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# Black Swans and Black Elephants in Plain Sight: An Empirical Review of Central Bank Independence

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Prior to the 2008 financial crisis, it was easy to see the logic of delegating monetary policy to private central bankers. It was widely accepted that politicians could not be trusted with monetary policy because of their short-term time horizons and fixations on their next elections. They would be tempted to spike the punch bowl just when central bankers, with their longer time horizons, would be taking the punch bowl away from the party.[1] The credibility of the Federal Reserve in helping maintain low inflation seemed to confirm the conventional wisdom of keeping central banks insulated from politics. Legal scholars have largely deferred to this orthodox economics consensus on central bank structure by avoiding the constitutional critique of broad delegations to privately-directed central banks.[2] But the

* Betty Hutton Williams Professor of International Economic Law, Chapman University School of Law. I am grateful to Len Baynes, dré cummings, Lynne Dallas, Angela Harris, Christian Johnson, Joe Knight, Bob Kuttner, Martha McCluskey, Tayyab Mahmud, Lawrence Mitchell, Athena Mutua, Frank Pasquale, Steve Ramirez, Nancy Rapoport, Lynn Stout, and Mark Tushnet for key encouragement for my research agenda on central banking in American law. I would also like to thank participants at the Class Crits Workshop on "Rethinking Law and Economics" at the University of Buffalo Law School and the Baldy Center for Law and Social Policy, and conferences on the financial crisis held at the S.J. Quinney College of Law at the Univeristy of Utah and St. John's University School of Law. In addition, I appreciate the lively discussion and helpful comments I received at faculty workshops at the University of San Diego School of Law and UCLA School of Law. I am indebted to Rebecca Laws, Aron Movroydis, and James Moore for their able and timely research assistance. Finally, I thank Hannah Elisha, Janelle Salamon, and Jennifer Fry for their editorial skill, and to the student members of the *Chapman Law Review* for all their work to bring this article to publication. The views expressed in this article are entirely my own.

1 William McChesney Martin, Federal Reserve chairman in the 1950s and 1960s, is credited with the punch bowl aphorism. *See* N. Gregory Mankiw, *How to Avoid Recession? Let the Fed Work*, N.Y. TIMES, Dec. 23, 2007, (Sun. Money), at 4. Mankiw, a Republican economist, downplayed the Federal Reserve's failure to prevent the subprime mortgage crisis through regulation. *Id.* Mankiw also defended the Fed's easy monetary policy in 2007 as an attempt to avoid recession by "spiking the punch with grain alcohol when the party starts to flag . . . ." *Id.*

2 The Federal Reserve is a privately-owned central bank; each of the system's twelve regional Federal Reserve Banks is owned by private commercial member banks. Lewis v. United States, 680 F.2d 1239, 1241 (9th Cir. 1982); THE FEDERAL RESERVE SYSTEM: ITS PURPOSES AND FUNCTIONS 48, 50–53 (Bd. of Governors of the Fed. Reserve

financial crisis and its continuing aftermath have shaken this orthodox paradigm of central bank independence. Suddenly, it seemed that central bankers were as prone to short-term herd behavior as any politician, and that the Federal Reserve was not all that independent of the private financial interests that dominate its own governing boards.[3] The line between regulator and regulated industry had become blurred as the central bank enabled the housing bubble with low interest rates and ever-lower lending standards, while abandoning any meaningful oversight or supervisory role. Critics charge that the central bank was not simply asleep at the wheel, but that it was an active cheerleader in all that had gone wrong in inflating a huge and unsustainable bubble. Since the collapse, the Federal Reserve has showered trillions of dollars in subsidies on its private constituencies, far exceeding all other subsidies and stimulus packages passed by Congress combined.[4]

Indeed, since the financial crisis hit in 2008, the case for autonomous central banking has been increasingly questioned, even in financial circles.[5] Others see no such lessons from the financial collapse and subsequent bailouts. An article by Harout Jack Samra warrants attention for combining the typical range of flawed assumptions and problematic methodologies in arguing for central bank independence.[6]

Part I of this essay will consider the economic authorities relied upon by Samra, including David Ricardo and John

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Sys. 2d ed. 1947) [hereinafter THE FEDERAL RESERVE SYSTEM: ITS PURPOSES AND FUNCTIONS 1947] (reporting that each of the twelve Federal Reserve Banks is a private corporation which serves a regional district and is obligated to "subscribe to the capital of the Federal Reserve Banks"); MURRAY N. ROTHBARD, A HISTORY OF MONEY AND BANKING IN THE UNITED STATES: THE COLONIAL ERA TO WORLD WAR II 258 (2002) (quoting a Chase National Bank official, prior to the Act's passage, that the Federal Reserve Act "will make all incorporated banks together joint owners of a central dominating power"); WILLIAM GREIDER, SECRETS OF THE TEMPLE: HOW THE FEDERAL RESERVE RUNS THE COUNTRY 277 (1987) [hereinafter GREIDER, SECRETS OF THE TEMPLE] (describing "a privately controlled network of regional reserve banks that would be given governmental powers"); RON PAUL, END THE FED 23 (2009) (concluding that the Federal Reserve Act conferred "legal legitimacy on a cartel of the largest bankers").

3 The Federal Reserve's policy-making Federal Open Market Committee (FOMC) includes the regional Federal Reserve Bank presidents who are appointed by boards of directors which are in turn selected by private commercial banks in each regional district. THE FEDERAL RESERVE: PURPOSES & FUNCTIONS 3–4, 10 (Bd. of Governors of the Fed. Reserve Sys. Publ'n Comm. ed., 9th ed. 2005) [hereinafter THE FEDERAL RESERVE: PURPOSES & FUNCTIONS 2005].

4 Div. of Supervision and Consumer Protection, The Fed. Deposit Corp., *A Year in Bank Supervision: 2008 and a Few of Its Lessons*, SUPERVISORY INSIGHTS, Summer 2009, at 3, 7.

5 Clive Crook, *Central Bankers Get with the Politics*, FIN. TIMES, May 17, 2010, at 13.

6 *See generally* Harout Jack Samra, *Central Bank Autonomy in Latin America: A Survey and Case Studies*, 13 CHAP. L. REV. 63 (2009).

Maynard Keynes, towering figures in the history of economic thought.[7] Samra overlooks conflicting views of Keynes in particular.[8] Although Keynes endorsed the autonomy of central bankers he also argued that they should be motivated solely by the public interest.[9] Keynes also endorsed the nationalization of the Bank of England and provided a theoretical framework for neutralizing monetary policy and reigning in the authority of central bankers and activating the fiscal capabilities of elected branches of government.[10] A fair and balanced discussion of Keynes suggests, at the very least, that central bank governance and monetary policy are far more complex matters than presented by Samra and other proponents of central bank independence.[11] Consideration of the Keynesian model in action, particularly during the 1940s, suggests that high economic growth and low inflation need not be inconsistent with a more accountable central bank.[12] Meanwhile, the record of the Federal Reserve's more recent failures suggests that autonomous central banking invites regulatory capture, financial instability, and eventual financial collapse and bailout.[13]

Part II considers the empirical research relied upon by Samra, including studies that purportedly correlate central bank independence with lower inflation rates.[14] The studies were all conducted prior to the 2008 collapse and all mimicked the flaws in the risk management models that contributed to the financial crisis by relying on far too limited time periods of historical data.[15] By so doing, they overlooked the possibilities of so-called "Black Swans"—those outlier events that do not fit neatly within the bell-shaped curves of probabilities, but which do occur and reoccur in history.[16] Instead, the studies all engage in a crude type of comparative analysis, comparing countries and inflation rates while ignoring all potential non-monetary factors, such as differences in regulatory and trade policies affecting consumer price levels.

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7 *See generally* GIANNI VAGGI & PETER GROENEWEGEN, A CONCISE HISTORY OF ECONOMIC THOUGHT: FROM MERCANTILISM TO MONETARISM (2003).

8 *See, e.g.*, Samra, *supra* note 6, at 69.

9 *See infra* Part I.

10 *See infra* Part I.

11 *See infra* Part I.

12 *See infra* Part I.

13 *See infra* Parts I & II.C.

14 *See infra* Part II.A.

15 *See infra* Part II.A; Timothy A. Canova, *Financial Market Failure as a Crisis in the Rule of Law: From Market Fundamentalism to a New Keynesian Regulatory Model*, 3 HARV. L. & POL'Y REV. 369, 381–82 (2009) [hereinafter Canova, *Financial Market Failure*].

16 NASSIM NICHOLAS TALEB, THE BLACK SWAN: THE IMPACT OF THE HIGHLY IMPROBABLE xxii–xxiii (2010).

Perhaps a more fruitful approach would be longitudinal studies that consider changes in one particular central bank's structure and macroeconomic performance over a longer time period. For instance, by ignoring the data from the 1930s and 1940s for the United States in particular, the empirical literature overlooks perhaps the most significant decade when the central bank lacked de facto independence, inflation was kept low, and economic growth rates were at an all-time high.[17] Likewise, by failing to consider more recent data from the 2000s, these studies fail to appreciate the relationship between central bank independence and agency capture, deregulation of lending standards, growth of financial fragility and inflation of unsustainable financial bubbles, and enormous subsidies to favored financial constituents.[18]

Part III responds to Samra's reliance on a book little-known in the United States, *Guide to the Perfect Latin American Idiot*,[19] written by three highly ideological Latin American journalists—a book devoid of sources but long on name-calling.[20] The economic philosophy embedded in this book is a crude monetarism, one which was refuted by the weight of empirical evidence in the early 1980s when monetarists, led by Milton Friedman, wrongly predicted a resurgence of inflation, and more recently by the evidence of the past two years, in which inflation has not kept pace with the huge expansion in the money supply precisely because of the collapse in the velocity of money, a Keynesian insight that monetarists conveniently overlook. But Samra and *The Perfect Idiot* co-authors do not discuss such substantive issues; rather, their ad hominem line of argument seems intended to deflect and distract from substantive discussion. Part IV concludes this article with a discussion of various proposals to reform the structure of the Federal Reserve to make it more accountable and transparent. Recent reforms in the Dodd-Frank Wall Street Reform and Consumer Protection Act are placed in the context of various constitutional challenges to the Federal Reserve.[21] What has often been missing from both sides of the central bank debate is an appreciation for nuance and the wide spectrum of possible central bank structures. All too often the choices are phrased as a false dichotomy between an independent but captured central bank or one that is dominated by the

17 *See, e.g.*, *infra* Parts I & II.A.

18 *See infra* Part II.

19 *See generally* PLINIO APULEYO MENDOZA, CARLOS ALBERTO MONTANER & ALVARO VARGAS LLOSA, GUIDE TO THE PERFECT LATIN AMERICAN IDIOT (Michaela Lajda Ames trans., Madison Books 2000) (1996). Hereinafter *The Perfect Idiot*.

20 *See infra* Part III.

21 *See infra* Part IV.

politics of daily shifts in public opinion. In a diverse and pluralistic society, surely there should be other, alternative models that would achieve greater transparency and public accountability without sacrificing the objectives of price stability and economic growth.[22]

## I. THE MISUSES OF HISTORY

Samra opens his article with a quote by Keynes that there is "no surer means of overturning the existing basis of society than to debauch the currency."[23] This was from Keynes' prophetic 1920 critique of the Versailles peace settlement, a critique that recognized the inflationary dangers from imposing huge war reparations on Germany.[24] Defenders of central bank independence routinely point to the hyperinflation in Weimar Germany, which did indeed destroy the foundations of middle class prosperity, but they present highly selective evidence, ignore the actual history, and therefore draw the wrong lessons. Contrary to their arguments, the Weimar hyperinflation had little to do with the structure of the central bank.

Rather, the root cause of the German hyperinflation of 1923, like more recent bouts of high inflation in Latin America, was the country's inability to service its huge foreign debt rather than any purported political control of the central bank. In May 1922, responding to pressure from foreign creditors Britain and France, Germany passed the Law on the Autonomy of the Reichsbank, which made the central bank independent of government.[25] As recounted by David Marsh: "The granting of the Reichsbank's independence had no effect on controlling inflation, which ran at 1,300 percent in 1922."[26] In fact, it was this newly independent central bank that printed paper money around the clock while placing the blame for the continuing inflation squarely on the Allied governments for making repayment of Germany's debts

22 JOHN R. COMMONS, INSTITUTIONAL ECONOMICS: ITS PLACE IN POLITICAL ECONOMY 900–01 (1934) (proposing reform of the Federal Reserve to include representation of all economic stakeholders to give voice to a wide diversity of economic interests); LEON H. KEYSERLING, MONEY, CREDIT, AND INTEREST RATES: THEIR GROSS MISMANAGEMENT BY THE FEDERAL RESERVE SYSTEM: THE FED'S ASSIST TO INFLATION, RECESSIONS, AND INJUSTICE AND THE READILY AVAILABLE REMEDIES IN THE PERSPECTIVE OF THE WHOLE ECONOMY 111 (Conf. on Econ. Progress, Washington, D.C., 1980) (proposing that Federal Reserve Board of Governors and Federal Open Market Committee include fair representation of "business, labor, farmers, [and] consumers").

23 Samra, *supra* note 6, at 63.

24 *Id.* at 63 n.1.

25 DAVID MARSH, THE MOST POWERFUL BANK 81, 252 n.46 (1992).

26 *Id.* at 81.

impossible when French and Belgian armies occupied the Ruhr, the industrial heartland of Germany's economy, in early 1923.[27]

It is unlikely that any central bank governance structure could have prevented the 1923 German hyperinflation. The Reichsbank was already autonomous, and, in 1924, the hyperinflation was ended by the introduction of a new currency and the so-called Dawes plan, which granted Germany a temporary moratorium on its reparations payments.[28] By 1933, nearly a decade after the hyperinflation had ended and with an even more independent central bank, the basis of German society was once again overturned. Three years of Great Depression and mass unemployment led to the rise of Hitler.[29] Keynes himself would focus his critique on the monetary orthodoxy that contributed to depression and deflation, though he largely ignored the implications for central bank structure in implementing his alternative model.

The myth of Weimar hyperinflation should give pause to simplistic uses of history that ignore the full context and range of historical facts.[30] Likewise, Samra offers a long quote by David Ricardo from 1824 to suggest that Ricardo "advocated for greater independence for monetary authorities."[31] However, in the quote itself, Ricardo proposes delegating monetary authority to commissioners "not removable from their official situation but by a vote of one or both Houses of Parliament."[32] That would have made Ricardo's proposed monetary commissioners more accountable than the regional Federal Reserve Bank presidents sitting on the Federal Open Market Committee (FOMC) that

27 *Id.*

28 Timothy A. Canova, *Financial Liberalization, International Monetary Dis/Order, and the Neoliberal State*, 15 AM. U. INT'L L. REV. 1279, 1298–99, 1299 n.84 (2000) [hereinafter Canova, *Financial Liberalization*].

29 ADAM FERGUSSON, WHEN MONEY DIES: THE NIGHTMARE OF THE WEIMAR COLLAPSE 213 (1975); WILLIAM SHIRER, THE RISE AND FALL OF THE THIRD REICH: A HISTORY OF NAZI GERMANY 94–111 (1985); William Krehm, *The Bank of Canada—A Misused Tool*, *in* WILLIAM F. HIXSON, IT'S YOUR MONEY 121 app., 122 (1997) (discussing Reichsbank's refusal in 1930 "to make loans to the democratic German government unless it fired its Finance Minister, the Socialist economist Rudolf Hilferding . . . [initiating] a tight money policy that drove unemployment to 30% and paved the way for the Nazis to come to power and World War II"). It was deflationist policies in Germany that paved the way for Hitler and National Socialism. CONTRA KEYNES AND CAMBRIDGE: ESSAYS, CORRESPONDENCE 36 (Bruce Caldwell ed., 1995).

30 Eric Foner suggests that historical truth is not fixed and permanent, and that fact and interpretation can be sealed off from each other: "The very selection and ordering of some 'facts' while ignoring others is itself an act of interpretation." ERIC FONER, WHO OWNS HISTORY? xvii (2002).

31 Samra, *supra* note 6, at 68.

32 *Id.*

makes U.S. monetary policy.[33] This is not to suggest that Ricardo today would support making the Federal Reserve Bank presidents more accountable, but rather to suggest the uncertainties inherent in trying to find support for present-day policies in the words of early economists.

Samra also asserts that Keynes "later adopted similar views to Ricardo's as to the benefits of central bank independence."[34] His only support for this assertion is an article by B.W. Fraser, written when Fraser served as Governor of the Reserve Bank of Australia, in which he quotes Keynes' testimony before the 1913 Royal Commission regarding an Indian central bank.[35] Although Keynes endorsed the idea of providing such a central bank's executive officers with day-to-day independence, he also suggested constraining that authority by "ultimate government responsibility," which is not exactly a ringing endorsement of central bank goal independence.[36] Yet, Samra equates Keynes' testimony with support for central bank independence, presumably of the variety now predominant in maintaining anti-Keynesian policies in much of the world today.

To conclude that Keynes and Ricardo had similar views on monetary governance and policy paints with too broad a brush. Samra never mentions that the work of Keynes he relies on was written decades before Keynes' groundbreaking 1936 classic, *The General Theory of Employment, Interest, and Money*.[37] It is instructive to consider the evolution of and weaknesses in Keynes' views on monetary governance and policy as it highlights the differences between autonomy and accountability as well as

33 Section 341 of the Federal Reserve Act provides for the appointment and dismissal of the presidents of the regional Federal Reserve Banks by the private boards of directors of those regional Federal Reserve Banks. Federal Reserve Act, 12 U.S.C. § 341 (2006). It should also be noted that Ricardo's plan for independent commissioners was never adopted, the Bank of England continued to issue paper money and conduct monetary policy for the next two centuries, and the United Kingdom was not beset by any hyperinflations.

34 Samra, *supra* note 6, at 69.

35 B.W. Fraser, *Central Bank Independence: What Does it Mean?*, RESERVE BANK OF AUSTRALIA BULLETIN 1, 2 (1994), *available at* http://www.rba.gov.au/publications/bulletin/1994/dec/pdf/bu-1294-1.pdf. Fraser served as Governor from 1989 to 1996. *Past & Present Governors*, RESERVE BANK OF AUSTRALIA, http://www.rba.gov.au/about-rba/history/governors/index.html (last visited Jan. 4, 2011).

36 Samra discusses the difference between goal independence and instrument independence. Samra, *supra* note 6, at 79–82.

37 Hereinafter referred to as "The General Theory." Samra refers to *The Perfect Idiot* as "groundbreaking,"—and perhaps it is in the annals of mean-spirited satire and ad hominem attacks. *The General Theory of Employment, Interest, and Money*, on the other hand, was truly groundbreaking and is still considered by many as "[t]he most influential macroeconomics book of the twentieth century." LYNN TURGEON, THE SEARCH FOR ECONOMICS AS A SCIENCE: AN ANNOTATED BIBLIOGRAPHY 108 (Lynn Turgeon ed., 1996).

the cultural sea change in public ethics between the time of Keynes and the present.

