advancement of the corporatist crusade' (Klein, 2007, p. 163). Everywhere, 'main street' became divorced from Wall street and a criminogenic (deHaven-Smith *et al*, 2010) elite emerged:

> In every country where Chicago school policies have been applied over the past three decades, what has emerged is a powerful ruling alliance between a few very large corporations and a class of mostly wealthy politicians – with hazy and ever-shifting lines between the two groups. (Klein, 2007, p. 15)

For the past almost forty years, exaggerated, mystifying claims about unfettered markets transforming technology and the dynamism of democracy removed any signs of modesty within the 'dismal science' of economics

(Kouzmin, 2009). According to this delusion, history no longer mattered and the present was constantly captured by one possible Neo-liberal, monetarist future (Gerlach and Hamilton, 2000). Communism and Socialism were supposedly defeated by 'free enterprise'. Human society had reached the 'end of history' (Fukuyama, 1992), and triumph of economic and political liberation was no longer restrained by the physical hardships and demands of industrial and service compacts. Everyone was encouraged to become a property owner and equity investor and participate in the unchecked prosperity of the 'ownership society'. Especially in the United States and the United Kingdom, the banking/financial sector expanded exponentially and 'old world' physical production was moved offshore. Global cyberspace, epitomized by free-flowing finance and disembodied transactions, promised physical and ideological transcendence. Capitalist economics and its 'efficient market' conspirators – investment banking, management, finance, the accounting profession, rating agencies and marketers were effectively the 'emperor's new clothes' projecting the systemic and personal ability to overcome all forms of scarcity and transcending any constraints associated with earthly existence (Ravenscroft and Williams, 2009).

Although the post-stagflation 'Washington Consensus' era exhibited lengthy periods of national and global growth in Gross National Product and improving living standards, the rapid extension of free-market economics and social policy was distinctive for national and international 'accumulation by dispossession' (Harvey, 2006, p. 43). This involved permanent visible and invisible warfare, massive growth in inequalities, multiple economic and political instabilities, market failures, increasing speculation about the solvency and liquidity of the domestic and international financial systems, and concern about the inevitability of unattainable investment 'bubbles'. Since mid-2007, Greenspan's 'irrational exuberance' morphed into a financial and social meltdown, which rivals the Great Depression of the 1930s. The new epoch of dephysicalized, frictionless, unrestrained, ahistorical economic growth, revolving around free-markets, information and computer technology (ICT) and an increasingly 'criminogenic' (deHaven-Smith *et al*, 2010), plutocratic democracy, crashed and burned. For those in the real 'main' street economy and in 'emerging' nations, the Washington Consensus, the New World Order and the Peace Dividend echo religious dogma from a bygone era. An era in which nations and individuals 'joined the democratic wave' (only to be) 'hit with a perfect storm of financial shocks – debt shocks, price shocks and currency shocks – created by the increasingly volatile, de-regulated, global economy' (Klein, 2007, p. 160).

The GFC should not have come as a surprise to anyone freed from monetarist economics and Neo-liberal dogma. Boom and bust cycles are common in national and international economies (Bonner and Rajiva, 2007). The vicissitudes of the business cycle, and the propensity for the development of 'bubbles' in the inter-related economic and business cycles, have been extensively documented (Ferguson, 2008). However, apart from the 'perma-bears', few commentators, with perhaps the exception of academic and market commentator Roubini, predicted the devastation wrought by the GFC (Garnaut, 2009). Central to this failure was the widespread self-serving conviction that a Neo-liberal, monetarist world, based on the implementation of free-market capitalism, the unrestrained use of ICT and rampant individualism had overcome the knowledge gaps and physical limitations causing economic and business cycles. The pervasive conviction that markets were inherently 'efficient' and inevitably 'self-correcting' blinded free-market adherents and just about every 'mainstream' economist and market participant to the possibility that any problem, let alone, a GFC, was possible or imminent (Skidelsky, 2009, p. 168).

What has become evident is that economic and political elites were increasingly enchanted by the possibilities of de-physicalized, financial engineering to generate superior returns without commensurable risk (while passing the 'dirtier' aspects of capitalism to other locales) and that governments being convinced, or convincing themselves, that manipulation of the money supply was all that is required to ensure economic and social progress. This delusion was so self-serving and so obviously wrongheaded to be deserving of criminal prosecution – not the extensive takeover of 'toxic' assets and other so-called 'investments' by taxpayers.