In his 1926 essay, *The End of Laissez-Faire*, Keynes suggested that in many cases the ideal location of authority would be "somewhere between the individual and the modern State."[38] Progress would lie in the recognition and growth of "semi-autonomous bodies within the State—bodies whose criterion of action within their own field is solely the public good as they understand it, and from whose deliberations motives of private advantage are excluded . . . ."[39] This hardly seems to describe the monetary operations of today's Federal Reserve and other autonomous central banks. In just the past two years, the Federal Reserve has purchased some $1.25 trillion of so-called toxic assets from private financial institutions and extended another $1.5 trillion in low-interest loans to those interests.[40] There is certainly no reason to assume that motives of private advantage have been excluded from these central bank decisions. Rather, there are enormous conflicts of interest and opportunities for private avarice inherent in today's culture of independent central banking.

In *The End of Laissez-Faire*, Keynes spoke favorably of the Bank of England as an example of the medieval conception of autonomies—"bodies which in the ordinary course of affairs are mainly autonomous within their prescribed limitations, but are subject in the last resort to the sovereignty of the democracy

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38 JOHN MAYNARD KEYNES, *The End of Laissez-Faire (1926)*, *in* ESSAYS IN PERSUASION 312, 313 (1963).

39 *Id.* *See also* JOHN MAYNARD KEYNES, THE GENERAL THEORY OF EMPLOYMENT, INTEREST, AND MONEY 372, 374 (1936) [hereinafter KEYNES, THE GENERAL THEORY] (decrying the large disparities in income and wealth that existed in his day).

> The love of money as a possession—as distinguished from the love of money as a means to the enjoyments and realities of life—will be recognised for what it is, a somewhat disgusting morbidity, one of those semi-criminal, semi-pathological propensities which one hands over with a shudder to the specialists in mental disease.

JOHN MAYNARD KEYNES, *Economic Possibilities of Our Grandchildren (1930)*, *in* ESSAYS IN PERSUASION, *supra* note 38, at 358, 369.

40 Federal Reserve Bank of New York, FAQs: MBS Purchase Program, http://www.ny.frb.org/markets/mbs_faq.html (last visited Jan. 11, 2011) (reporting $1.25 trillion in Federal Reserve purchases of mortgage backed securities). The Federal Reserve's various emergency lending programs exceeded $1.6 trillion. Christian A. Johnson, Exigent and Unusual Circumstances: The Federal Reserve and the U.S. Financial Crisis 11 (Sept. 7, 2010) (unpublished manuscript), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1584731 (reporting $112 billion in Primary Credit Program; $493 billion in Term Auction Facility; $225.4 billion in Section 13(3) lending; $234 billion in Term Securities Lending Facility; $147 billion in Primary Dealer Credit; $145 billion in Asset-Backed Commercial Paper Money Market Mutual Fund Liquidity Facility; $349 billion in Commercial Paper Funding Facility; and $48 billion in Term Asset-Backed Securities Loan Facility).

expressed through Parliament."[41] He was also quite clear that he saw the central bank as motivated and incentivized to act in the public interest by limiting the private avarice of its shareholders to "conventionally adequate dividends."[42] Beyond paying such dividends, "the direct interest of the management [of the Bank] often consists in avoiding criticism from the public," and that was sufficient, according to Keynes, to ensure that Bank directors would be motivated by the public interest.[43]

Keynes saw the Bank of England as merely an extreme instance of institutions which were "socializing themselves" because of their growing size, impact on others, and their concern with their reputation and stability.[44] This was a rather optimistic and unrealistic view of the capacity of semi-autonomous institutions and actors to constrain and regulate themselves. According to Robert Skidelsky, Keynes' view "was driven by a belief in scientific expertise and personal disinterestedness which now seems alarmingly naïve"[45]

> [Keynes] accepted uncritically the view that captains of industry were constrained, by the size of their undertakings, to serve the public interest; and he assumed, without further argument, that an interconnected elite of business managers, bankers, civil servants, economists and scientists, all trained at Oxford and Cambridge and imbued with a public service ethic, would come to run these organs of state, whether private or public, and make them hum to the same tune. He wanted to decentralize and devolve only down to the level of Top People.[46]

The nuances and flaws of Keynes' position on central banking are not reflected in Samra's portrayal. Keynes believed that central banking could be removed not just from politics but from the self-interest of bankers, and that it should "'be regarded as a kind of beneficent technique of scientific control such as electricity or other branches of science are.'"[47] For all his genius in overturning the economic orthodoxy of his day, Keynes' political philosophy rested on a somewhat flawed view of human nature. He could wax eloquently about the eventual euthanasia

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41 JOHN MAYNARD KEYNES, *The End of Laissez-Faire (1926)*, *supra* note 38, at 313–14.

42 *Id.* at 315.

43 *Id.*

44 ROBERT SKIDELSKY, JOHN MAYNARD KEYNES: THE ECONOMIST AS SAVIOR 1920–1937, at 227 (1992) [hereinafter SKIDELSKY, JOHN MAYNARD KEYNES: THE ECONOMIST AS SAVIOR]; JOHN MAYNARD KEYNES, *The End of Laissez-Faire (1926)*, *supra* note 38, at 315.

45 SKIDELSKY, JOHN MAYNARD KEYNES: THE ECONOMIST AS SAVIOR, *supra* note 44, at 228.

46 *Id.* at 227–28.

47 *Id.* at 228 (quoting Keynes).

of politics (as well as the euthanasia of the rentier[48]), but until that bright future arrived, assumptions of political and financial disinterestedness seemed premature. The result was an inherent and recurring inconsistency in Keynes' views on central banking.

For instance, in 1932 Keynes supported the Labour Party plan for nationalization of the Bank of England, and yet he still opposed "democratic interference" in its governance.[49] Presumably, nationalization would do away with the paying of dividends to Bank shareholders and thereby further undermine the self-interested profit motive of Bank directors. Nonetheless, Keynes wanted to protect the Bank's day-to-day independence.[50] If "it was the policy and not the structure of the Bank of England which was at fault," then to Keynes the remedy was to better educate the Bank governors in the proper principles of monetary management.[51] His view on autonomous institutions cannot be separated from his faith in an aristocracy of merit motivated solely by the public interest and common good, an aristocracy of obligations and duties and limits.[52] How different from today's financial aristocracy—which has morphed into an increasingly lawless and predatory oligarchy.[53] Indeed, for centuries this has been the very definition of oligarchy: an aristocracy that rules for its own selfish advantage rather than primarily for the common good.[54]

Keynes also articulated, albeit in incomplete form, what wise and scientific economic management should look like during a prolonged downturn or so-called liquidity trap.[55] He bemoaned

48 KEYNES, THE GENERAL THEORY, *supra* note 39, at 376. A rentier is a person whose income comes mainly from property rents, bond interest or other investments. *Id.*

49 SKIDELSKY, JOHN MAYNARD KEYNES: THE ECONOMIST AS SAVIOR, *supra* note 44, at 437.

50 *Id.*

51 *Id.*

52 This public-regarding view of aristocracy was articulated by Ortega y Gasset: "Nobility is defined by the demands it makes on us—by obligations, by not rights. *Noblesse oblige*." JOSE ORTEGA Y GASSET, THE REVOLT OF THE MASSES 63 (Anonymous trans., W.W. Norton & Co. 1960) (1930).

53 SIMON JOHNSON & JAMES KWAK, 13 BANKERS: THE WALL STREET TAKEOVER AND THE NEXT FINANCIAL MELTDOWN 120–21 (Pantheon Books 2010).

54 Leo Strauss, *Plato*, *in* HISTORY OF POLITICAL PHILOSOPHY 33, 74 (Leo Strauss & Joseph Cropsey eds., Univ. of Chicago Press 3d ed. 1987) (suggesting Plato's view that the difference between aristocracy and oligarchy is the difference "between lawfulness and lawlessness"); James E. Holton, *Marcus Tullius Cicero*, *in* HISTORY OF POLITICAL PHILOSOPHY, *supra*, at 163 (discussing Cicero's view that aristocracy contained "within itself not only certain defects but even the seeds of its own destruction," namely the injustice and greed of oligarchy, its "depraved counterpart"); Muhsin Mahdi, *Alfarabi*, *in* HISTORY OF POLITICAL PHILOSOPHY, *supra*, at 212 (discussing Alfarabi's criticism of oligarchy as a vile regime "in which the ultimate aim of the citizen is wealth and prosperity for their own sakes").

55 *See* JOHN MAYNARD KEYNES, *The End of Laissez-Faire (1926)*, *supra* note 38, at 317.

persistently high levels of unemployment and the tremendous and arbitrary inequalities in income and wealth that undermined the production and efficiency of the economic system.[56] The cure, he suggested, was an active fiscal policy accommodated by a neutralized monetary policy, and implemented by deliberate control of currency and credit by central institutions[57]—a policy-mix that both constrains and directs the goals and instruments of central bankers and is therefore routinely seen as incompatible with central bank independence.[58]

In *The General Theory*, Keynes provided the theoretical framework for what would become the most active period in the history of U.S. public finance.[59] Keynes recognized that central banks tend to concentrate on short-term interest rates, while leaving the price of long-term debt instruments to the market.[60] During a severe slump, he argued, the central bank should also set interest rates at low levels for longer-term government securities.[61] This would accommodate much higher levels of government borrowing and spending to stimulate the economy and invest in long-term assets such as infrastructure, while also pushing down long-term interest rates for private borrowers—a framework completely at odds with Samra's hostility to central bank accommodation of large fiscal deficits and his vision of central bank independence.[62]

This Keynesian model was followed in the United States from 1941 to 1951, a decade of hyperactive fiscal policy and neutralized monetary policy that finally pulled the U.S. economy out of the Great Depression.[63] Throughout this period, the Federal Reserve was not independent in any de facto sense. Instead, it took its monetary policy instructions from the White

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56 *Id.* at 317–18.

57 *Id.*

58 For instance, Jácome decries a government's direction of capital controls as an imposition on central bank independence. Samra, *supra* note 6, at 79 (quoting Luis Jácome H., *Legal Central Bank Independence and Inflation in Latin America During the 1990s*, at 4 (IMF, Working Paper No. 01/212, 2001), *available at* http://www.imf.org/external/pubs/ft/wp/2001/wp01212.pdf [hereinafter Jácome, *Legal Central Bank Independence*].

59 *See generally* KEYNES, THE GENERAL THEORY, *supra* note 39.

60 *Id.* at 206.

61 *Id.*

62 *See* Samra, *supra* note 6, at 74–77.

63 Robert Higgs, *Wartime Prosperity? A Reassessment of the U.S. Economy in the 1940s*, 52 J. ECO. HISTORY 41, 42 (1992) ("The entire episode of apparent business-cycle expansion during the war years is understood by most writers as an obvious validation of the simple Keynesian model: enormous government spending, with huge budget deficits, spurred the military economy and produced multiplier effects on the civilian economy, the upshot being increased employment, real output, and consumption and decreased unemployment.").

House and the Treasury.[64] Although the results were impressive, with the highest economic growth decade in American history coupled with low inflation, this history is strangely left out of every empirical study cited by Samra. Instead, this 1940s decade is apparently to be considered as an outlier, an aberration, to be dismissed as the special circumstance of war even though it also spanned the post-war period of reconstruction, the Marshall Plan, and the G.I. Bill of Rights, massive fiscal programs that altered the world for the better and ensured there would be no return to depression economics.[65]

To appreciate the sea change in economic policy involved in the Keynesian model, consider the metrics. Today, federal spending is about 25% of GDP; in the 1940s, spending peaked at nearly 45% of GDP.[66] Today's federal deficit is about 9% of GDP; in the 1940s, the deficit peaked at about 31% of GDP.[67] Today, the federal debt held by the public is about 61% of GDP; in the 1940s, it peaked at over 113% of GDP.[68] Those higher spending and debt levels were sustainable precisely because the central

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64 THE FEDERAL RESERVE SYSTEM: ITS PURPOSES AND FUNCTIONS 1947, *supra* note 2, at 105; LESTER V. CHANDLER, THE ECONOMICS OF MONEY AND BANKING 482–83 (5th ed. 1969).

65 Friedman and Schwartz dismiss the World War II high growth rates and low inflation rates by attributing the post-war inflation to the war years. MILTON FRIEDMAN & ANNA JACOBSON SCHWARTZ, A MONETARY HISTORY OF THE UNITED STATES, 1867–1960, at 556–58 (1963). Higgs does much the same. Higgs, *supra* note 63, at 50, 52. Meltzer refers to the pegged period as an anomaly and then dismisses the experience. ALLAN H. MELTZER, A HISTORY OF THE FEDERAL RESERVE: VOLUME 1: 1913–1951, at 738–39 (2003) (quoting with approval from Allan Sproul, president of the New York Federal Reserve Bank from 1941 to 1956 that "in war or in any other great emergency, the policy of the central banking system must support the national plan of action. It seems to me equally clear that in less emergent circumstances it is wise for government to set-up barriers or buffers of protection of the central banking system from narrow political influence"). *But see* HAROLD G. VATTER, THE U.S. ECONOMY IN WORLD WAR II 100–01 (1985) (relying on C.R. Whittlesey's 1948 assessment that it may have been a mistake to remove price controls until civilian supply rose to meet pent-up demand).

66 National Priorities Project, Charts, *Federal Outlays and Revenues, 1930–2015 as a Percentage of the GDP*, http://nationalpriorities.org/en/resources/federal-budget-101/charts/general/federal-outlays-and-revenues-1930-2015-perc-gdp/ (last visited Jan. 11, 2011).

67 *Trade, Exchange Rates, Budget Balances and Interest Rates*, THE ECONOMIST, July 29, 2010, *available at* http://www.economist.com/node/16702183?story_id=16702183; ECONOMIC. REPORT TO THE PRESIDENT ON THE ACTIVITIES OF THE COUNCIL OF ECONOMIC ADVISERS, app. 438 tbl.B-76 (1993), *available at* http://fraser.stlouisfed.org/publications/erp/issue/1587/download/6006/ERP1993_Appendixes.pdf; EXECUTIVE OFFICE OF THE PRESIDENT, HISTORICAL TABLES: BUDGET OF THE UNITED STATES GOVERNMENT, FISCAL YEAR 2009, 24, tbl.1.2, *available at* http://www.whitehouse.gov/sites/default/files/omb/budget/fy2009/pdf/hist.pdf.

68 CONG. BUDGET OFFICE, THE BUDGET AND ECONOMIC OUTLOOK: AN UPDATE 2 (2009), *available at* http://www.cbo.gov/ftpdocs/105xx/doc10521/2009BudgetUpdate_Summary.pdf; CONG. BUDGET OFFICE, HISTORICAL DATA ON FEDERAL DEBT HELD BY THE PUBLIC (2010), *available at* http://www.cbo.gov/ftpdocs/117xx/doc11766/2010_08_05_FederalDebt.pdf; ECON. REPORT TO THE PRESIDENT, *supra* note 67.

bank was not independent. Known as the "pegged period" in public finance, from 1942 to 1951 the Federal Reserve was directed by the White House and Treasury to purchase government securities in any amount and at any price needed to peg interest rates at 3/8 of 1% on short-term Treasury borrowing and 2.5% on long-term Treasury borrowing.[69]

Contrary to today's Washington Consensus view, the Federal Reserve's loss of its independence in the 1940s did not coincide with higher inflation. Meanwhile, the U.S. economy grew at real annual rates of 15% or more for the three peak years and more than doubled in output during the war.[70] Private investment was crowded in, not out. Industry boomed and businesses returned to profitability. The United States emerged from the war with enormous productive capacity, as the world's largest creditor and with huge trade surpluses, conditions which allowed it to play a commanding role on the world stage. By the end of the war, with the jobless rate at only 1.2%, full-employment was a reality for perhaps the first and only time in American history, and the distribution of income became much more equitable as a result of the strong economy, low yields on Treasury securities, and progressive taxation.[71]

During the 1940s period, the Federal Reserve lacked both goal independence and instrument independence.[72] The objectives of the interest rate peg were set by the Treasury, and Congress directed a range of policy instruments. In particular, the central bank was deprived of the blunt monetary instrument of raising either short-term or long-term interest rates.[73] In

69 THE FEDERAL RESERVE SYSTEM: ITS PURPOSES AND FUNCTIONS 1947, *supra* note 2, at 105; CHANDLER, *supra* note 64, at 482–83.

70 Christopher J. Tassava, *The American Economy During World War II*, EH.NET ENCYCLOPEDIA, Feb. 2, 2010, http://eh.net/encyclopedia/article/tassava.WWII (last visited Jan. 11, 2011); THE NATIONAL HISTORIC LANDMARKS PROGRAM ET AL., WORLD WAR II & THE AMERICAN HOME FRONT: A NATIONAL HISTORIC LANDMARKS THEME STUDY 3 (Oct. 2007), *available at* http://www.nps.gov/ history/nhl/themes/HomefrontStudy.pdf.

71 LYNN TURGEON, BASTARD KEYNESIANISM: THE EVOLUTION OF ECONOMIC THINKING AND POLICYMAKING SINCE WORLD WAR II 5 (1996). "The wealthiest 5 percent of Americans had received 30 percent [of income] in 1929 . . . by 1944 their share was down to 20.7 percent." JOHN M. BLUM ET AL., THE NATIONAL EXPERIENCE: A HISTORY OF THE UNITED STATES 685 (4th ed. 1977).

72 Samra, *supra* note 6, at 79–82 (discussing goal and instrument independence).

73 Since the Federal Reserve could no longer ratchet up interest rates to preempt potential inflation during this pegged period, the federal government had to find new ways to keep prices stable, including price controls. In addition, consumer purchasing power and inflationary pressures were dampened by bond sales to the public and highly progressive taxes. WILLIAM J. BARBER, DESIGNS WITHIN DISORDER: FRANKLIN D. ROOSEVELT, THE ECONOMISTS, AND THE SHAPING OF AMERICAN ECONOMIC POLICY, 1933–1945, at 142–51 (1996). This approach to wartime finance had been urged by Keynes in his plan on "how to pay for the war." ROBERT SKIDELSKY, JOHN MAYNARD KEYES: FIGHTING FOR FREEDOM 1937–1946, at 53 (2001) [hereinafter SKIDELSKY, JOHN MAYNARD

addition, the Federal Reserve was directed to impose selective credit controls and strict lending standards on its member banks, including interest rate ceilings and prohibitions on checking and savings deposits, and margin requirements on private borrowing for purchases of corporate securities, housing, automobiles, and other consumer durables—policy tools that complemented wage and price control authority.[74] Likewise, the Federal Reserve and other central banks throughout the 1930s and 1940s were directed to impose a range of foreign exchange controls and engage in foreign currency operations.[75] Moreover, the Treasury Department assumed responsibility for exchange rate policy with a stabilization fund that rivaled the Federal Reserve's open market portfolio in size, thereby allowing the Treasury to circumvent the Federal Reserve, devalue the dollar, and relax monetary policy.[76] These controls, along with the neutralization of monetary policy, were part of the model envisioned by Keynes to help an economy reach full employment without inflation.[77]

KEYNES: FIGHTING FOR FREEDOM] (highlighting that the "Keynes Plan" which was formalized by Keynes in an article published in *The Times* in November 1939, was in essence a crystallization of Keynes' ideology from as early as 1937).