Derivatives did not remove risk from business and economic transactions. In actuality, when combined with effectively unregulated access to leverage, via securitization and 'shadow' banking', financial destruction was inevitable. This financial engineering amounted to a gigantic, irresponsible game of pass the parcel and, in its most repellent forms, was no more than a set of huge 'Ponzi' schemes. McDonald and Robinson (2009) provide a chilling first-hand account of Lehman Brothers' hubristic fall from grace and especially the firm's fatal addiction to impossibly leveraged, securitized, residential real estate. In addition, it is becoming clear that the 'wolfs of Wall Street' (Belfort, 2009) did not simply rely on the supposed 'efficiency' of markets or their political/corporate connections to make money but actively engaged in inappropriate lending to those with little possibility for repayment; engaged in naked and other predatory forms of short selling; traded in hidden 'dark pools'; used share lending to increase profits; charged excessive fees for illusionary returns; and visibly and invisibly acted to manipulate markets so as to profit from volatility. Goldman Sachs has become the 'poster child' for these 'old' and 'new' E-SCADs (Teitlelbaum, 2010, p. 7) and is currently under investigation for its involvement with Greece's manipulation of its financial arrangements with the European community (*The Sydney Morning Herald*, 2010).

Finally, the 'too big to fail' recapitalization of selected banks and the buy-outs of some big corporations only reinforces the extent of 'crony capitalism' within supposedly advanced economies and the criminogenic nature of allowing members of an inter-connected elite to use government funds as a solution to deluded speculation and hubristic excess. Unfortunately, this conclusion is further reinforced by the extent that Wall Street alumni (especially individuals connected to Goldman Sacks) and Friedman, monetarist economists still direct and/or have influence on United States and worldwide responses to the GFC.

Towards Forensic Examination: E-SCADs or Not?

The potentially catastrophic collapse of Wall Street private financial institutions from late 2008 onwards, which triggered the GFC, as indicated above, has led to crisis management responses by governments around the world (Prime Minister of Australia, 2008), especially in the major Anglo-American polities. To what extent the governments might have committed E-SCADs in the process of what looks increasingly like policy-on-the-run (re-) action, or something more purposeful in terms of largesse to the private-sector oligarchic elite, is clearly in question? One issue is the extent to which governments may have acted ethically and, more importantly, legally, in responding to this crisis? Another relates to the opportunity cost for citizens in terms of government programmes and services foregone had not extensive public funds been directed towards corporate ‘bail-outs’ rather than democratically determined services and programmes. To what extent has the private interest, rather than public interest, been served is the critical test?

A full, forensic examination of state responses to the GFC, because of the lack of overall transparency of precisely what has transpired, as well as extraordinary complexity, remains tentative. Detailed analysis is totally dependent on what has been revealed publicly rather than what is speculative and shadowy. Inevitably, there has been a series of events, meetings, pleadings, behind the scenes, revolving around power and politics that has not yet been revealed. Only now the secretive deals, which pushed the American International Group (AIG) to the edge, and the role of the then Head of the New York Federal Reserve, Timothy Geithner, have been revealed (Teitlelbaum, 2010, p. 7). Furthermore, although there is an enormous volume of disparate ‘evidence’ in the public domain, its value, at times, is questionable. As such, much of the burden of proof, in attempting to establish a coherent case for or against E-SCAD commission in the current crisis, can be directed more towards proven ‘on the balance of probability’ rather than ‘beyond reasonable doubt’ (deHaven-Smith, 2006; Kouzmin *et al*, 2009a, forthcoming).

What is known, as fact, is that in spite of the three-decades’ long, strong, free-market rhetoric of Neo-liberalism, US, UK and Australian oligarchic, private-sector elites, in this crisis, have been at the receiving end of what is being described as unprecedented corporate welfare, although not all has simply been hand-outs (*New York Times Style Magazine*, 2009). This has occurred, and continues, through the range of so-called stimulus packages provided by the state. Although the crisis, from an Australian perspective, was seen to be more critical in the United States than in Australia, the response of the state in both polities has been similar, although the scale related to relative economies has clearly been different (Prime Minister of Australia, 2008; OECD, 2009).

In considering the GFC in the United States, it is worth examining the formal government supported neo-liberalist era over the years from the perspective of state provided, private-sector aid. Between 1980 and 2008, for example, as a result of a range of crises, the US government, purportedly, provided the financial, airline and motor vehicle industries with bailouts totalling around US$ 493 billion. From 2008 to the present, however, the total amount of 'bail-outs arising from the GFC is purported to be around US$ 4627 billion. In a period of less than two years, compared to the 18 years before, the level of state support, this time largely for the wider financial and motor vehicle industries, has increased at least ninefold (ProPublica, 2010).

There was, of course, a reasonable logic to the airline industry bailout in 2001 with 9/11, as government action grounded all air traffic for a period, major airlines were the direct target of extraordinary terrorist action and nervous potential passengers were reluctant to fly. However, in the cases of the broader financial and motor vehicle industries, the main logic surrounding the apparent episodic necessity for a 'bail-out' seems to have been their own corporate inability to manage strategically (ProPublica, 2010). Government desire to avoid the unacceptable political, economic and social repercussions of the collapse of critical players in major oligarchic-dominated industries is understandable.

However, the recidivism rate of imminent failure within these industries (ProPublica, 2010) suggests that the 'bail-outs' are having a limited, long-term impact as catalysts for obviously needed positive change and industry restructuring, with much greater regulation and accountability. If government is prepared to 'bail-out' every time there is a significant, or extraordinary, crisis in these sectors, it is not surprising that the institutionalized response of the elite industry actors, as oligarchic isomorphism (Kouzmin *et al*, forthcoming), is to come to government, cap-in-hand, as a right/entitlement.

The corporate cultures surrounding these oligarchic elites privilege them in ways that are significantly different from others, especially in terms of what is ethical and what is not. For the Chief Executive Officers (CEOs) of the so-called 'Detroit 3', as the crisis became evident, to arrive in Washington DC in late 2008, in private corporate aircrafts (Milbank, 2008), demonstrated extraordinary insensitivity and a similar level of corporate hubris (insolence), which led to Enron's eventual, but spectacular, demise (Munson, 2005). It was only Congressional and public outcry that tempered the 'Detroit 3's' subsequent corporate behaviour. What was blatantly obvious to most, initially, was apparently invisible to them. How can this be explained?

Unlike the oligarchs of ancient Greece (or even modern Greece?), 'the rule of men [sic] of property, the rich …' (de Ste. Croix, 1972, p. 35) did have some legitimate political rights, although questionable. Modern-day corporate oligarchs clearly attempt to rule without formal, political legitimacy. However, simple observation would suggest that what the ancient and modern oligarchs, respectively, have in common is that they held, and hold, the ideals of the democratic polis in contempt. In this sense, oligarchs are above the common people, and even the state, as they are exceptionally privileged by their wealth and position. When they err, they seemingly take it for granted that it is their right to be bailed out so their status is maintained. These oligarchs also possess significant bargaining power.

Within the modern oligarchic club, as in ancient times, they have no moral responsibility to others but are beholden simply to themselves. Effectively, corporate oligarchs have 'captured' the state or, at the very least, have established a high-dependency and mutually beneficial relationship between themselves and the state (Kouzmin *et al*, forthcoming). This crisis indicates that such a relationship compromises democratic ideals to an extreme, and potentially sets the stage for E-SCADs to be committed by governments subjected to corporate, oligarchic power at critical times. The oligarchic clubs of ancient Greece were ruthless and membership was tenuous to some extent (Cambridge Ancient History, 1979). There is no evidence to suggest that today's oligarchic clubs are any less ruthless. Ruthlessness, in political behaviour of any elite puts the integrity of the state, and the public interest, at risk.