74 CHANDLER, *supra* note 64, at 247–51, 484–85, 489–90; MELTZER, *supra* note 65, at 602–05 (recounting the Federal Reserve's use of selective credit controls); Arthur Smithies, *Uses of Selective Credit Controls*, *in* UNITED STATES MONETARY POLICY 94, 94–105 (American Assembly ed., 1964) (indicating that selective credit controls might be wise). For the theoretical underpinnings of Keynesian policy in the U.S., see generally J. E. MEADE, AN INTRODUCTION TO ECONOMIC ANALYSIS AND POLICY (C.J. Hitch ed., 1938).

75 FRIEDMAN & SCHWARTZ, *supra* note 65, at 471–72; MELTZER, *supra* note 65, at 461; FRED L. BLOCK, THE ORIGINS OF INTERNATIONAL ECONOMIC DISORDER 109–10 (1977); CHANDLER, *supra* note 64, at 426–27.

76 MELTZER, *supra* note 65, at 457–59; CHANDLER, *supra* note 64, at 468–69. In the conduct of its foreign currency operations, the Federal Reserve acts "in close cooperation with the U.S. Treasury, which has overall responsibility for U.S. international financial policy." THE FEDERAL RESERVE SYSTEM: PURPOSES & FUNCTIONS 63 (Bd. of Governors of the Fed. Reserve Sys. ed., 8th ed. 1994) [hereinafter THE FEDERAL RESERVE SYSTEM: PURPOSES & FUNCTIONS 1994]. Meanwhile, with a favorable balance of trade, there was little need to sell Treasury debt abroad and an enhanced capability of spreading the debt widely in the U.S. among the general public. *See Spending Beyond Our Means: US Trade Balance by Decade*, MINT.COM (Feb. 15, 2010), http://www.mint.com/blog/trends/spending-beyond-our-means-us-trade-balance-by-decade (last visted Nov. 3, 2010) (showing a shift in U.S. balance of payments from surplus to deficit); Franklin Noll, *The United States Public Debt, 1861 to 1975*, EH.NET ENCYCLOPEDIA fig.12 (Feb. 1, 2010, 6:21 PM), http://eh.net/encyclopedia/article/noll.publicdebt (showing rise in foreign purchases of Treasuries after U.S. payments go into deficit).

77 Keynes helped create Britain's foreign exchange control system during World War II. SKIDELSKY, JOHN MAYNARD KEYNES: FIGHTING FOR FREEDOM, *supra* note 73, at 74–77, 194. In the Bretton Woods negotiations that would create the International Monetary Fund, Keynes and the assistant U.S. treasury secretary Harry Dexter White attempted to construct a system of national exchange controls. LINDA MCQUAIG, THE CULT OF IMPOTENCE: SELLING THE MYTH OF POWERLESSNESS IN THE GLOBAL ECONOMY 223–34 (1998); James R. Crotty, *On Keynes and Capital Flight*, 21 J. ECON. LITERATURE 59, 62 (1983).

All these various controls are today considered incompatible with central bank independence.[78] Yet, this model proved remarkably successful in keeping inflation of both consumer and asset prices at relatively low rates, while delivering impressive economic growth, high levels of employment, a more equitable distribution of wealth and income, and a rising middle class standard of living. Even after price controls ended in 1947, inflation was only a temporary problem, and by 1949 prices were falling across the board.[79] This may well have reflected the country's expanded supply.[80] "Federal spending did not simply pump up demand; massive federal investments in infrastructure and factories expanded the nation's industrial capacity, thereby reducing inflationary pressures."[81]

In a study relied on by Samra, Luis Jácome argues against the combination of de jure independence and de facto political interference in the context of central banks in Brazil and Venezuela, countries with markedly different political and economic environments from the United States.[82] Of course, Jácome does not consider the more positive experience of the Federal Reserve, which was legally independent in the 1940s, but as a practical matter lacked de facto independence yet did not lead to high inflation or other negative economic outcomes.[83] Rather, the increased policy direction provided by Congress, the Treasury, and the White House reflected a deeper discussion and wider range of interests in the formulation of monetary policy.[84]

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78 Fraser, *supra* note 35, at 5.

79 *Historical Inflation Data from 1914 to the Present*, INFLATIONDATA.COM, http://inflationdata.com/inflation/Inflation_Rate/HistoricalInflation.aspx?dsInflation_currentPage=5 (last visted Nov. 3, 2010).

80 VATTER, *supra* note 65, at 100–01. For discussion on the end of the pegged period, see Gerald A. Epstein & Juliet B. Schor, *The Federal Reserve-Treasury Accord and the Construction of the Postwar Monetary Regime in the United States*, 7 SOCIAL CONCEPT 7, 7–48 (1995).

81 Timothy A. Canova, *The Federal Reserve We Need*, THE AM. PROSPECT, Oct. 11, 2010, http://prospect.org/cs/articles?article=the_federal_reserve_we_need [hereinafter Canova, *The Federal Reserve We Need*].

82 Agustín Carstens & Luis Jácome H., *Latin American Central Bank Reform: Progress and Challenges* 6 (IMF, Working Paper No. 05/114, 2005), *available at* http://www.imf.org/external/pubs/ft/wp/2005/wp05114.pdf.

83 Inflation was kept low during the boom years of the 1940s. In fact, the annual inflation was below three percent for the final three years of the war, from October 1942 to August 1945. BLUM ET AL., *supra* note 71, at 685 ("From October 1942 to the end of the Pacific war, consumers' prices rose only 8.7 percent.").

84 John Commons, a leading Institutionalist economist of the 1930s, advocated for such wider participation in the formulation of monetary policy. COMMONS, *supra* note 22, at 900–01; Charles J. Whalen, *Full Employment with Liberty: John R. Commons' Perspective and Its Continuing Relevance*, 44 J. ECO. ISSUES 559, 565 (2010). This was the position of Leon Keyserling, Chairman of the Council of Economic Advisers in the administration of President Harry S. Truman. KEYSERLING, *supra* note 22, at 111

In more recent years, without such policy direction and input from elected branches, the Federal Reserve has focused almost exclusively on one policy objective (low consumer price inflation), and has used only one policy instrument (changes in short-term interest rates).[85] All other policy objectives, such as maximizing employment and ensuring financial stability, were secondary at best, and often totally ignored.[86] What a sharp contrast to the 1940s, when the political direction of policy goals and instruments helped the Federal Reserve resist domination and capture by its big bank constituency, which was crucial in achieving a host of policy objectives, including full employment, low inflation, and stability of the financial system.

If the 1940s was clearly the low point for central bank independence, it was the high point for political accountability. The Federal Reserve chairman during this period was Marriner Eccles, a successful Utah banker whose support for higher federal spending had anticipated the fiscal ideas of Keynes.[87] In the 1930s, he had pushed for structural reform of the Fed to remove the "banker interest" from its crucial policy-making Federal Open Market Committee.[88] Although Eccles came up short in that effort, he remained committed to a model of governance that prevented the central bank from undermining the Treasury's fiscal program.[89] Eccles and other Federal Reserve governors demonstrated the ideals of self-restraint and concern for the public good that Keynes assumed should motivate the actions of autonomous central bankers.

Throughout the 1940s, the Federal Reserve's willingness and ability to accommodate huge Treasury deficits while imposing a range of selective credit and capital controls reflected both its relative independence from private financial interests and its accountability to democratically elected institutions. This period provides a model of what a democratically-accountable central bank would look like when working with elected branches to achieve the three primary objectives of Keynesian economics: (1) maintaining genuine full-employment; (2) reducing the

(proposing that Federal Reserve Board of Governors and Federal Open Market Committee include "fair representation of business, labor, farmers, [and] consumers").

85 *See* Ben S. Bernanke, Chairman, Bd. of Governors of the Fed. Reserve Sys., Monetary Policy Objectives and Tools in a Low-Inflation Environment, Address at the Revisiting Monetary Policy in a Low-Inflation Environment Conference (Oct. 15, 2010) (highlighting that low inflation and short term interest rates have been the modern standard, but noting that some consequences have arisen as a result of such a policy).

86 *Id.*

87 MELTZER, *supra* note 65, at 464–65.

88 *Id.* at 468–69, 476.

89 *Id.*

tremendous inequalities in wealth and income that undermine any sustainable recovery; and (3) putting an end to the monopolistic structures and financial practices that harm taxpayers and consumers alike.[90]

Unfortunately, few economists ever learn of this period in Federal Reserve history. Not surprisingly, this most successful decade in U.S. history is ignored by Samra and the empirical studies upon which he relies, and has been all but airbrushed from most mainstream texts, including the economics textbook co-authored by the present Federal Reserve chairman, Ben Bernanke.[91] It is a telling omission that Bernanke, although routinely hailed as an authority on the Great Depression, does not mention the monetary regime—a politically-directed central bank—that accommodated the hyperactive fiscal policy that lifted the U.S. economy out of the Depression once and for all after a decade of drift.

## II. EMPIRICAL MYOPIA, BLACK SWANS, AND BLACK ELEPHANTS

Every empirical study relied on by Samra suffers the same flaws of selective presentation of evidence and myopic focus on limited variables and limited time periods. None of the studies consider data from the 1920s to the mid-1950s, thereby avoiding important "black swan" events, including the 1929 stock market crash, the financial panics of the early 1930s, the Great Depression, and the economic boom of the 1940s.[92] In this way they mimic the risk management models used by big banks and credit rating agencies in the past decade to ignore the possibility of sharp drops in asset prices.[93] By dismissing such large

90 Canova, *Financial Market Failure*, *supra* note 15, at 373 (restating the primary policy objectives of ABBA P. LERNER, THE ECONOMICS OF CONTROL: PRINCIPLES OF WELFARE ECONOMICS 3 (1947)).

91 *See generally* ROBERT H. FRANK & BEN S. BERNANKE, PRINCIPLES OF MACRO-ECONOMICS (3d ed. 2007) (providing Federal Reserve and monetary history that includes pre-pegged and post-pegged periods, but nothing on the pegged period itself); STEPHEN G. CECCHETTI, MONEY, BANKING, AND FINANCIAL MARKETS (2006) (avoiding any discussion of the fiscal and monetary expansion of the pegged period). *See also* EXEC. OFFICE OF THE PRESIDENT, ECONOMIC REPORT OF THE PRESIDENT AND ANNUAL REPORT OF THE COUNCIL OF ECONOMIC ADVISERS 280–81 tbl.B-1 (1996) (providing GDP statistics no earlier than 1959); PAUL A. SAMUELSON & WILLIAM D. NORDHAUS, MACROECONOMICS 191–211 (18th ed. 2005) (historical overview of the Federal Reserve and monetary policy omitting any mention of pegged period); HARVEY S. ROSEN, PUBLIC FINANCE 424–26 (6th ed. 2002) (discussing federal deficits no earlier than 1970). Meanwhile, the Federal Reserve encourages mis-education and ignorance of the pegged period through its financial education and literacy programs as well as its practice of keeping hundreds of economists on paid retainers while restricting the dissemination and scope of their research. ROBERT D. AUERBACH, DECEPTION AND ABUSE AT THE FED: HENRY B. GONZALEZ BATTLES ALAN GREENSPAN'S BANK 141–47 (2008).

92 *See generally* TALEB, *supra* note 16.

93 Canova, *Financial Market Failure*, *supra* note 15, at 381–82.

historical events as outliers and aberrations, these risk models effectively assumed that housing prices would always keep rising. Likewise, Samra also ignored the more recent black swans, the financial collapse of 2008 and its continuing aftermath, as well as the rise of China as an economic power without an independent central bank—events so recent and so significant that to overlook them is more like missing a black elephant than a black swan.[94]

## A. Autistic Economics and Inflation Myopia

All of the studies relied on by Samra, and in fact all of the many studies generated by the research departments of central banks and the International Monetary Fund (IMF) confine their analyses mostly to the 1980s and 1990s while overlooking any and all non-monetary explanations for variations in inflation rates. It is worth noting the professional affiliations of the authors of many of the studies cited by Samra, most of whom were associated with the IMF, World Bank, Bank for International Settlements, and the Federal Reserve, institutions with long-standing commitments to the model of central bank independence, and in the case of the Federal Reserve, a direct bureaucratic self-interest and perhaps a financial interest in maintaining the model.[95]

In addition to the truncated period and focus of analysis, these studies share a fixation on one variable: the rate of consumer price inflation, while ignoring all other kinds of price inflation, even hyperinflations of asset prices. This fixation on one variable while ignoring all others is characteristic of the orthodoxy in economics. In recent years, a critical movement has developed within economics that challenges this orthodox approach as "autistic" for pursuing econometric modeling as "an end in itself" and thereby "cutting off economics from reality."[96]

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94 A "black elephant" is a combination of "the elephant sitting in the room," which everyone knows is important but is a taboo that no one will talk about, and "black swan," which is considered an extreme or unlikely event that undermines prior risk management strategies. The black elephant has been defined as "an event which is extremely likely and widely predicted by experts, but people attempt to pass it off as a black swan when it finally happens." Vinay Gupta, *On Black Elephants*, THE BUCKY-GANDHI DESIGN INSTITUTION (Apr. 27, 2009, 8:31 AM), http://vinay.howtolivewiki.com/blog/flu/on-black-elephants-1450.

95 *See, e.g.*, Jácome, *Legal Central Bank Independence*, *supra* note 58, at 5–6 (discussing Latin American structural reforms to comply with International Monetary Fund "best practices" for central bank autonomy); JOSEPH E. STIGLITZ, MAKING GLOBALIZATION WORK 28, 57 (2006) [hereinafter STIGLITZ, MAKING GLOBALIZATION WORK].

96 POST-AUTISTIC ECONOMICS NEWSLETTER, No. 1, Sept. 2000, http://www.paecon.net/PAEReview/wholeissues/issue1.htm (last visited Jan. 11, 2011). Autism is characterized by a narrow range of interests, restricted use of language, lack of

According to this critique, mainstream economics suffers from a variety of symptoms of autism in its uncontrolled use of mathematics, repetitive fixation with abstract econometric modeling, and complete avoidance of social context and empirical evidence, including historical facts, the functioning of institutions, and the study of the behaviors and strategies of agents.[97] The studies relied on by Samra that attempt to correlate central bank independence with low inflation are within this autistic tradition: they ignore empirical evidence that would correlate central bank independence with asset price inflations, unsustainable financial bubbles, high levels of unemployment, top-heavy distributions of income, agency capture, financial fragility, and central bank subsidies for financial elites.

These studies are also based on flawed assumptions about the nature and causes of consumer price inflation. Luis Jácome's 2001 study assumes that "inflation is essentially a monetary phenomenon"[98] and focuses on three relatively brief periods: 1980–1989, when Latin American countries were beset by the so-called Third World debt crisis and sharply rising interest rates on their foreign debts; and 1990–1995 and 1996–2000, periods of recovery in much of Latin America thanks in large part to resolution of the debt crisis and a revival in agriculture and commodity exports.

The most recent episodes of high inflation in Latin America have occurred in the context of foreign indebtedness and balance of payments crises.[99] Dependence on foreign bank loans, inflows

social reciprocity, inability to appreciate social context, repetitive behavior, repetitive use of idiosyncratic language, and inflexible adherence to specific, non-functional routines or rituals. *Diagnosis of Autism*, AUTISM SPEAKS, http://www.autismspeaks.org/diagnosis/index.php (last visited Jan. 11, 2011).

97 POST-AUTISTIC ECONOMICS NEWSLETTER, *supra* note 96. According to Marc Lavoie, the post-autistic movement has criticized mainstream economics for "the dogmatism of their teaching and the irrelevance of formalized models that seemed to relate to some imaginary world rather than to the real world." MARC LAVOIE, INTRODUCTION TO POST-KEYNESIAN ECONOMICS xiv (2006). *See also Milton Friedman*, *in* CONVERSATIONS WITH LEADING ECONOMISTS: INTERPRETING MODERN MACROECONOMICS 124, 137 (Brian Snowdon & Howard R. Vane eds., 1999) (quoting Friedman that "economics has become increasingly an arcane branch of mathematics rather than dealing with real economic problems").

98 Jácome, *Legal Central Bank Independence*, *supra* note 58, at 29 (asserting that "inflation is essentially a monetary phenomenon"). *See also* Samra, *supra* note 6, at 64 n.9 (citing to Jácome's paper). Jácome finds a strong correlation between central bank independence and low inflation during the 1991–2001 period, although that finding also required that Argentina and Venezuela be excluded from the analysis. Jácome, *Legal Central Bank Independence*, *supra* note 58, at 23–24.

99 Mark Weisbrot, Ctr. for Econ. & Pol'y Research, *Latin America's Electoral Leftward Shift: The Importance of Economics*, (Mar. 14, 2006), *available at* http://www.cepr.net/events/200603_latam/2006_03_lagrowth_transcript.htm [hereinafter Weisbrot, *Latin America's Electoral Leftward Shift*] (providing the graphic charts which accompany Weisbrot's speech). There were serious inflations in the 1970s and 1980s in

of portfolio capital, and the "dollarization" of domestic bank accounts led to overvalued currencies and huge trade imbalances financed by yet more capital inflows contributing to unsustainable debt burdens.[100] When interest rates rose and painful adjustments were imposed by international bond markets and International Monetary Fund loan conditions, everything went in reverse. Collapsing currencies led to ever-rising prices of imported goods, including necessities such as food and fuel, and falling prices for exports, including exports of commodities in particular. As countries found it increasingly difficult to meet their debt service obligations and import bills, some responded by printing money, leading to even higher inflation rates. Market fundamentalists blame the central banks for monetizing debt while ignoring the underlying causes that led to such poor decisions.[101] Moreover, monetizing debt in the middle of a balance of payments and foreign debt crisis is very different from monetizing debt to invest in real productive resources and expand the industrial capacity and supply of a country.

Since Jácome begins with monetarist assumptions, it is not surprising that he sees independent central banks and tighter monetary policy as the only explanations for the low inflation period.[102] Foreign debt burdens and sharply higher interest payments imposed from without are never addressed. According to critics of Jácome's approach, the failure "to control adequately for other factors that might account for cross-country differences in inflation" is a major deficiency in the literature that purports to attribute low inflation to central bank independence.[103] In fact, Carl Walsh has noted one study that did control for other potential determinants of inflation and "found little additional role for central bank independence."[104]

Significant non-monetary factors contributed to global inflation in the 1970s in particular, including recurring balance of payments crises and International Monetary Fund designed adjustment.[105] The Organization of Petroleum Exporting

Argentina, Bolivia, Brazil, Chile, Peru, and Uruguay. This was also a period of sharply rising oil prices that had nothing to do with central bank structure or monetary policies in Latin America, and which contributed to balance of payments problems, dependence on foreign inflows of portfolio capital, falling currencies, and rising prices. *Id.*

100 Weisbrot, *Latin America's Electoral Leftward Shift*, *supra* note 99 (providing the graphic charts which accompany Weisbrot's speech).