Furthermore, some political elites, inevitably, will be attracted to the oligarchic club and will seek membership by compromising democratic norms, thus reinforcing the high dependency relationship between business and government elites. They can also use their legitimate power to support their actions with the corporate oligarchs. The *Emergency Economic Stabilization Act* (2008) and the Troubled Assets Relief Program (TARP) established under the Act, in the United States, certainly gives legitimacy to government action to 'bail-out'. In the case of TARP, there was an amount of more than US$700 billion, out of total bailout commitments of around US$12.2 trillion *(New York Times Style Magazine*, 2009). Fancifully, details of the Act are available at a government website titled 'Financial Stability' (US Department of Treasury, 2009). Whether this Act is simply a device or mask for rewarding the oligarchic elite probably remains to be seen in terms of how moral the oligarchs are in repaying government largesse. Although in many polities the citizen was also given some degree of financial relief, in the current crisis, this pales into insignificance in comparison to the bailouts given by the state to the corporate oligarchs.

The case of Lloyd's Bank in the United Kingdom supports this assertion. Lloyds, in the light of a current £6.3 billion loss is now dependent upon 'schemes implemented by the British government to keep money flowing', to the amount of £157 billion (Treanor, 2010, p. 55). Other banks, in the last decade or so, such as Barings, have not been so privileged and have been subject to market failure. Although the Detroit 3 are attempting to meet their repayments of the $26 billion awarded to them, there is still is a long way to go before final payments are made. Out of the seven original 'recipients of exceptional financial assistance', […] 'five companies have outstanding "exceptional assistance" from the American taxpayer: AIG, Chrysler, Chrysler Financial, GM and GMAC'. The Bank of America and Citigroup have already paid their 'exceptional assistance' (Feinberg, 2010).

The underlying hubris, for the most part, of these 'exceptional assistance' and other corporate-oligarchic beneficiaries seems barely dented. There is also little, if any, evidence of contrition about their behaviour or the likelihood that Wall Street and Detroit will change significantly. So far, there have only been feeble governmental attempts, in the midst of a large amount of blaming rhetoric, to moderate corporate excess. In the United States, TARP legislation has supposedly given some, but limited, authority to the 'Special Master' (Feinberg, 2010) (appointed by Geithner) to limit executive compensation for the oligarchic elite in the financial industry, particularly those who received 'exceptional financial assistance'. However, as the Special Master notes (Feinberg, 2010), he has no power to override existing executive contracts, although, in one instance, he has successfully renegotiated such a contract. In addressing this and related issues, the Master has also sought special assistance from Harvard Law School and the University of Southern California's Marshall Business School. This is indicated in a recent 'Press Room' statement from Feinberg (2010), the implication being that this advice from academic elites further confirms the relative helplessness to act definitively to stop corporate compensation excess but gives action so far, some legitimacy. Although principles have been established, there is limited authority to do much more than advise.

A similar disregard for corporate, moral responsibility has been evident in the Australian government schemes. It took government no time at all to support the major big-four banks, even though they are subject to strong prudential, regulatory control. Although clearly exposed to some degree of risk through the international fallout from the subprime and Wall-Street crises, the government announced deposit guarantees for amounts of up to A$1.0 million. Although this was clearly comforting to Australians who had deposits in these institutions, such government action resulted in the flight of capital to the big-four banks from a wide range of non-guaranteed, financial institutions, some of which were also subject to strict prudential, regulatory control. Unlike the big-four, these institutions, effectively, were shut out of international markets as a result (Gruen, 2009). The level of risk to these institutions was so great that they were forced to stop withdrawals for a while, which, in turn, led to government deciding to provide interim welfare support until the problem was resolved. Inevitably, the big-four Australian banks have had a windfall benefit from this action in the intervening months and have, on occasions, passed on interest rate increases beyond the official rates (Hartcher and Irvine, 2008). They have also rewarded themselves handsomely.

However, possibly one of the most morally corrupt government 'bail-outs' of A$320 million, in Australia, has occurred in relation to a large, multinational company in the construction industry. In a long-running public and highly controversial saga over its need, but reluctant to set up and manage a compensation fund for employee victims of their asbestos-related products over time, the company James Hardie defaulted on the requirement to make a $1.8 billion payment to the fund. They cited the reason for their default as the impact of the GFC but promised that they would repay this amount when they could. In this case, government certainly faced a dilemma – to disadvantage the victims or reward Hardie for total irresponsibility (Drape, 2009). In this situation, government had effectively been forced into committing an E-SCAD, where there is evidence beyond reasonable doubt.