101 *See* Jácome, *Legal Central Bank Independence*, *supra* note 58, at 29–30.

102 *See id.* at 30.

103 Carl E. Walsh, *Central Bank Independence*, *in* 1 THE NEW PALGRAVE DICTIONARY OF ECONOMICS 728, 730 (Steven N. Durlauf & Lawrence E. Blume eds., 2d ed. 2008).

104 *Id.*

105 *See generally* CHERYL PAYER, THE DEBT TRAP: THE INTERNATIONAL MONETARY FUND AND THE THIRD WORLD (1974).

Countries (OPEC) quadrupled the price of oil in 1973 and doubled the price of oil in 1979.[106] As a result, Western banks helped "recycle" the so-called petrodollars deposited by OPEC countries into loans to Latin American and other Third World countries, as developing countries were then called, so they could continue paying for oil imports.[107] But this recycling of petro-dollars ended badly for most of Latin America when U.S. banks raised interest rates sharply on their loans in the early 1980s.[108]

Studies by Jácome and others do not consider the following counter-factual: if Latin American countries had independent central banks at the time of the 1980s debt crisis, would such a model have then been discredited and would the reforms then have gone in the opposite direction leading to greater central bank accountability which should then receive much of the credit for all the good inflation numbers resulting from resolution of the debt crisis and export-led recovery? In fact, Chile provides just such a counter-factual example, although one would not realize this by reading Samra's ahistorical case study of Chile, as he provides few dates and makes no attempt to correlate central bank reforms with actual economic indicators.[109]

Although Chile's central bank was made independent in the early 1980s, average annual inflation exceeded 20% throughout the 1980s and 17% through the mid-1990s.[110] Moreover, Chilean inflation was brought down to 6% a year in the late-1990s, but not because of any change in central bank monetary vigilance.[111] Rather, lower inflation rates coincided with increased regulation of portfolio capital markets imposed by the elected government, resulting in greater exchange rate and price stability.[112] Chile's

106 JEFFRY FRIEDEN, GLOBAL CAPITALISM: ITS FALL AND RISE IN THE TWENTIETH CENTURY 364, 368 (2006); Jack L. Hervey, *Changing U.S. Trade Patterns*, *in* HISTORY OF THE U.S. ECONOMY SINCE WORLD WAR II 444, 446 (Harold G. Vatter & John F. Walker eds., 1996).

107 GREIDER, SECRETS OF THE TEMPLE, *supra* note 2, at 340.

108 STEVEN SOLOMON, THE CONFIDENCE GAME: HOW UNELECTED CENTRAL BANKERS ARE GOVERNING THE CHANGED GLOBAL ECONOMY 22 (1995) (discussing the Reagan administration's approach to treating the debt crisis of four particular countries—Mexico, Argentina, Brazil, and Yugoslavia—as financial problems that demanded International Monetary Fund austerity programs); GREIDER, SECRETS OF THE TEMPLE, *supra* note 2, at 437. *See generally* DARRELL DELAMAIDE, DEBT SHOCK (1984).

109 *See* Samra, *supra* note 6, at 84–86.

110 Eva Gutiérrez, *Inflation Performance and Constitutional Central Bank Independence: Evidence from Latin America and the Caribbean* 16 tbl.3 (IMF, Working Paper No. 03/53, 2003), *available at* http://www.imf.org/external/pubs/ft/wp/2003/wp0353.pdf.

111 *Id.*

112 Timothy A. Canova, *Banking and Financial Reform at the Crossroads of the Neoliberal Contagion*, 14 AM. U. INT'L L. REV. 1571, 1621–22, 1626 (1999) [hereinafter Canova, *Banking and Financial Reform*] (discussing Chile's *encaje* program which required foreign investors and lenders to deposit 30% of the investment or loan into a

high inflation in the earlier period, and its disinflation in the later period, had far less to do with central bank structure than with foreign debt burdens, exchange rates, and the effectiveness of financial regulation. As discussed above, Chile's high inflation rates of the 1980s occurred under an independent central bank, and the disinflation of the 1990s occurred when the central bank's instrument independence was undermined by capital controls.[113] Yet Jácome does not consider any explanation other than a crude monetarist one.

In another Jácome paper co-authored with Agustín Carstens in 2005, the authors likewise have a relatively short view of economic history, comparing changes in macroeconomic indicators from the 1980s to 2003.[114] Samra relies on this paper in particular for his statement that "most scholars agree" that central bank autonomy is "a *sine qua non* of monetary or price stability."[115] If this is so, the statement says more about blind orthodoxy than the merits of central bank independence. One is hard pressed to find strong empirical support for such a sweeping conclusion, which perhaps confuses cause and effect.[116] According to Adam Posen, reforms leading to central bank independence often reflect the presence of an already strong political constituency for low inflation.[117] For instance, as Latin American countries pulled out of the debt crisis and experienced a resurgence in their exports, the resulting economic growth may have strengthened the political forces pushing for central bank independence, as well as a host of other policies—such as trade

non-interest bearing account with the central bank for a full year or pay a 3% tax to recover the deposit); GREG GRANDIN, EMPIRE'S WORKSHOP: LATIN AMERICA, THE UNITED STATES, AND THE RISE OF THE NEW IMPERIALISM 204 (2006) (discussing Chile's break with "free-market dogma" in the 1980s and turn to state promotion of exports and use of regulatory laws "including some enacted by the vilified Allende government").

113 *See supra* Part II.A.

114 Carstens & Jácome, *supra* note 82, at 15 tbl.6; Samra, *supra* note 6, at 65 n.12 (citing to Carstens & Jacome's paper). The paper's conclusion that central bank independence explains the reduction in inflation once again ignores all other possible explanations and empirical evidence from earlier periods. Carstens & Jácome, *supra* note 82, at 17.

115 Samra, *supra* note 6, at 65 & n.12.

116 Even Samra hedges this sweeping conclusion by referring to Federal Reserve Board Chairman Ben Bernanke's caveat that "the evidence for developing countries is more mixed." Samra, *supra* note 6, at 69 (quoting Bernanke as stating that "the evidence for developing countries is more mixed" with regard to the connection between central bank independence and the promotion of low inflation).

117 Walsh, *Central Bank Independence*, *supra* note 103, at 728, 730; Adam Posen, *Why Central Bank Independence Does Not Cause Low Inflation: There is No Institutional Fix for Politics*, *in* 7 FINANCE AND THE INTERNATIONAL ECONOMY 40, 47 (Richard O'Brien ed., 1993)).

liberalization, fiscal austerity, and wage suppression—which would also have contributed to lower inflation rates.[118]

Samra also relies on a study by Eva Gutiérrez arguing the high inflation in Latin America during the late 1980s and early 1990s was caused by the region's high fiscal deficits, which were monetized by central banks that were pressured by elected governments with short-term objectives.[119] Gutiérrez also attributes the decline in inflation in the 1990s to reforms that made central banks more autonomous.[120] Again, like all the other studies relied on by Samra,[121] Gutiérrez' study does not consider data from earlier key periods such as the 1940s and early 1950s. Moreover, Gutiérrez even ignores the high economic growth rates and low inflation rates across Latin America during the 1960s, prior to central bank independence, and the OPEC oil price hikes and the ensuing debt crisis.[122] Moreover, like Jácome, she does not consider any other factors that may have led to later declines in inflation and improvements in economic growth such as the resolution of Latin America's debt crisis and higher export earnings.

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118 *See* Michael Parkin, *Inflation*, *in* 4 THE NEW PALGRAVE DICTIONARY OF ECONOMICS 293, 299 (Steven N. Durlauf & Lawrence E. Blume eds., 2d ed. 2008) (discussing fiscal causes of inflation).

119 *See* Gutiérrez, *supra* note 110, at 15 (stating that inflation during the 1980s and early 1990s was, at root, due to the high fiscal deficits that were financed by monetization by central banks).

120 *See id.* at 16, 23 (linking lower inflation to "entrench[ing] the independence of the central bank in the constitution").

121 *See, e.g.*, Luis I. Jácome & Francisco Vásquez, *Any Link Between Legal Central Bank Independence and Inflation? Evidence from Latin America and the Caribbean* 12 tbl.1, 15 fig.2, 16 tbl.3 (Int'l Monetary Fund, Working Paper No. 05/75, 2005), *available at* http://www.imf.org/external/pubs/ft/wp/2005/wp0575.pdf (focusing on data from the 1990s); Samra, *supra* note 6, at 71 n.43 (citing to Jácome & Vásquez' paper); Charles T. Carlstrom & Timothy S. Fuerst, Commentary, *Central Bank Independence: The Key to Price Stability?*, FED. RESERVE BANK OF CLEVELAND, Sept. 1, 2006, at 1, *available at* http://www.clevelandfed.org/research/commentary/2006/0901.pdf (focusing on the 1955–2000 period); Samra, *supra* note 6, at 73 n.58 (citing to the Federal Reserve Bank of Cleveland commentary); Alberto Alesina & Lawrence H. Summers, *Central Bank Independence and Macroeconomic Performance: Some Comparative Evidence*, 25 J. MONEY, CREDIT, & BANKING 151, 160 app. tbl.A1, 161 app. tbl.A2 (1993) (focusing on two periods: 1955–1988 and 1973–1988); Samra, *supra* note 6, at 72 n.56 (citing to Alesina & Summers' article); Jeffrey C. Fuhrer, *Central Bank Independence and Inflation Targeting: Monetary Policy Paradigms for the Next Millennium?*, 1997 NEW ENG. ECON. REV. 19, 25 (1997), *available at* http://www.bos.frb.org/economic/neer/neer1997/neer197b.pdf (focusing on the period of 1970 to the late 1990s); Samra, *supra* note 6, at 72 n.53 (citing to Fuhrer's article).

122 *See* EDWIN WILLIAMSON, THE PENGUIN HISTORY OF LATIN AMERICA 620 tbl.3 (rev. ed. 2009) (reporting high economic growth rates across Latin America in the 1960s and sharp declines in the 1980s); *id.* at 621 tbl.4 (reporting relative price stability across Latin America in the 1960s, followed by huge increases in inflation in the 1970s and 1980s); *id.* at 622 tbl.5, 623 tbl.6 (reporting rising total external debt levels across Latin America from 1978 to 1984); *id.* at 624 tbl.7 (reporting rising external debt and debt service levels across Latin America from 1975 to 1985).

Likewise, Samra relies heavily on a study by Carlstrom and Fuerst on the Reserve Bank of New Zealand, once considered the least independent of central banks, which was made independent in 1989 and now ranks among the more independent.[123] The country's inflation rate fell from an average 7.6% in 1955–1988 to 2.7% in 1988–2000.[124] Of course, the inflation numbers are elevated for the early period simply by including the 1970s, the peak years of inflation due in large part to successive price hikes by OPEC, a global oil cartel.[125]

Carlstrom and Fuerst acknowledge that, with reference to the United States, changes in central bank independence "were not responsible for the large inflation run-up that occurred during the 1970s in the United States and throughout the world."[126] Likewise, the decline in U.S. inflation was "not caused by changes in [Federal Reserve] independence but by other forces that have lowered the worldwide inflation rate."[127] But, apparently the authors saw no reason to extend those caveats to New Zealand. Instead, Carlstrom and Fuerst must engage in "holding everything else equal" to conclude that if New Zealand had "an independence score" as high between 1955 and 1988 as it does today, then annual inflation would have been 3.4% instead of 7.6% during that period.[128] Apparently, in this fictitious world, the OPEC price increases and global inflation would simply have ceased having any effect on the New Zealand economy.[129]

Carlstrom and Fuerst then broaden their conclusion beyond New Zealand to the global economy once more: "[H]olding everything else equal, the increase in central banks' independence would have lowered the average inflation rate

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123 Samra, *supra* note 6, at 73.

124 Carlstrom & Fuerst, *supra* note 121, at 1.

125 Vlad Grinkevich, *OPEC Marks 50th Anniversary*, FINANCIAL (Oct. 9, 2010), http://www.finchannel.com/Main_News/Op-Ed/70381_OPEC_marks_50th_anniversary. *See also* Andrew C. Udin, *Slaying Goliath: The Extraterritorial Application of U.S. Antitrust Law to OPEC*, 50 AM. U. L. REV. 1321, 1327–28 (2001) ("A 'cartel' is an association of producers and/or consumers of a certain product, formed for the purpose of manipulating the product's price in a given market . . . . OPEC is widely known as the most prominent cartel in the international economy[.]"); Tim McMahon, *Inflation Similarities Between the 2000s and the 1970s*, INFLATIONDATA.COM (Apr. 21, 2006), http://inflationdata.com/inflation/Inflation_Articles/2000_vs_1970s.asp (noting that in the 1970s, inflation rates had surpassed 14%); John Keefe, *What Causes Inflation? Lessons from the 1970s, Vol.3*, CBS MONEYWATCH.COM (May 26, 2009), http://moneywatch.bnet.com/economic-news/blog/macro-view/what-causes-inflation-lessons from-the-1970s-vol-3/553/ ("Many people who lived through the 1970s associate high inflation with sharply higher oil prices, due to an embargo on Arab oil in 1973.").

126 Carlstrom & Fuerst, *supra* note 121, at 3.

127 *Id.*

128 *Id.* at 2.

129 *See supra* note 125.

worldwide from 5.6% to 3.8%."[130] Again, there is no discussion about how central bank independence would have prevented the OPEC countries from forming a cartel and raising global oil prices. They offer caveats that central bank independence was not the only factor in reducing inflation rates and that the impact of independence is more mercurial in developing nations.[131] But it is telling that such caveats are hedged in their conclusion section, which offers the definitive statement that central bank independence is the "most effective way" to ensure low inflation and that "nearly 2 percentage points of developed countries' average decline in inflation over time is *the direct results* [sic] of their central banks' increased independence."[132] Here we see a pattern of studied ignorance: all non-monetary factors must be ignored to maintain the case for central bank independence.

Likewise, Samra relies on a study by Larry Summers and Alberto Alesina, finding a strong relationship between central bank independence and lower inflation across more than a dozen industrialized countries.[133] According to this study, countries with high degrees of central bank independence generally had lower inflation rates than countries with less independent central

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130 *Id.*

131 Carlstrom & Fuerst, *supra* note 121, at 1–3.

132 *Id.* at 3 (emphasis added).

133 Alesina & Summers, *supra* note 121, at 159, 160–61 tbls.A1 & A2 (analyzing the independence of various countries' central banks and concluding that "[t]hese results suggest that the monetary discipline associated with central bank independence reduces the level and variability of inflation"). As Deputy Secretary, and then Secretary, of the Treasury from 1999–2001, Summers played an active role in pushing central bank independence around the world and deregulation of banking and derivatives in the United States. *See Lawrence H. Summers: Director of the National Economic Council and Assistant to the President for Economic Policy*, NATIONAL ECONOMIC COUNCIL, http://www.whitehouse.gov/administration/eop/nec/director (last visited Jan. 11, 2011). *See also* Joshua Zumbrun, *Clinton Calls Advice He Got on Derivatives 'Wrong' (Update1)*, BLOOMBERG BUSINESSWEEK (Apr. 19, 2010, 7:07 PM), http://www.businessweek.com/news/2010-04-19/clinton-calls-advice-he-got-on-derivatives-wrong-update1-.html ("[Summers'] argument was that derivatives didn't need transparency because they were 'expensive and sophisticated and only a handful of people will buy them and they don't need any extra protection' . . . ."). Summers stated in an interview that

> we've got a very clear sense, as I know the Fed does, of the respective roles of national fiscal authorities and national central banks. And that has got to be premised on a central bank's independence. It's got to be premised on a central bank's making judgments about overall monetary and financial policy, not about specific subsidies.

David Wessel, *Larry Summers on Ben Bernanke–Sort of*, REAL TIME ECONOMICS (Apr. 14, 2009, 8:52 PM), http://blogs.wsj.com/economics/2009/04/14/larry-summers-on-ben-bernanke-sort-of/. At the time of this writing, he is director of the White House National Economic Council. *See Lawrence H. Summers: Director of the National Economic Council and Assistant to the President for Economic Policy*, NATIONAL ECONOMIC COUNCIL, http://www.whitehouse.gov/administration/eop/nec/director (last visited Oct. 23, 2010).

banks.[134] But this conclusion is easily dispelled by expanding the time frame of the longitudinal studies and considering non-monetary factors. For instance, the annual inflation rate in the United States averaged about 6% during the 1941–1951 decade, when the Federal Reserve was politically-directed.[135] This was roughly the average annual U.S. inflation rate for the 1973–1988 period, when the Federal Reserve enjoyed far more independence.[136] Perhaps Samra would object to including the inflationary 1970s in such a comparison, but of course that is exactly what all of these self-serving studies have been doing to impugn the record of politically accountable central banks in Latin America.

Although Samra asserts that "most scholars agree" that central bank autonomy is closely correlated with lower inflation, the actual evidence is far less clear.[137] Eiffinger and de Haan present the findings of more than two dozen studies, not one of which considers the empirical evidence prior to 1950, thereby ignoring the most important decade of the twentieth century, as discussed above, when the Federal Reserve and other central banks lacked independence while supporting the century's highest economic growth rates and low inflation rates.[138] Even with such limited time frames, the studies were less than uniform in finding any statistical relation between central-bank independence and inflation, and many found no relation between central-bank independence and economic growth, interest rates, or budget deficits.[139]

In summarizing the empirical studies, including the Allesina/Summers study, Carl Walsh has stated that "[a]mong developed economies, central bank independence was found to be negatively correlated with average inflation."[140] Walsh noted, however, that data supporting this contention was based on "the high inflation years of the 1970s."[141] In addition, the studies mostly omitted consideration of the 1950s and 1960s, and completely overlooked the 1930s and 1940s. Moreover, these

134 Alesina & Summers, *supra* note 121, at 159.

135 *Historical Inflation Data from 1914 to the Present*, *supra* note 79. *See also supra* Part I.

136 Alesina & Summers, *supra* note 121, at 161 app. tbl.A2.

137 Samra, *supra* note 6, at 65.

138 Sylvester C. W. Eijffinger & Jakob de Haan, Special Paper, *The Political Economy of Central-Bank Independence*, PRINCETON INT'L FIN. SEC. 64–65 tbls.B1 & B2 (1996), *available at* http://www.princeton.edu/~ies/IES_Special_Papers/SP19.pdf. *See also supra* Part I (noting the period of 1941–1951).

139 Eijffinger & de Haan, *supra* note 138, at 66–69 tbls.B2–B4.

140 Walsh, *Central Bank Independence*, *supra* note 103, at 728–29.

141 *Id.* at 729.

studies have also been criticized for failing to consider any non-monetary factors that might explain changes in inflation rates.[142]

Walsh further noted that for developing countries, when "causality is difficult to establish; is inflation high because of political interference that leads to rapid turnover of central bank officials? Or are central bank officials tossed out because they can't keep inflation down?"[143] Again, implicit in such questions is the recognition that inflation may at times be caused by other non-monetary factors beyond the control of central bankers. Yet Samra indulges, quite uncritically, in monetarist assumptions. He quotes at length from Milton Friedman denigrating such possible causes of inflation as "'greedy businessmen, grasping trade unions, . . . Arab sheikhs, . . . or anything else that seems remotely plausible.'"[144] According to Friedman, any of these can produce rising prices for individual goods or services, but "'they cannot produce rising prices for goods in general . . . . [T]hey cannot produce continuing inflation.'"[145] There is actually no empirical analysis in Friedman's argument; rather, this is ideology and belief. There is no recognition that the quadrupling of the price of just one item—petroleum—could have devastating ripple effects throughout the economy, raising prices for goods in general, particularly since that commodity is an input in the production of so many other goods.[146]

Samra also quotes Friedman that

> '[t]here is probably no other proposition in economics that is as well established' as the principle that '[i]nflation occurs when the quantity of money rises appreciably more rapidly than output, and the more rapid the rise in quantity of money per unit of output, the greater the rate of inflation.'[147]

142 *Id.* at 730. Although Samra quotes from Walsh's summary at some length about the definitions of goal independence and instrument independence, he does not discuss the criticisms raised by Walsh about the empirical studies of developing countries related to methodology, causation, scope of analysis, and underlying theory. *See, e.g.*, Samra, *supra* note 6, at 80.

143 *See* Walsh, *Central Bank Independence*, *supra* note 103, at 728, 730.

144 *See* Samra, *supra* note 6, at 76 (quoting Friedman).

145 *See id.* (quoting Friedman).

146 James Galbraith disputes the view that the 1970s inflation somehow vindicates Milton Friedman and undermines Keynesian economics. The inflation resulted from the Vietnam War, the collapse of Bretton Woods, the rise of OPEC and major oil shocks in 1973–1974 and 1979; huge events that were much larger than any "monetary mischief." Therefore, the solution need not have been super-tight money, high interest rates, deep recession, and even less accountability for central bankers. Rather, "[t]he renewed application of less drastic measures might have been enough." James K. Galbraith, *We Are All Keynesians Again: Why Ben Bernanke Isn't Listening to Robert Samuelson*, WASH. MONTHLY (Jan./Feb. 2009) (reviewing ROBERT J. SAMUELSON, THE GREAT INFLATION AND ITS AFTERMATH: THE PAST AND FUTURE OF AMERICAN AFFLUENCE (2008)).

147 *See* Samra, *supra* note 6, at 67 (quoting Friedman). This Friedman quote comes from a chapter in which Friedman once again raises the history of the Weimar

Samra fails to analyze the implications of Friedman's monetarist prescription, which would limit the discretion of central bankers by tying them to a fixed rule for money, essentially requiring that the Federal Reserve limit the growth of monetary aggregates to about three percent a year, regardless of the consequences.[148] According to William Greider, Friedman's solution would have Congress "strip the Fed of its privileged independence and enact legislative instructions for U.S. monetary policy."[149] Samra is apparently unaware that this crude monetarism, based as it is on a quantity theory of money, was easily refuted in the early 1980s, when monetarists led by Friedman wrongly predicted double-digit inflation would result from an increase in the money supply and, instead, inflation continued to fall.[150] Various explanations—all non-monetary—were offered by economists, from falling oil prices to a strong dollar, and the Federal Reserve itself abandoned the monetarist experiment in mid-1982.[151]

Friedman's monetarism is also refuted by the evidence of the past two years, during which time central banks around the world, and the Federal Reserve in particular, have been trying mightily to expand the money supply to ease credit conditions and foster economic recovery.[152] The result has not been a resurgence of inflation. Quite the contrary, inflation has fallen to near zero and the U.S. economy creeps dangerously close to deflation.[153]

As the Federal Reserve itself recognizes, the velocity of money—the frequency in which money is actually spent—can

hyperinflation without providing the important context that Germany was in the grips of a balance of payments and foreign debt crisis, and that its central bank was already autonomous. *See* MILTON FRIEDMAN, MONEY MISCHIEF: EPISODES IN MONETARY HISTORY 194, 217 (1994).

148 GREIDER, SECRETS OF THE TEMPLE, *supra* note 2, at 91–92.

149 *Id.* at 91.

150 TURGEON, BASTARD KEYNESIANISM, *supra* note 71, at 78–79; Nicholas Kaldor, *How Monetarism Failed*, *in* HISTORY OF THE U.S. ECONOMY SINCE WORLD WAR II, *supra* note 106, at 423–24; ROBERT LEKACHMAN, GREED IS NOT ENOUGH: REAGONOMICS 120–35 (1982); Timothy A. Canova, *Inflation Hinges Not on M-1 Alone*, N.Y. TIMES, Apr. 16, 1984, at A20.

151 Andrew E. Busch, *Ronald Reagan and the Defeat of the Soviet Empire*, 27 PRESIDENTIAL STUDIES Q. 451, 460 (1997) (attributing the decline in inflation to falling oil prices engineered by the Saudis as part of a Reagan administration strategy to collapse the Soviet economy); Andrew H. Bartels, *Volcker's Revolution at the Fed*, *in* HISTORY OF THE U.S. ECONOMY SINCE WORLD WAR II, *supra* note 106, at 422.

152 Johnson, *supra* note 40.

153 David Leonhardt, *2010, a Year of No Inflation*, ECONOMIX BLOG, N.Y. TIMES, (Sept. 13, 2010 8:45 AM), http://economix.blogs.nytimes.com/2010/09/13/2010-a-year-of-falling-prices.

vary quite dramatically.[154] This was an insight of Keynes, developed in his theory of "liquidity-preference,"[155] that monetarists like Friedman seem to overlook at critical times.[156] For instance, as consumer and business confidence has declined along with the economy during the past two years, there has been a marked increase in hoarding by banks, businesses, and consumers.[157] Under such conditions, expansion of the money supply will not necessarily translate into higher inflation or higher economic growth. "The Fed has been pushing reserves into the banking system in exchange for toxic assets while hoping the banks will lend to consumers and businesses in an environment of severe economic insecurity."[158] Marriner Eccles himself had criticized this approach as "pushing on a string" and largely ineffective.[159]

Although the quantity theory of money and other monetarist assumptions have been widely discredited, many of the studies relied on by Samra remain committed to these doctrines. In any given context, changes in inflation rates may or may not have anything to do with central bank structure and monetary policy, and they may or may not be related to a host of non-monetary factors. Unfortunately, for autistic economics, context does not

154 THE FEDERAL RESERVE SYSTEM: PURPOSES & FUNCTIONS 1994, *supra* note 76, at 27 (reporting that when the velocity of money or credit changes unpredictably, "adherence to the initial objectives for money or credit growth would lead to an undesirable outcome for output or prices").

155 KEYNES, THE GENERAL THEORY, *supra* note 39, at 194–209.

156 In fairness, in Friedman's academic work he recognizes periodic changes in money velocity, including periods in which velocity has fallen quite significantly even as the supply of money has increased and inflation has remained stable. FRIEDMAN & SCHWARTZ, *supra* note 68, at 302, 307 (discussing a sharp decline in money velocity from 1929–1933); *id.* at 546 (discussing decline in money velocity during World War II). But in Friedman's less academic and more popular and polemical writings relied on by Samra, there is not a word of mention about the velocity of money. FRIEDMAN, *supra* note 147, at 189–95, 202, 205–09, 219–22, 229–33, 235–37, 258–59, 264 (discussing money supply growth and inflation without any mention of changes in the velocity of money). It could be construed that the omission was motivated by Friedman's political agenda and may be lacking in intellectual honesty.

157 Jia Lynn Yang, *Companies Pile Have the Cash But Not the Will to Hire*, WASH. POST, July 15, 2010, at A1 (reporting that "[n]on-financial companies are sitting on $1.8 trillion in cash, roughly one-quarter more than at the beginning of the recession"); Daniel Fisher, *Excess Reserves Are the $1 Trillion Reminder of Crisis*, FORBES BLOG (Aug. 5, 2010, 9:21 AM), http://blogs.forbes.com/danielfisher/2010/08/05/excess-reserves-are-the-1-trillion-reminder-of-crisis/ (reporting excess bank reserves at the Federal Reserve rose from $1.9 billion in August 2008 to more than $1 trillion two years later).

158 Canova, *The Federal Reserve We Need*, *supra* note 81.

159 MELTZER, *supra* note 65, at 478 (discussing Eccles' 1935 testimony to the House Committee on Banking and Currency). Eccles recognized that central bank accommodation of large public deficits would prove far more effective than pushing reserves into the banking system as long as the federal government spent wisely in putting people back to work and investing in the long-term infrastructure needs of the nation.

matter, and these studies fail to even consider non-monetary factors in changes in inflation rates over time.[160]

B. Economic Growth and Income Distribution

The empirical literature on central bank independence is limited and also quite flawed in its treatment of economic growth and the distribution of income. Once again, the studies generally narrow the time period of inquiry to reach unsound conclusions. Moreover, all the studies relied on by Samra fail to even consider the impact of central bank independence on distributions of wealth and income.

For instance, in the study by Carlstrom and Fuerst on the New Zealand experience, the authors fail to mention that the 1950s and 1960s was the longest period of sustained economic growth in New Zealand history while inflation averaged about four percent.[161] Since the Reserve Bank of New Zealand was far less independent during this period, it allowed the Labour government to pursue Keynesian economics, social welfare, employment protection, and the expansion of infrastructure to serve economic, employment, and social development objectives.[162]

This was also the trend in much of the advanced capitalist world during the same period, including in the United States, Canada, Japan, and much of Western Europe, where politically-directed central banks were accommodating massive government spending and social welfare programs, and high economic growth rates.[163] Yet, a study by Summers and Alesina found no

160 *See, e.g.*, *Historical U.S. Inflation Rate: 1914 to the Present*, *supra* note 80; VATTER, *supra* note 65, at 100.

161 JANE KELSEY, THE NEW ZEALAND EXPERIMENT: A WORLD MODEL FOR STRUCTURAL ADJUSTMENT? 160 (1997).

162 *Id.* at 23.

163 LINDA MCQUAIG, SHOOTING THE HIPPO: DEATH BY DEFICIT AND OTHER CANADIAN MYTHS 220–28 (1995) (discussing the role of the Bank of Canada in accommodating public spending and investment levels of "the golden era" of the late 1940s to early 1970s which "represented a kind of historic compromise between powerful financial interests and the working population"); WILLIAM KREHM, A POWER UNTO ITSELF 26–27 (1993) (describing the Bank of Canada's pegging interest rates at 1.5% throughout the 1940s and 1950s, perhaps the most vibrant period in all of Canada's economic history to accommodate active fiscal policies on education, housing, and infrastructure investment); WILLIAM F. HIXSON, IT'S YOUR MONEY 124 (1997) (explaining how the Bank of Canada financed the public's purchases of Victory Bonds during World War II "to mobilize the idle real resources of the nation—labor, materials, and plant—to win the war"); Jagdish Bhagwati, *The Capital Myth: The Difference Between Trade in Widgets and Dollars*, 77 FOREIGN AFF. 7, 10 (1998) (pointing out that Western Europe and Japan returned to prosperity after World War II, and China has enjoyed remarkable economic growth rates in recent years, all without capital account convertibility); BLOCK, *supra* note 75, at 109 (noting that "[a]t the beginning of the 1950s . . . no major European currency was convertible"); MARGARET GARRITSEN DE VRIES, BALANCE OF PAYMENTS ADJUSTMENT, 1945 TO 1986: THE IMF

correlation between central bank independence and higher economic growth rates precisely because it did not consider any data prior to 1955, but mostly focused on the period of 1973–1988.[164] How convenient to mostly ignore the three most successful decades for politically directed central banks. For instance, if we compare U.S. economic growth in the 1940s with growth in more recent years, the conclusions are much different. In fact, U.S. gross national product (GNP) grew at an average rate of about 5.2% a year during the 1940s when the Federal Reserve was politically-directed,[165] compared with average annual GNP growth of about 2.4% growth from 1973–1987 when the Federal Reserve was far less accountable.[166] Therefore, real economic growth rates were more than twice as high when the central bank was politically accountable compared with when it had much greater autonomy.

According to Mark Weisbrot, real per capital growth in Latin America rose 82% between 1960 and 1980, the period prior to central bank independence; and only 9% from 1980 to 2000, the period coinciding with reforms to independent central banks.[167] This is an enormous decline in growth rates from about 4% a year to less than 0.5%, not even high enough to keep pace with population increases. In country after country—Argentina, Brazil, Mexico, Bolivia, Costa Rica—there were enormous decelerations in economic activity with the onset of structural reforms, including central bank independence, that were imposed by the International Monetary Fund in the context of severe balance of payments and foreign debt crises.[168]

Ha-Joon Chang concludes that the "bad old days" before independent central banks was actually the most successful period for developing countries, with per capita income growing by 3% annually in the 1960s and 1970s, above the 1.7% annual growth rates since the 1980s after central bank independence

EXPERIENCE 30–32 (1987) (chronicling reforms in various countries to make their currencies legally convertible); BEGG ET AL., CTR. FOR ECON. POL'Y RESEARCH, SUSTAINABLE REGIMES OF CAPITAL MOVEMENTS IN ACCESSION COUNTRIES viii (indicating that some larger Western European countries did not fully remove capital controls until the 1990s).

164 Samra, *supra* note 6, at 72 n.56–57; Alesina & Summers, *supra* note 121, at 160–61 app. tbls.A1 & A2 (focusing on two periods, 1955–1988 and 1973–1988).

165 *Statistical Tables Relating to Income, Employment, and Production*, *in* ANNUAL REPORT TO THE PRESIDENT, COUNCIL OF ECONOMIC ADVISORS 197, 204 tbl.B-2 (1980), *available at* http://fraser.stlouisfed.org/publications/erp/issue/1383/download/5809/ERP1980_Appendixes.pdf (providing the basis for the calculation of the 5.2% figure for the 1941–1951 period by averaging the annual real GNP growth rates).

166 Alesina & Summers, *supra* note 121, at 161 app. tbl.A2.

167 Weisbrot, *Latin America's Electoral Leftward Shift*, *supra* note 99 (providing the graphic charts which accompany Weisbrot's speech).

168 *Id.*

and other neoliberal reforms were implemented.[169] Chang also points out that the average growth rate of developing countries since the 1980s "would be even lower if we were to exclude China and India," two countries that have experienced tremendous economic growth precisely by not embracing central bank independence.[170]

China's central bank is tightly controlled in a one-party state and is perhaps the most politically directed central bank in the world, with the state dictating the central bank's objectives and policy instruments.[171] Yet, China has experienced the fastest economic growth over a sustained period of time than any country since the United States in the 1940s.[172] Meanwhile, inflation has not yet gotten out of hand. For instance, as Chinese growth rates have pulled up real estate prices, the authorities have imposed margin requirements and other selective credit controls to prevent the asset bubble from getting out of hand.[173] China's central bank has also been directed to intervene in foreign exchange markets to keep the Chinese currency undervalued to the dollar, thereby helping the country amass large trade and current account deficits by promoting manufacturing and exports.[174] China, India, and Malaysia were among the very few Asian countries to avoid economic collapse during the Asian currency contagion of the late 1990s by

169 HA-JOON CHANG, BAD SAMARITANS: THE MYTH OF FREE TRADE AND THE SECRET HISTORY OF CAPITALISM 27 (2008).

170 *Id.*

171 C. FRED BERGSTEN ET AL., CHINA: THE BALANCE SHEET: WHAT THE WORLD NEEDS TO KNOW NOW ABOUT THE EMERGING SUPERPOWER 29 (2006); WILLIAM GREIDER, ONE WORLD, READY OR NOT: THE MANIC LOGIC OF GLOBAL CAPITALISM 160 (1997).

172 G. John Ikenberry, *The Rise of China and the Future of the West: Can the Liberal System Survive?*, 87 FOREIGN AFF. 23, 23–24, 26 (2008), *available at* http://www.foreignaffairs.com/articles/63042/g-john-ikenberry/the-rise-of-china-and-the-future-of-the-west.

173 Joy C. Shaw, *Beijing Acts to Limit Speculative Investing*, WALL ST. J., Apr. 19, 2010, at A15 (reporting an increase in margin requirements and lending rates by State Council, China's cabinet, rather than the People's Bank of China, the country's central bank). Hong Kong's central bank, which is more independent than the People's Bank of China, has been provided with selective credit control instruments and charged with containing inflation of asset prices. Although these intrusions are often considered by monetarists to be constraints on central bank prerogatives, such delegated authority has provided the central bank with the tools to slow, if not completely prevent, the growth of a housing bubble. Jonathan Cheng, *Hong Kong Acts to Prevent Bubble*, WALL ST. J., Oct. 24–25, 2009, at B2 (reporting that Hong Kong has managed so far "to sidestep the troubles that beset the U.S. subprime mortgage market, thanks to a 30% down-payment requirement that has been in place since 1991," and was recently raised to 40% for the high-end property market).

174 BERGSTEN ET AL., *supra* note 171, at 90 (concluding that "undervaluation of the Chinese currency since 2002 has exacerbated the underlying structural imbalance in bilateral trade" and contributed to China's current account surplus).

imposing restrictions on short-term capital flows.[175] Recall that currency and capital controls are routinely criticized by monetarist scholars as intrusions on central bank independence.[176] Malaysia imposed capital controls over the objections of its central bank governor and deputy governor, both of whom reportedly resigned in protest.[177] As Joseph Stiglitz concluded, and the IMF finally conceded:[178] "In retrospect, it was clear that Malaysia's capital controls allowed it to recover more quickly, with a shallower downturn, and with a far smaller legacy of national debt burdening future growth."[179] Meanwhile, throughout the period of currency contagion in Asia, India's economy continued to grow at a rate in excess of 5% and China's economy grew at close to 8%.[180]

The empirical evidence demonstrates that in both good times and bad, economic growth rates are higher when central banks are subject to some political control. China's emergence as an economic powerhouse is particularly instructive: a politically directed central bank has accommodated high economic growth rates over a sustained period of time while helping to ensure relative stability in asset prices and financial markets. This compares favorably with the relative instability and slow growth in the United States and other countries with captured central banks.

It is also instructive to consider the relationship between economic growth and income distribution. At times, economic growth may be widely shared and contribute to more equitable distributions of income; at other times, when based on policies that restrict wide distributions, economic growth leads to less income equality.[181] Slow growth or negative growth is most often associated with rising inequality.[182] Unfortunately, none of the

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175 STIGLITZ, MAKING GLOBALIZATION WORK, *supra* note 95, at 34; ROBIN HAHNEL, PANIC RULES: EVERYTHING YOU NEED TO KNOW ABOUT THE GLOBAL ECONOMY 88 (1999).

176 Samra, *supra* note 6, at 79 (quoting Jácome, *Legal Central Bank Independence*, *supra* note 58, at 20–22).

177 JOSEPH E. STIGLITZ, GLOBALIZATION AND ITS DISCONTENTS 124 (2002) [hereinafter STIGLITZ, GLOBALIZATION AND ITS DISCONTENTS].