Furthermore, in the Australian setting in which forensic tracking is probably easier than in the United States because of a smaller economy and population, there have been numerous claims about the inefficient implementation of 'stimulus package' initiatives resulting in significant waste and, even worse, loss of life. In the case of a 'green' policy including a just-suspended free-home insulation programme, four young people involved in installations have lost their lives through electrocution and heat exhaustion (Head, 2010). Over 1000 homes are to be inspected for possible electrification of ceilings caused by the insulating product that was used and limited quality control. This scheme attracted many new, inexperienced and unqualified entrants to the industry. In addition to the original stimulus package, government has now implemented a compensation scheme of A$ 41.0 million.

As these macro and micro level examples suggest, there has clearly been significant failure of public management as a response to the GFC. It is, obviously, impossible in the short period, since the GFC began, to gauge the efficacy of government 'bail-outs' of the corporate sectors, in real terms, especially as the economic starting point for all countries is not equal. Australia was in a better economic situation, with strong monetary policy which has been more effective to a considerable extent (Gruen, 2009), than the United States. The US Department of Labor (2010) figures indicate, for example, that the US unemployment rate moved from 6.9 per cent in the last quartile of 2008 to 10.0 per cent in the last quartile of 2009, a 3.1 per cent increase. For Australia, in the same period, there was only a 1 per cent rise, from 4.5 per cent to 5.5 per cent.

The Organization for Economic Cooperation and Development (OECD), in November 2009, in their 'Economic Outlook', urged the US and Australian governments to reduce economic stimulus measures during 2010. Whether they are correct in doing so, and on what basis they are making these recommendations, is not directly clear as it is unlikely that they have the wisdom to manage this crisis any better than governments on the run. Although economic growth is projected to be positive in 2010 in both countries, other indicators relating to areas such as government debt or consumption suggest that recovery may be exceptionally slow.

On the basis of the evidence relating to the GFC to date, public management/ crisis management has certainly been flawed. On the balance of probability, it is likely that multi-billion dollar E-SCADs have been committed by the state, related to the arguments outlined above. To what extent these state crimes are wilful or related to 'capture' and incompetence is not yet clear. However, such an assertion of likely government 'criminality' is further supported by pockets of evidence beyond reasonable doubt that demonstrate profligate waste of stimulus funds through government incompetence. Only a very small part of this story of incompetence has been told here. Thus, there is likely to be a continuing, and even an inter-generational, negative legacy because of government largesse and incompetence, as well as oligarchic isomorphism, as a public management response to the GFC. Furthermore, unless the high-level dependency-capture nexus between the oligarchic corporate elite and the elite of the state is modified, the same kind of 'bail-outs' and E-SCADs will be evident again when the next crisis looms. Instead of ancient Greece, the historical reference point will more likely be leading Anglo-American polities and other counterparts in the Group-20, the most recently created political, oligarchic club.

Conclusion

Despite the resurgence of history and the re-appropriation of interventionist economic and social policy, it is questionable to what extent things have actually changed. The central contradiction still remains – capitalism inevitably involves the unequal accumulation of capital and other forms of wealth and elites and others who benefit from this accumulation constantly strive to render invisible this contradiction, even to the point of self-destructive hubris. More than anything else, the GFC has exposed the appalling consequences of such self-absorption and projected delusions, especially when these convictions/ enchantments envelope everything in global existence. Post-GFC, public administration must be attuned to taming this beast. This should begin with the recognition that such crises are not unusual, that there are economic/ business cycles that are inherently, highly destructive and that new epochs of productivity are not just simply based on geographic and demographic extensions of traditional forms of exploitation but are hard won and easily subverted by the fluxing of visible and invisible power to serve the interests of criminogenic oligarchs/political elites.

Public affairs scholarship must not be swayed or distracted by claims that a new epoch of 'transparency' will not only resolve the GFC but will also prevent future financial crises. Public policy must be attuned to the interests served by any proclaimed 'transparency' and ever watchful of claims that 'transparency' has resolved the crisis. Keynes, and history, must not be put away when the economy has improved and financial and other markets are presented as being capable of self-regulation. To cite just one cautionary tale, the 'transparency' that was supposed to have eliminated earlier speculative market manipulations of Enron (Munson, 2005) has had little impact on the subsequent GFC, where Enron-style 'invisible' off-balance-sheet financing permeated the murky world of global financial engineering and 'shadow' banking.

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