178 Michael M. Phillips, *IMF Concedes that Malaysia's Controls over Capital Produced Positive Results*, WALL ST. J., Sept. 9, 1999, at A21.

179 STIGLITZ, GLOBALIZATION AND ITS DISCONTENTS, *supra* note 177, at 125.

180 *Id.*

181 James Galbraith describes these negative outcomes as "growth with inequality" and "poverty amidst plenty." Email from James K. Galbraith, Professor, LBJ School of Public Affairs, University of Texas at Austin, to Post-Keynesian list-serve (Aug. 12, 2000, 10:19), *available at* http://www.mail-archive.com/pen-l@galaxy.csuchico.edu/msg44810.html (discussing the CEPR paper *World Bank Research Faulted*).

182 The Commission on the Measurement of Economic Performance and Social Progress has provided a useful critique of the failures of aggregate measurements of GDP, income, consumption and wealth to reflect actual living standards and distributions of

studies relied on by Samra considered the distributional consequences of central bank structure. In fact, Samra's ad hominem attack was apparently triggered by a quote from my own work pointing out that the Washington Consensus policy agenda, which includes central bank independence, has coincided with a significant redistribution of income and wealth from the many at the bottom to the few at the top.[183]

Samra's omission is unfortunate since empirical, theoretical, and econometric research does exist which considers the relationship between the goal independence of central banks and distributional consequences. For instance, *Beyond Inflation Targeting* provides sophisticated empirical and econometric analyses by nearly two dozen economists, none of whom are associated with the research departments of central banks or other orthodox institutions.[184] In particular, the volume considers the distributional consequences of "inflation targeting," which, according to Gerald Epstein and Erinç Yeldan, is considered "the new orthodoxy" approach, has been adopted by some two dozen central banks, and is usually associated with central bank independence.[185] These and other studies conclude that inflation targeting may have significant costs in terms of lost output and mal-distributions of income and wealth, including differential negative impact on the employment rates of women relative to men and on the welfare of workers relative to owners and managers.[186]

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income, consumption and wealth. JOSEPH E. STIGLITZ, AMARTYA SEN & JEAN-PAUL FITOUSSI, MISMEASURING OUR LIVES: WHY GDP DOESN'T ADD UP 13–14 (2010).

183 Samra, *supra* note 6, at 74–75 (quoting Canova, *Financial Liberalization*, *supra* note 28, at 1294).

184 BEYOND INFLATION TARGETING: ASSESSING THE IMPACTS AND POLICY ALTERNATIVES vii–xi (Gerald A. Epstein & A. Erinç Yeldan eds., 2009).

185 Gerald A. Epstein & A. Erinç Yeldan, *Beyond Inflation Targeting: Assessing the Impacts and Policy Alternatives*, *in* BEYOND INFLATION TARGETING: ASSESSING THE IMPACTS AND POLICY ALTERNATIVES, *supra* note 184, at 3–4 (defining the inflation targeting policy framework as "'the public announcement of inflation targets coupled with a credible and accountable commitment on the part of government policy authorities to the achievement of these targets'") (quoting Mark Setterfield, *Is Inflation Targeting Compatible with Post Keynesian Economics?*, 28 J. OF POST KEYNESIAN ECON. 653, 653–71 (2006) and citing to studies by Bernanke, Mishkin and Schmidt-Hebbel).

186 Epstein & Yeldan, *Beyond Inflation Targeting*, *supra* note 185, at 8; Elissa Braunstein & James Heintz, *The Gendered Political Economy of Inflation Targeting: Assessing Its Impacts on Employment*, *in* BEYOND INFLATION TARGETING, *supra* note 184, at 110–12 (concluding that in middle- and low-income countries dealing with demand-pull inflation, inflation targeting may undermine economic growth); Arjun Jayadev, *Income, Class and Preferences Towards Anti-inflation and Anti-unemployment Policies*, *in* BEYOND INFLATION TARGETING, *supra* note 184, at 87 (finding systematically differential effects on the welfare of workers compared with owners, and on different segments of the working class). *See also* Jose Antonio Cordero, *Economic Growth Under Alternative Monetary Regimes: Inflation Targeting vs. Real Exchange Rate Targeting*, 22 INT'L REV. OF APPLIED

In Latin America, the region on which Samra focuses, levels of income inequality are among the highest in the world, and the levels of poverty have skyrocketed in the present period of independent central banks.[187] James Galbraith and the University of Texas Inequality Project have identified a range of policies that undermine growth and equality, namely "policies of tearing down social institutions that provide health care, education, housing, food and direct support for the wages of low-income workers," as well as the deregulation of capital markets that lead to inevitable financial crises.[188] Unaccountable central bankers are more likely to pursue the range of these policies by catering to elite financial interests and by limiting the ability of elected governments to expand budgets and avoid fiscal austerity.

Unfortunately, questions of growth and distribution are hardly asked by Samra and are entirely missing in his four case studies. Among the research he relies upon, the few who discuss such issues, like Larry Summers, follow the same flawed empirical methodology based on truncated periods of analysis.[189] This outdated orthodox approach, shared by monetarism and debased forms of Keynesianism, has simply ignored the numerous studies that correlate central bank independence with slow growth and rising levels of income inequality.[190] The orthodoxy ignores distributional questions and entrenches itself in abstract ignorance. This is once again a case of autistic economics, oblivious to larger social or historical contexts and apparently mesmerized by the elegance of their mathematical abstractions.

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ECON. 145, 145–60 (2008) (using econometric analysis to conclude that inflation targeting undermines growth and employment).

187 2009 WORLD DEVELOPMENT INDICATORS 64–65 tbl.2.7 (Data Dev. Grp., The World Bank ed., 2009) (reporting high and generally rising poverty rates); *id.* 72–73 tbl.2.9 (reporting high Gini coefficients throughout Latin America). *See also* James K. Galbraith & Hyunsub Kum, *Inequality and Economic Growth: Data Comparisons and Econometric Tests*, (Univ. of Texas Inequality Project, Working Paper No. 21, 2002), *available at* http://utip.gov.utexas.edu/papers/utip_21rv.pdf (finding that per capita GDP growth has slowed in most countries since 1981 and there is a worldwide trend toward rising inequality).

188 Galbraith, *supra* note 181 (discussing the CEPR paper *World Bank Research Faulted*).

189 *See* Alesina & Summers, *supra* note 121, at 154; Samra, *supra* note 6, at 72 n.56 (referencing the research findings of Alesina and Summers).

190 The British economist Joan Robinson, part of Keynes' inner circle, coined the phrase "bastard Keynesianism" to describe the early Keynesian models that departed from Keynes' original framework and sought to reconcile Keynesians and non-Keynesians by conforming more closely to orthodox theory. SKIDELSKY, JOHN MAYNARD KEYNES: THE ECONOMIST AS SAVIOR, *supra* note 44, at 538, 621.

### C. Agency Capture, Financial Fragility, and Rigged Markets

There is a tendency among economists to dismiss empirical data prior to 1950 as not relevant to today's realities. The 1930s was a depression decade, the 1940s was a wartime decade, and both are seen as anomalies and the data from those periods are treated as outliers.[191] Perhaps it is understandable that Samra would not recognize the salience of the pre-1952 period in U.S. monetary history since it is no longer taught in most economics departments and business schools.[192] But there is certainly no reason to ignore the post-2000 period, in which independent central banks, led by the Federal Reserve, lowered interest rates while relaxing all kinds of meaningful regulatory oversight, resulting in an enormous hyperinflation of asset prices followed by a bust of historic proportions. Throughout his brief for central bank independence, Samra manages to avoid any mention of the financial collapse of 2008 and the enormous ensuing financial bailouts, which were engineered by privately-directed central banks.

This blind spot fits within the genre of central bank apologists. They missed the possibility of a black swan prior to the financial collapse by ignoring the empirical data of the financial collapse of 1929–1933; they now miss the black elephant in the closet, the 2008 financial crisis itself and the scale of the ongoing bailouts and hidden subsidies. They also overlook how central bank independence has become a cover for regulatory capture by private sector banking constituencies.[193]

As recognized by Samra, the Federal Reserve has come to enjoy complete instrument independence as well as substantial goal independence since its mandate as delegated by Congress is

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[191] Anti-Keynesians routinely dismiss the high economic growth and low inflation rates of World War II by attributing the post-war inflation to the war years. FRIEDMAN & SCHWARTZ, *supra* note 65, at 556–58. *See generally* Higgs, *supra* note 63. Meltzer himself dismissed the 1940s as an anomaly. MELTZER, *supra* note 65, at 737–39 (quoting with approval Allan Sproul, president of the New York Federal Reserve Bank from 1941 to 1956). Niall Ferguson's myopia suggests that today's anti-Keynesians have learned nothing from the 1940s. Niall Ferguson, *Today's Modern Keynesians Learnt Nothing Since the 1930s*, FIN. TIMES, July 20, 2010, at 9.

[192] This observation is based on numerous discussions the author has had over the past two decades with faculty in economics departments and business schools around the country about the coverage in their basic and advanced courses. The pre-1952 pegged period is missing from mainstream texts used in those courses, and it appears rare for faculty to supplement those deficient texts with readings on the pegged period.

[193] Theories of agency capture easily explain the capture of central banks by their commercial banking and financial constituencies. *See generally* MANCUR OLSON, JR., THE LOGIC OF COLLECTIVE ACTION: PUBLIC GOODS AND THE THEORY OF GROUPS (1965); George J. Stigler, *The Theory of Economic Regulation*, 2 BELL J. ECO. & MGMT. SCI. 3 (1971); Gary S. Becker, *A Theory of Competition Among Pressure Groups for Political Influence*, 98 Q. J. ECON. 371 (1983).

cast in broad terms with conflicting policy objectives.[194] But such broad delegations of power have only facilitated the Federal Reserve's capture by its big bank constituency. As Epstein and Yeldan acknowledge, "in practice, 'central bank independence' means that central banks have become less accountable to their governments, and, arguably, more accountable to financial elites and international organizations such as the IMF."[195]

Central bank independence does not occur in a vacuum; it is adopted because of the presence of a strong political constituency.[196] The Federal Reserve's most important political constituency is comprised of the big banks that own and dominate the regional Federal Reserve Banks and the Federal Open Market Committee.[197] This domination by private bankers helps explain the "revolving door" that funnels bank economists and lawyers into high level positions at the Federal Reserve and routinely rewards Federal Reserve officials with lucrative private sector opportunities.[198] Although Samra relies on Milton Friedman for the quantity theory of money, he ignores Friedman's strident criticism of the Federal Reserve as an agency that has been captured by its big bank constituency.[199]

Samra quotes approvingly from the *Guide to the Perfect Latin American Idiot* that "the fox in the henhouse is not the businessman but the state, which is plucking the chickens mercilessly."[200] Hardly any serious observer would accuse businesspeople or industrialists, as opposed to bankers and

194 Samra, *supra* note 6, at 80 (quoting Walsh, *Central Bank Independence*, *supra* note 103, at 729); *id.* at 82 (discussing the Federal Reserve's complete instrument independence and noting that "it has complete discretion over when and to what extent to make open market operations and other decisions").

195 EPSTEIN & YELDAN, *supra* note 184, at 8. Likewise, Mark Weisbrot notes that the CEO of JP Morgan sits on the board of the powerful New York Federal Reserve Bank. The problem has been turned on its head as central banks are no longer independent from powerful financial interests. Mark Weisbrot, *Answer to the People, Not Greedy Elites*, THE GUARDIAN (Feb. 15, 2010, 23.00 GMT), http://www.guardian.co.uk/commentisfree/cifamerica/2010/feb/15/argentina-central-bank-independent.

196 Walsh, *Central Bank Independence*, *supra* note 103, at 730 (discussing Posen, *supra* note 117).

197 THE FEDERAL RESERVE SYSTEM: PURPOSES & FUNCTIONS 1994, *supra* note 76, at 6–15.

198 Milton Friedman, *The Case for Overhauling the Federal Reserve*, CHALLENGE, July–Aug. 1985, at 4, 6 [hereinafter Friedman, *Overhauling the Fed*] (criticizing the Federal Reserve for "churning" its accounts by unnecessary buying and selling of government securities to subsidize the bond-dealing operations of its private constituency). *See generally* Jordi Blanes i Vidal, Mirko Draca, & Christian Fons-Rosen, *Revolving Door Lobbyists* (Centre for Economic Performance Discussion Paper No 993, Aug. 2010), *available at* http://cep.lse.ac.uk/pubs/download/dp0993.pdf.

199 According to Friedman, "no major institution in the United States has so poor a record of performance over so long a period of time yet so high a public reputation as the Federal Reserve." Friedman, *Overhauling the Fed*, *supra* note 198, at 5.

200 Samra, *supra* note 6, at 75.

financiers, of controlling central banks. In fact, for many years critics of independent central banking have proposed including representatives of industrial capital on the Federal Reserve's policymaking committees.[201] Instead, as the structure of the Federal Reserve shows quite clearly, it is private sector commercial bankers and financial interests that dominate through ownership and direction of the regional Federal Reserve Banks.[202] The most powerful of the regional Fed banks is the New York Federal Reserve Bank, which over the past two years has provided some $1.6 trillion in low interest loans, backed by shaky collateral, to its member banks, while purchasing some $1.25 trillion of their toxic assets and another $500 billion in Treasury securities.[203] Often referred to as "quantitative easing," the Federal Reserve's large-scale purchase of assets has a direct "qualitative" effect by providing direct financial assistance to the private counterparties on these transactions.[204] Along with selective release of insider information by Federal Reserve officials to their favored investors (often former Fed officials), these are among the many quid pro quos in a system of opaque subsidies that are more suggestive of crony capitalism and rigged markets than any free and fair playing field.[205] It would appear that the bankers themselves are playing the role of the fox plucking the taxpayer-chickens in the central bank henhouse.[206]

In May 2008, former Federal Reserve chairman Paul Volcker expressed concern that the Federal Reserve's independence could be undermined by the wide variety of assets it had taken onto its balance sheet to help its banking constituency. He was quoted in

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201 COMMONS, *supra* note 22, at 900–01; KEYSERLING, *supra* note 22, at 111.

202 THE FEDERAL RESERVE SYSTEM: PURPOSES AND FUNCTIONS 7–15 (Bd. of Governors of the Fed. Reserve Sys. ed., 6th ed. 1974) [hereinafter THE FEDERAL RESERVE SYSTEM: PURPOSES AND FUNCTIONS 1974].

203 *FAQs: MBS Purchase Program*, FEDERAL RESERVE BANK OF NEW YORK, http://www.ny.frb.org/markets/mbs_FAQ.HTML (last updated Aug. 20, 2010) (reporting $1.25 trillion in Federal Reserve purchases of mortgage backed securities). The Federal Reserve's various emergency lending programs exceeded $1.6 trillion. Johnson, *supra* note 40 (reporting $112 billion in Primary Credit Program; $493 billion in Term Auction Facility; $225.4 billion in section 13(3) lending; $234 billion in Term Securities Lending Facility; $147 billion in Primary Dealer Credit; $145 billion in Asset-Backed Commercial Paper Money Market Mutual Fund Liquidity Facility; $349 billion in Commercial Paper Funding Facility; and $48 billion in Term Asset-Backed Securities Loan Facility).

204 David Wessel, *For Fed, Goosing Markets Is a Risk Worth Taking*, WALL ST. J., Oct. 14, 2010, at A4.

205 Kristina Cooke et al., *Special Report: The Ties that Bind at the Federal Reserve*, REUTERS (Sept. 30, 2010), http://www.reuters.com/article/idUSTRE68S01020100930.

206 In analyzing central bank independence, Samra recognizes that a disproportionate focus on formal legal structures "often fails to truly explain the full extent of political interference in the central bank decision-making processes." Samra, *supra* note 6, at 65. Unfortunately, he does not apply such inquiry to the informal (and for that matter, formal) mechanisms that allow private financial interests to interfere politically in central bank governance.

the *Wall Street Journal* as stating that the central bank might be viewed "as the rescuer or supporter of a particular section of the market [which] is not strictly a monetary function in the way it's been interpreted in the past."[207] This was nearly six months before the New York Federal Reserve Bank, then headed by Timothy Geithner, adopted many of the liquidity and open market programs that greatly expanded its balance sheet further to prop up its constituency.[208] Volcker, long respected in financial circles, suddenly seemed increasingly out of touch with the new normal of hidden subsidies for the financial oligarchy of big banks and hedge funds.

B.W. Fraser, former governor of the Australian central bank, argues that politicians cannot be trusted to direct monetary policy because they are drawn to short-term monetary stimulus that will fuel inflation: "Independent and longsighted central bankers are needed to rescue politicians from this temptation."[209] Likewise, Gauti Eggertsson and Eric Le Borgne conclude that delegating monetary policy to independent central bankers results in "better forecasts and fewer policy mistakes, which increases social welfare."[210] Such glorifications of central bankers seem naïve at best in light of their role in the financial collapse and multi-trillion dollar subsidies to their financial constituencies.[211] It should now be clear that central bankers are not independent from the big banks, and they are as short-sighted as any banking executive fixated on the next quarterly report or daily stock price.

The Federal Reserve's capture is also related to the larger political culture in Washington. The politicians who continue to delegate broad powers to the Federal Reserve are responding to the agenda of the same big banks that exercise decisive influence over the central bank. The lure of large campaign contributions, surely a very short-term motive, is often enough to convince elected officials to continue with such broad delegations and to

207 Greg Ip, *Fed Balance Sheet Worries Volcker*, WALL ST. J., May 15, 2008, at A3.

208 DAVID WESSEL, IN FED WE TRUST: BEN BERNANKE'S WAR ON THE GREAT PANIC 256 (2009).

209 Fraser, *supra* note 35, at 2–3; Samra, *supra* note 6, at 71 (quoting Fraser).

210 Gauti Eggertsson & Eric Le Borgne, *A Political Agency Theory of Central Bank Independence* 5 (IMF, Working Paper No. 03/144, 2003), *available at* http://www.imf.org/external/pubs/ft/wp/2003/wp03144.pdf; Samra, *supra* note 6, at 81 (quoting Eggerston & Le Borgne).

211 Samra offers a "pithy quote" from *The Economist* that "the only good central bank is one that can say no to politicians." Samra, *supra* note 6, at 72 n.52. Since the many failures of the world's leading central banks over the past decade, not least of all by the Federal Reserve, perhaps this aphorism should be changed to "the only good central bank is one that can say no to its big bank constituencies."

comply with the Wall Street agenda being pushed by the Federal Reserve itself.[212]

Agency capture helps explain the Federal Reserve's failure to effectively monitor and supervise the lending practices of banks, its efforts to undermine the Glass-Steagall firewalls between commercial and investment banking, and its lobbying to further deregulate markets for financial derivatives.[213] Throughout the Greenspan and Bernanke eras, at the height of its independence, the Federal Reserve has served as the lapdog for Wall Street interests rather than as a watchdog to prevent marketplace abuses.

The deregulatory agenda pursued by the Federal Reserve, and the financial innovations that resulted, were justified by a variety of economic theories, including rational expectations, real business cycle theory, and the efficient financial market theory—all of which were discredited by the present financial crisis, but all of which live on by force of momentum and career-long commitments in the academy.[214] According to numerous economic theorists and historians, the consequence of such financial innovation is to markedly increase the fragility of the financial system.[215] A study by Gerald Epstein presents econometric evidence correlating independent central banking with more speculative financial markets and lower rates of capacity utilization.[216] The past two decades of independent central banking witnessed a proliferation in financial innovations, includeing the securitized asset-backed instruments and financial derivatives that played an enormous role in the financial panic, economic recession, and ongoing crisis.

### D. Case Studies in Historical Context

The relationship between central bank independence and financial fragility is not confined to the United States and other wealthy countries. Samra notes that more than a dozen Latin

212 "The financial sector is far and away the largest source of campaign contributions to federal candidates and parties, with insurance companies, securities and investment firms, real estate interests and commercial banks providing the bulk of that money. The sector contributes generous sums to both parties . . . ." Aaron Kiersh, *Finance/Insurance/Real Estate: Background*, CTR. FOR RESPONSIVE POLITICS (last updated July 2009), http://www.opensecrets.org/industries/background.php?cycle=2010&ind=F.

213 Canova, *Financial Market Failure*, *supra* note 15, at 384–87.

214 ROBERT SKIDELSKY, KEYNES: THE RETURN OF THE MASTER 32–42 (2009).

215 *See generally* HYMAN P. MINSKY, STABILIZING AN UNSTABLE ECONOMY (2008); CHARLES P. KINDLEBERGER & ROBERT Z. ALIBER, MANIAS, PANICS, AND CRASHES: A HISTORY OF FINANCIAL CRISES (5th ed. 2005).

216 Gerald Epstein, *Political Economy and Comparative Central Banking*, 24 REV. RADICAL POL. ECON., no. 1, Spring 1992, at 1–30.

American countries have implemented reforms strengthening central bank independence in the past three decades.[217] He selects four of those countries (Argentina, Chile, Mexico, and Venezuela) as case studies, none of which seek to correlate central bank reforms with changes in any economic indicators.[218] All the case studies show are the legal changes that have occurred to make central banks more or less independent. But a closer look at the empirical evidence in these four countries suggests the dangers of unaccountable and captured central banks.

As discussed above, in Chile inflation rates rose in the 1980s under an independent central bank and fell in the 1990s under a regime of capital controls that restricted the central bank's instrument independence and helped shield the country from successive currency contagions.[219] Although Chile is seen as more successful than many other Latin American countries, it still suffers from high rates of unemployment and poverty and top-heavy distributions of income.[220]

In Mexico, the central bank was reformed in 1993;[221] in early 1995 the Mexican peso collapsed.[222] Mexico, unlike Chile, rejected capital controls.[223] The impact of the peso crash and the ensuing austerity was severe and added to the mass dislocations arising from Mexico liberalizing its agricultural and other markets as part of its implementation of the North American Free Trade Agreement (NAFTA).[224] Today, after two decades with an independent central bank, Mexico is a failing state, fighting a drug war with the burdens of mass unemployment, high poverty rates, and huge inequalities in wealth and

217 Samra, *supra* note 6, at 66.

218 *Id.* at 66, 82–85, 87, 90.

219 *See supra* notes 206–209 and accompanying text. *See also* Gutiérrez, *supra* note 110, at 16 tbl.3.; Canova, *Banking and Financial Reform*, *supra* note 112, at 1621–23, 1626 (discussing Chile's *encaje* program which required foreign investors and lenders to deposit thirty percent of the investment or loan into a non-interest bearing account with the central bank for a full year or pay a three percent tax to recover the deposit); GRANDIN, *supra* note 112, at 204 (discussing Chile's break with free market dogma in the 1980s, turn to state promotion of exports and use of regulatory laws, "including some enacted by the vilified Allende government").

220 WORLD BANK, 2009 WORLD DEVELOPMENT INDICATORS 64–65 tbl.2.7 (2009) (detailing poverty rates and reporting that one in five Chileans are below the poverty line); *id.* at 72–73 tbl.2.9 (detailing "[d]istribution of income or consumption," and reporting high Gini coefficients for Chile).

221 Carstens & Jácome, *supra* note 82, at 4 n.3.

222 Canova, *Banking and Financial Reform*, *supra* note 112, at 1572.

223 *Id.* at 1625 n.224.

224 *Id.* at 1586–96; Timothy A. Canova, *Closing the Border and Opening the Door: Mobility, Adjustment, and the Sequencing of Reform*, 5 GEO. J. L. & PUB. POL'Y 341, 344–46 (2007) [hereinafter Canova, *Closing the Border*].

income.[225] It is difficult to understand how anyone could point to Mexico as a success story for independent central banking, trade liberalization, privatization, or other components of the Washington Consensus policy agenda.

Argentina's experience has been equally checkered; central bank independence has coincided with years of persistently high levels of unemployment, a wave of financial and political corruption, an enormous financial crisis in 2001, and the country's worst economic collapse in a century.[226] This led to the election of a Peronist government that inherited more than 20%, 60% of the population below the poverty line, and 40% in extreme poverty.[227] Not surprisingly, the government turned to populist measures, including open conflict with the central bank on the use of foreign reserves to repay $10 billion to the International Monetary Fund in 2009.[228] Some months later, when the central bank refused to comply with the government's plan to use $6.6 billion of foreign reserves to pay off other debt, President Cristina Fernández fired the head of the central bank.[229] How has all this worked out for Argentina? A significant economic recovery took hold as a result of a devalued peso, renewed demand for Argentine agricultural exports, and increased social spending by the government.[230] According to Mark Weisbrot, it is questionable whether Argentina could have begun "the remarkable economic recovery that started in 2002, in which the economy grew more than 60% in six years, if its central bankers had the kind of independence that the U.S. Federal Reserve has."[231]

Samra ends his article with a discussion of Venezuela's central bank that serves as an extension of his diatribe against Venezuelan President Hugo Chávez. Once again, he fails to place changes in central bank structure within the context of any

225 WORLD BANK, *supra* note 220, at 64–65 tbl.2.7 (detailing poverty rates and reporting that one in five Mexicans are below the poverty line and rural poverty is at about thirty percent); *id.* at 72–73 tbl.2.9 (detailing "[d]istribution of income or consumption," and reporting high Gini coefficients for Mexico).

226 WILLIAMSON, *supra* note 122, at 583–84; STIGLITZ, GLOBALIZATION AND ITS DISCONTENTS, *supra* note 177, at 18, 69; Roberto Frenkel & Martín Rapetti, *Five Years of Competitive and Stable Real Exchange Rate in Argentina, 2002–07*, *in* BEYOND INFLATION TARGETING, *supra* note 184, at 179–81.

227 WILLIAMSON, *supra* note 122, at 584.

228 *Id.*

229 Mark Weisbrot, *Answer to the People, Not Greedy Elites: Argentina's President Came Under Fire for Sacking the Head of the Central Bank—But Why Should Such Institutions be 'Independent'?*, THE GUARDIAN UNLIMITED (Feb. 15, 2010, 11:00 PM), http://www.guardian.co.uk/commentisfree/cifamerica/2010/feb/15/argentina-central-bank-independent [hereinafter Weisbrot, *Answer to the People*].

230 WILLIAMSON, *supra* note 122, at 584.

231 Weisbrot, *Answer to the People*, *supra* note 229.

actual economic or financial developments. As Samra notes, Venezuela's central bank was given administrative autonomy in the 1990s.[232] He fails to mention that inflation in Venezuela was markedly lower in the 1980s than the 1990s, and that inflation rose significantly after reform of the central bank in December 1992.[233] Annual inflation averaged about 21% in Venezuela throughout the 1980s prior to the central bank reform, 44% from 1990–1995 as the central bank was being granted more autonomy, and 45% from 1996–2000.[234] These figures only undermine Samra's thesis that central bank independence is correlated with low inflation.[235]

Others have criticized Venezuela's 1992 reform as being insufficient: the central bank was legally independent, but it was subject to episodes of political interference, including the government instituting capital controls, deposit insurance, and requiring the central bank to turn over its profits.[236] Although the central bank was not as independent as Jácome and others would have preferred, it was more independent than it would become under Hugo Chávez, who is the particular subject of Samra's ire. Chávez, however, was not elected president until December 1998, well after the relatively lower inflation rates of the 1980s, prior to central bank independence, and after the economic and financial upheavals of the 1990s that occurred under an independent central bank.[237]

The pre-Chávez history of central bank reform in Venezuela suggests that formal legal changes are often less significant than underlying political and social realities. There was impressive economic growth in Venezuela in the 1950s to the late 1970s, but under the country's oligarchic two-party system, the gains were not widely distributed.[238] According to Edwin Williamson, "oil-wealth became concentrated in the upper echelons, while poverty shot up to 50 percent in the 1980s from about 15 percent in the

232 Samra, *supra* note 6, at 90.

233 Jácome, *Legal Central Bank Independence*, *supra* note 58, at 29; *id.* at 20 (regarding Dec. 1992 central bank reform); *id.* at 22 (providing inflation statistics).

234 *Id.* at 20. *See also* Gutiérrez, *supra* note 110, at 16 (reporting annual inflation in Venezuela of 13% in 1980–1984, 33% in 1985–1989, 41% in 1990–1994, and 53% in 1995–1999).

235 Recall that Jácome excluded Venezuela and Argentina from his analysis that purports to correlate central bank independence with low inflation in the 1990s, perhaps because the empirical evidence would only undermine Jácome's thesis as well. *See* Jácome, *Legal Central Bank Independence*, *supra* note 58, at 23–24.

236 *Id.* at 20–22.

237 WILLIAMSON, *supra* note 122, at 594.

238 *Id.* at 593 (reporting that Venezuela's economy grew about 6% per year from about 1950 to the late 1970s).

1950s."[239] A report of the Inter-American Dialogue that was critical of Chávez, conceded that "during the 1980s and 1990s, no South American country deteriorated more than Venezuela; its gross domestic product (GDP) fell some 40 percent."[240] In 1989, after imposing the standard International Monetary Fund austerity program, the capital of Caracas exploded in rioting and looting which spread to other cities, the army was called in, and several hundred civilians were killed in the repression.[241] In 1994, the country's banking system collapsed and there were massive strikes against austerity measures.[242]

This all occurred during the period of relative central bank independence, but none of this chaos appears in any of the autistic economics literature. It also explains the populism and popularity of Chávez when he was elected with 56% of the vote in 1998.[243] As Williamson concluded, "The programme of reform undertaken by Chávez has to be understood as a reaction to what young army officers like him regarded as a hopelessly corrupt oligarchy which had squandered the nation's huge oil resources while doing too little for the poor and disadvantaged."[244]

At the time Chávez assumed power in 1998, Venezuela's poverty rate was 52%;[245] by 2007, the poverty rate had fallen to 27.5%, and there were declines in measures of income inequality as well.[246] According to Mark Weisbrot, this impressive reduction in poverty, which was largely overlooked by the mainstream media in the United States, resulted from higher economic growth rates and significant government spending to increase people's access to health care, education, and nutrition.[247]

One need not support Hugo Chávez's style of politics or his foreign policy agenda to see the wisdom in reforming a central

239 *Id.* at 594.

240 MICHAEL SHIFTER, HUGO CHÁVEZ: A TEST FOR U.S. POLICY, A SPECIAL REPORT OF THE INTER-AMERICAN DIALOGUE 11 (Mar. 2007), *available at* http://www.thedialogue.org/PublicationFiles/Hugo%20Ch%C3%A1vez%20-%20A%20Test%20for%20U.S.%20Policy%20%28pdf%29.pdf.

241 WILLAMSON, *supra* note 122, at 594.

242 *Id.*

243 *Id.*

244 *Id.*

245 WORLD BANK, *supra* note 220, at 65 tbl.2.7.

246 Mark Weisbrot, *Poverty Reduction in Venezuela: A Reality-Based View*, REVISTA: HARV. REV. LATIN AM., Fall 2008, at 36, 39 (reporting decline in income inequality in Venezuela as measured by the Gini coefficient).

247 *Id.* at 36, 38–39 (reporting that publications such as *Foreign Affairs*, *Foreign Policy*, the *Washington Post*, the *New York Times*, the *Financial Times*, and the *Miami Herald* and many others had published articles "falsely asserting that poverty had increased under the Chavez government").

bank to make it more accountable to a wider range of societal interests than those of a narrow banking fraternity. In December 2007, Chávez proposed a series of reforms that included restricting the central bank's independence by vesting ultimate monetary authority in the Executive,[248] quite different from the United States and many other countries where ultimate authority is vested in the legislative branch even if the legislature has delegated that power to an independent central bank for the time being.[249] It is also different from the 1940s period of central banking in the United States where policy was directed by the White House and Treasury which were subject to checks and balances by an independent judiciary and legislative branch.[250] But such distinctions are apparently lost on Samra who uses Chávez as a straw man to attack any criticism of central bank independence. The false dichotomy is taken to an absurd extreme when Samra raises the specter of Robert Mugabe in Zimbabwe.[251] Apparently any move toward central bank accountability, according to Samra's logic, is a step toward hyperinflation, ruthless dictatorship, and mob violence.

Perhaps Samra is correct to be concerned about vesting such powers in Hugo Chávez, but his misgivings seem to have less to do with concerns about the political accountability of the Chávez government and much more to do with its social and populist objectives. For instance, Samra criticizes the proposed reform for seeking to turn the central bank into an agent for funding "vast social programs" and domestic development objectives.[252] He declares, "A central bank that transforms into a development and relief agency has ceased to be a central bank."[253] This, he considers, would be "fundamental madness."[254]

Perhaps Samra would dismiss the Federal Reserve's strict accountability during the 1940s as nothing more than "a slush fund" for Franklin Roosevelt's "regional, political, and military ambitions, not to mention his domestic development goals."[255]

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248 Chris Kraul, *Venezuelan Voters Reject Bid by Chavez to Extend Powers*, L.A. TIMES, Dec. 3, 2007, at A1.

249 THE FEDERAL RESERVE SYSTEM: ITS PURPOSES AND FUNCTIONS 1947, *supra* note 2, at 1.

250 *Id.* at 101–04. For instance, Samra criticizes the proposed 2007 reform for attempting to require the Venezuelan central bank to follow the policy direction of the elected government, not unlike in the 1940s when the Federal Reserve followed the lead of the White House and Treasury. Samra, *supra* note 6, at 92–94.

251 Samra, *supra* note 6, at 65 (quoting Felipe Larrain's warnings about hyperinflation being awakened by leaders such as Chavez and Mugabe).

252 *Id.* at 94.

253 *Id.*

254 *Id.*

255 *Id.*

But for the millions of people in the United States and abroad who sought freedom and security, those ambitions and goals were theirs as well. Should we consider it "madness" to have a central bank support programs like the G.I. Bill of Rights, the Marshall Plan, or childhood education and nutrition, but somehow consider it acceptable when a central bank provides trillions of dollars in support for commercial banks and hedge funds? Such a perspective may seem upside-down to all but well-heeled lawyers and economists representing large banks and other financial interests. The reality is that since the 2008 financial crisis, the Federal Reserve has transformed itself into a relief agency for powerful banks and wealthy investors. This should suggest that the central bank has ceased to be a central bank for anyone but an elite financial oligarchy. Therein lies the fundamental madness of our current troubles.

### E. Farewell to Legal Autism

All four of the case studies offered by Samra are examples of "legal autism"—descriptions of legal rules without any reference to social settings or historical contexts, and without any correlation to changes in actual economic performance.[256] It is a strange ending to an argument that relies elsewhere on empirical evidence of a purported relationship between central bank independence and low inflation. Although Samra makes the bold assertion that the results of these studies are "quite striking" and "clearly argue in favor of greater independence," they are mainly striking in their flaws.[257] In fact, in reading these studies one would have no idea that there had been tremendous economic growth and low inflation from the 1940s through the 1960s in much of the world in the absence of independent central banking;[258] that a global oil cartel had quadrupled the price of oil in the early 1970s, and then doubled the price at the end of that decade;[259] that there had been debt crises and currency contagions throughout Latin America and much of the developing world over the past three decades;[260] that China has risen as an economic power without the help of an independent central

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256 *Id.* at 82–93

257 *Id.* at 73.

258 CHANG, *supra* note 169, at 27–31; HAHNEL, *supra* note 175, at 7; BRETTON WOODS COMM'N, BRETTON WOODS: LOOKING TO THE FUTURE, COMMISSION REPORT (1994); *Average Annual Inflation Rates by Decade*, INFLATIONDATA.COM (2008), http://www.inflationdata.com/inflation/images/charts/articles/decadeinflation.jpg.

259 Andrew Brod, *Look Back at 1970s to Understand a Real Energy Crisis*, NEWS-RECORD.COM, http://libres.uncg.edu/ir/uncg/f/A_Brod_LookBackat1970_2001.pdf (last visited Jan. 11, 2011).

260 Kristin J. Forbes & Roberto Rigobon, *Contagion in Latin America: Definitions, Measurement, and Policy Implications*, ECONOMIA, Spring 2001, at 1, 1–2.

bank;[261] and that 2008 brought a tremendous crisis in global financial markets and the most severe economic downturn in many countries since the Great Depression.[262]

These are rather astounding omissions. At a time when mainstream economics has been criticized and discredited for failing to predict or prevent the tremendous hyperinflation of asset prices and the most damaging financial crisis in more than eighty years, apologists of central bank independence continue to overlook any empirical evidence and historical facts that would undermine their normative conclusions. Since the crash, the Federal Reserve has poured trillions of dollars into its private sector banking clientele; a colossal monetary version of pork-barrel spending.[263] None of this is even mentioned by Samra. It is an impressive display of myopia and studied ignorance. There is no justification offered for the limited scope of analysis and no recognition that perhaps the very broad conclusions of these studies should therefore be tempered.

## III. THE SEARCH FOR MEANINGFUL DEBATE

The regime of independent central banking has contributed significantly to a financial and economic crisis of historic proportions. Its supporters, however, have shown little to no responsibility for their actions. In fact, the independence of the leading central banks, particularly the Federal Reserve and the European Central Bank, have been instrumental in fashioning the hidden bailouts that continue to subsidize the profits and bonuses of big banks and hedge funds.[264] The obvious culpability of central bankers warrants some degree of humility and introspection by supporters of central bank independence.

It is a sign of the weakness of the case for central bank autonomy that some of its proponents would choose to engage in "ad hominem" attacks on those who support increased accountability.[265] Samra's article engages in an unfortunate level

261 *See generally* ZULIU HU & MOHSIN S. KHAN, WHY IS CHINA GROWING SO FAST?, ECONOMIC ISSUES 8 (1997).

262 Heather Stewart, *We Are in the Worst Financial Crisis Since Depression, Says IMF*, THE GUARDIAN, Apr. 10, 2008, at A28.

263 James Quinn, *Audit of Fed Will Reveal Name of Banks Given $2 Trillion in Loans*, THE TELEGRAPH (May 12, 2010, 6:00 AM), http://www.telegraph.co.uk/finance/newsbysector/banksandfinance/7713041/Audit-of-federal-reserve-will-reveal-name-of-banks-given-2-trillion-in-loans.html.

264 Jack Ewing & Julia Werdigier, *Europe's Central Bank Extends Cash Lifeline and Gives Regulators a Pep Talk*, N.Y. TIMES, June 11, 2010, at B3 (reporting European Central Bank purchases of 40.5 billion euros ($49.1 billion) in bonds on the open market while failing to disclose what kinds of bonds).

265 An ad hominem argument seeks to link the validity of a premise to a characteristic of the person advocating the premise by appealing to feelings or prejudices

of ad hominem argumentation directly in response to my critique of central bank autonomy and my view that the Washington Consensus policy agenda was resulting in widening inequalities in income, wealth, and power that were empirically measureable.[266] Those inequalities have become too large to ignore, which is why ad hominem arguments, by attacking the messenger, are intended on some level to discredit the messenger and shock the discussion back in another direction, deflecting discussion away from social inequality and structural injustices.

Nowhere does Samra actually refute the empirical evidence that the trend toward central bank independence has coincided with stagnant real wages, higher real interest rates, and increasing inequalities in income, wealth, and power. Instead, Samra engages in a fair amount of breathless name-calling while conflating my argument with the views of Latin American populists and dictators, past and present. He does this through the use of the ad hominem "perfect idiot" which he claims is the insight of a "groundbreaking study of Latin American populism" entitled *Guide to the Perfect Latin American Idiot*, itself one long ad hominem attack of name-calling and guilt-by-association against anyone who has ever offered a critical history of Latin America or U.S. foreign policy or called for redressing the enormous inequalities in income, wealth, and power through the agencies of the state.[267]

Although the co-authors of *The Perfect Idiot*, like Samra, never define their terms, it is instructive to do so. "Idiot" is considered "usually offensive" and is used to describe "a person affected with extreme mental retardation," "a foolish or stupid person," and is derived from the Greek *idiōtēs* to mean a "layman" or "*ignorant* person."[268] The use of this insult by Samra and *The Perfect Idiot* authors, after having *ignored* all contrary factual evidence (all the black swans and all the black elephants

rather than intellect; it is marked by "an attack on an opponent's character rather than by an answer to the contentions made." MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 15 (11th ed. 2004). In this case, the premise is that independent central banks undermine social welfare. Samra's ad hominem attacks seek to undermine that premise by name-calling and guilt-by-association tactics.

266 Samra, *supra* note 6, at 74–75 (quoting from Canova, *Financial Liberalization*, *supra* note 28, at 1294, 1301–04). Samra's article is filled with breathless exclamations of "terrifying" and "ominous warnings" of hyperinflation and ruthless dictatorships that are to be associated with making central banks more accountable to elected governments. Samra, *supra* note 6, at 65. Perhaps in the future he will develop the "mental courage" to re-think his mode of arguments, underlying assumptions and world view. David Brooks, *A Case of Mental Courage*, N.Y. TIMES, Aug. 23, 2010, at A23 (decrying the underlying "metacognition deficit" that habitually afflicts this generation and prevents people from stepping back to re-think their positions and weaknesses).

267 *Id.* at 75.

268 MERRIAM-WEBSTER, *supra* note 265 (emphasis added).

in plain sight), is a bit like the pot calling the kettle black. Perhaps "glutton" would be an equally apt term to describe the mind-set of the authors of *The Perfect Idiot*.[269] The vast and growing inequalities in wealth and income, along with enormous central bank subsidies to a financial oligarchy, are suggestive of an upper-class elite that is prone to gluttony. Perhaps "the perfect glutton" is one who will swallow any shallow or specious argument, including ignorant empirical studies, all in the interests of amassing more riches beyond that which can ever be consumed in a lifetime. But it is a gluttony that is concealed in high-minded pretensions to cosmopolitanism and economic sophistication.

*Guide to the Perfect Latin American Idiot* is a book written by three ideological right-wing Latin American journalists, a book with no index, no sources, and a lot of name-calling.[270] It is not the work of scholarship and it does not belong in a serious scholarly article on central bank accountability. Its misuse by Samra is worthy of a response, but before discussing the parts of this book misused by Samra, it is instructive to consider the general tenor of the book and its ideological biases. Although *The Perfect Idiot* co-authors seek to place their work within the tradition of satire, it is difficult to imagine Sartre,[271] Camus,[272] or Revel[273] flinging ad hominem insults at their adversaries and then pretending it is to seek "intellectual confrontation in the arena of ideas, not anecdotes, using arguments, not insults or personal attacks."[274] If calling one's adversaries names like "idiots" is not an insult, then the level of discourse has surely fallen to a new low. If it is genuinely an attempt at satire, then for all three *The Perfect Idiot* co-authors their laugh is truly louder than their humor.[275]

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269 Glutton is defined as "one given habitually to greedy and voracious eating and drinking," one possessing a voracious appetite that endures and is never satiated. *Id.* Its synonyms include gorger, hog, overeater, pig, and stuffer. The word is derived from the Latin *gluttire*, "to swallow." *Glutton,* MERRIAM-WEBSTER.COM, http://www.merriam-webster.com/dictionary/glutton (last visited Jan. 5, 2011).

270 Plinio Apuleyo Mendoza is a Columbian novelist; Carlos Alberto Montaner is a Cuban essayist and journalist; Alvaro Vargas Llosa is a Peruvian columnist. MENDOZA, MONTANER, & VARGAS LLOSA, *supra* note 19, at 219.

271 *See generally* JEAN PAUL SARTRE, http://www.sartre.org (last visited Jan. 11, 2011).

272 *See generally The Nobel Prize in Literature 1957 Albert Camus*, NOBELPRIZE.ORG, (Jan. 11, 2011), http://nobelprize.org/nobel_prizes/literature/laureates/1957/camus-bio.html.

273 *See generally Jean-Francois Revel,* ENCYCLOPEDIA.COM (Jan. 11, 2011), http://www.britannica.com/EBchecked/topic/1221191/Jean-Francois-Revel.

274 Mario Vargas Llosa, *Introduction* to MENDOZA, MONTANER, & VARGAS LLOSA, *supra* note 19, at xvi.

275 *The Perfect Idiot* book lacks empirical support and rigor; there is no serious index or list of references, and no attempt to discuss ideas without name-calling. There is a

The book begins with an attack on Eduardo Galeano's truly groundbreaking 1970 book, *Open Veins of Latin America* which *The Perfect Idiot* trio crudely denounces as the idiot's Bible.[276] They attack Galeano, just as Samra attacks my work, for use of "the old dichotomy" of left versus right, the use of the word "neoliberal" to describe the Washington Consensus agenda, and the use of class to analyze the effects of that policy agenda on Latin American societies.[277] According to Michael Davis and Dana Neacsu, "one of the hegemonic and legitimizing features of globalization is the exclusion of parts of the debate as unworthy, in fact foreclosing what might be the most meaningful parts of the debate as meaningless."[278] Apparently, *The Perfect Idiot* trio would foreclose any class analysis as meaningless and any discussion of political polarization and a neoliberal agenda as old thinking. Perhaps in 1996, in the "irrational exuberance" of the expanding bubble economy, when *The Perfect Idiot* was first published, it may have seemed that such discussions could be excluded as unworthy and meaningless. In the aftermath of the bubble, as it continues to deflate for millions around the world, class analysis and critiques of the neoliberal agenda and criticism of unaccountable central bankers may well be the most meaningful parts of debate.

*The Perfect Idiot* trio attack Galeano for his use of the "open veins" metaphor and his view that the underdevelopment of poor countries is historically the result of the enrichment of others.[279] They take exception with Galeano's statement that "Everything, from the discovery until our times, has always been transmuted into European—or later United States—capital, and as such has accumulated in distant centers of power."[280] Perhaps the trio

compendium of quotations entitled "Index Expurgatorius Latinoamericanus" which denigrates a list of people and organizations that includes Raul Alfonsin (the former president of Argentina who helped defeat a military dictatorship), Amnesty International (for its conclusion that market reforms "have exacerbated social tensions" in Colombia), and Brazilian president Lula Da Silva (for a statement against privatizing state-owned companies and asserting the state has an important and dominant role). *Id.* at 209–18. Just to make sure all of these speakers are discredited by association, this "Index Expurgatorius Latinoamericanus" also includes Fidel Castro and Che Guevara, and it begins with an unattributed quotation: "It isn't having been an idiot that's so bad but persisting to be one." *Id.*

276 *Id.* at 21. *See generally* EDUARDO GALEANO, OPEN VEINS OF LATIN AMERICA: FIVE CENTURIES OF THE PILLAGE OF A CONTINENT (1973).

277 MENDOZA, MONTANER, & VARGAS LLOSA, *supra* note 19, at 66–69; Samra, *supra* note 6, at 74–75.

278 Michael Davis & Dana Neacsu, *Legitimacy, Globally: The Incoherence of Free Trade Practice, Global Economics and Their Governing Principles of Political Economy*, 69 UMKC L. REV. 733, 734 (2001).

279 MENDOZA, MONTANER, & VARGAS LLOSA, *supra* note 19, at 25 (quoting GALEANO, *supra* note 276, at 11).

280 GALEANO, *supra* note 276, at 12.

should consider the views of Adam Smith, the grandfather of free-market economics whom they would likely claim as their ideological ancestor and soul mate. Smith wrote of the consequences of the Old World "discovery" of Latin America: "The pious purpose of [Spain] converting them to Christianity sanctified the injustice of the project. But the hope of finding treasures of gold there was the sole motive which prompted [Spain] to undertake it."[281] The vast riches of gold and silver taken by Spain from the New World were "of a nature to excite in human avidity the most extravagant expectation of still greater riches."[282]

*The Perfect Idiot* trio scorn all non-monetarist views of inflation, which, as discussed above, only serves to show their own ignorance.[283] Likewise, they ridicule the idea of declining terms of trade and structural inequalities in political and market power, and instead hold fast to simplistic assumptions of arms-length bargaining between equals.[284] They ignore serious critiques of the global trading system offered by leading Latin American economists and they distort the history of the foreign debt crisis by characterizing bank loans of petrodollars at high interest rates as gifts.[285] They denigrate the idea that division of labor and trade results in winners and losers, an axiom of free trade theory and empirical reality itself.[286] But for all their ridicule and ignorance, there is not any serious analysis, only conclusory arguments that show serious ideological biases.

For instance, their ideological blinders are apparent in their discussion of Chile, where they claimed the vast majority of citizens support the creation of a private pension and health care system. "Only a perfect idiot," they claim, "would think of

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281 ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS 72 (Edwin Cannan ed., 1976).

282 *Id.* at 78.

283 MENDOZA, MONTANER, & VARGAS LLOSA, *supra* note 19, at 24–44.

284 *Id.* at 44 (equating criticisms of declining terms of trade with complaints about natural injustices such as the color of the sky).

285 *Id.* at 54.

286 *Id.* at 23. *See also* Eli Heckscher, *The Effect of Foreign Trade on the Distribution of Income*, *in* READINGS IN THE THEORY OF INTERNATIONAL TRADE 272, 272 (Howard S. Ellis & Lloyd A. Metzler eds., 1949) (introducing the Heckscher-Ohlin model); PAUL R. KRUGMAN & MAURICE OBSTFELD, INTERNATIONAL ECONOMICS: THEORY AND POLICY 72 (2006); MICHAEL P. TODARO, ECONOMIC DEVELOPMENT IN THE THIRD WORLD 378–83 (3d ed. 1985) (discussing Ricardian and Heckscher-Ohlin trade theories in context of growth in less developed countries); STEVEN M. SURANOVIC, INTERNATIONAL TRADE THEORY AND POLICY 134 (2010) (discussing distributive effects of trade and the compensation principle by which winners of free trade should compensate lowers to benefit of all); JOHN WILLIAMSON, THE OPEN ECONOMY AND THE WORLD ECONOMY 42–43 (1983) (discussing comparative advantage and the Heckscher-Ohlin model); Elizabeth Becker, *U.N. Study Finds Global Trade Benefits Are Uneven*, N.Y. TIMES, Feb. 24, 2004, at C5.

returning to a government-run pension system" that would consume money, expand the bureaucracy, and create a jungle of middlemen to administer such a program.[287] Instead, there has been a jungle of private insurance company middle men, a huge private bureaucracy siphoning the savings of millions in the form of hefty commissions and administrative fees, not unlike the private health insurance bureaucracy found in the United States. In a 2004 World Bank study, empirical analysis of two decades of Chile's pension system showed that "more than half of all workers [are excluded] from even a semblance of a safety net during their old age."[288] Investment accounts of retirees were so low that forty-one percent of those eligible to receive pensions were forced to continue working and the government was forced to provide subsidies for those failing to accumulate enough money in their pension accounts to pay basic old age expenses in retirement.[289] When the huge commissions and other administrative costs were taken into consideration, the total average return on worker contributions between 1982 and 1999 was 5.1%, less than half of what had been calculated by the superintendency of pension funds.[290] The average worker would have done better by simply placing their pension contributions in a passbook savings account.[291]

Chile's privatized pension scheme was good business for private investment firms but it failed to provide for many retirees, thereby contributing to Chile's high poverty rate. Retirees would have received higher annuities "if the system had remained in government hands."[292] Recall *The Perfect Idiot* trio's conclusion that "only a perfect idiot would think of returning to a government-run pension system."[293] In fact, Chileans were forced to re-think the country's privatized pension system and to cough up government subsidies to supplement the program.[294]

287 MENDOZA, MONTANER, & VARGAS LLOSA, *supra* note 19, at 72.

288 GREG ANRIG, THE CONSERVATIVES HAVE NO CLOTHES: WHY RIGHT-WING IDEAS KEEP FAILING 206 (2004) (quoting a 2004 World Bank report). *See* INDERMIT S. GILL, TRUMAN G. PACKARD & JUAN YERMO, KEEPING THE PROMISE OF SOCIAL SECURITY IN LATIN AMERICA xvii (2004).

289 Greg Anrig & Bernard Wasow, *Twelve Reasons Why Privatizing Social Security is a Bad Idea*, THE CENTURY FOUNDATION (Dec. 13, 2004), http://tcf.org/publications/2004/12/pb503.

290 *Id.*

291 *Id.*

292 GRANDIN, *supra* note 112, at 203 (citing to Larry Rohter, *Chile's Retirees Find Shortfall in Private Plan*, N.Y. TIMES, Jan. 27, 2005, at A1).

293 MENDOZA, MONTANER, & VARGAS LLOSA, *supra* note 19, at 72.

294 Larry Rohter, *Chile's Candidates Agree to Agree on Pension Woes*, N.Y. TIMES, Jan. 10, 2006, at A3 (quoting Patricio Navia, a political science professor, that most Chileans "perceive the costs of pensions and the pensions themselves as unfair" and as

In the 2006 presidential election, Sebastián Piñera, the billionaire businessman and conservative candidate, agreed that the privatized pension system was in need of repair.[295] He noted that half of Chileans had no pension coverage and of those who did, 40% were not receiving the minimum level.[296] This was a rather embarrassing admission since the candidate's brother, José Piñera, was "the former labor minister who imposed the personal account system" during the Pinochet dictatorship and since Sebastián Piñera was "backed by the large business groups that control the pension funds and have benefited from the expansion of investment capital the funds have provided."[297]

How ironic for the conservative candidate, and brother of the architect of pension privatization, to propose a government "guaranteed pension for housewives," "matching government contributions" for the poor, and "more bargaining power for consumers."[298] The only idiocy is that anyone would be surprised that a privatized pension system could possibly result in huge profits for private pension fund managers and inadequate returns for most Chileans. But it is important to recall that the private pension scheme was put in place during a period of military dictatorship when labor unions and civil society lacked basic democratic freedoms, large business interests enjoyed favored access to government, and the polity was essentially shocked, murdered, and tortured into submission.

Throughout their book, *The Perfect Idiot* co-authors are the perfect apologists for violent dictatorships and coup d'états against elected governments and civil society, including any coup sponsored by the Central Intelligence Agency (CIA) or big business interests. For a book that purports to disdain the political divisions between left and right, the trio is silent on the crimes of the right. They attack Augusto Sandino, the Nicaraguan revolutionary who rebelled against U.S. occupation of his country,[299] but not a word of condemnation for Anastasio

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resenting the huge overhead costs "that have led to record profits for the pension funds that manage the contributions").

295 *Id.*

296 *Id.*

297 *Id.*

298 *Id.* Apparently, proposing government guaranteed pensions and other such public interventions was not bad politics. Although he lost his campaign in 2006, Sebastián Piñera was ultimately elected president of Chile in January 2010. *Times Topics: Sebastián Piñera*, NYTIMES.COM, http://topics.nytimes.com/top/reference/timestopics/people/p/sebastian_pinera/index.html (last updated Oct. 13, 2010) (reporting that in his 2010 campaign, Mr. Piñera "promised to carry on many of the social programs put in place by President Michelle Bachelet, whose approval ratings have hovered around 75 percent").

299 MENDOZA, MONTANER, & VARGAS LLOSA, *supra* note 19, at 152.

Samoza, the brutal Nicaraguan dictator who served U.S. geopolitical and corporate interests.[300] They condemn Jacobo Árbenz Guzmán, the reformist and duly-elected president of Guatemala who was overthrown in a CIA-financed coup in 1954 to shield the United Fruit Company from any land reform.[301] They vilify Salvador Allende, the democratically-elected president of Chile violently overthrown on September 11, 1973, in another CIA-sponsored and corporate-financed coup that installed Augusto Pinochet in a brutal dictatorship.[302] They scorn Cuba's Marxist dictator Fidel Castro but go easy on what came before Castro, the corrupt and repressive regime of Fulgencio Batista, who was in bed with organized crime.[303]

Such partisanship is shameful for journalists as well as would-be scholars. Camus reminded the writers of his day to aspire to bear witness for those who are enslaved and he rejected apologists for repression who were angered at the murder of a man only when that man shared their ideas.[304] Camus understood that the brutal repressions in the East bloc did not excuse the sins of the West.

Not only is the trio's disdain for democracy and human rights morally reprehensible, it is also self-defeating to long-term interests of peace and stability. As Edwin Williamson concluded, "It was the toppling of Árbenz that had alienated young radicals throughout Latin America, persuading them of the need for armed struggle."[305] The record of past U.S. support for repression and brutality in Latin America lives on in our present

300 *See generally* WILLIAM KREHM, DEMOCRACIES AND TYRANNIES OF THE CARIBBEAN (1984) [hereinafter KREHM, DEMOCRACIES AND TYRANNIES].

301 WILLIAMSON, *supra* note 122, at 323, 353 (discussing involvement of CIA and United Fruit). *See generally* DEMOCRACIES AND TYRANNIES, *supra* note 300. *The Perfect Idiot* trio claim that the 1954 CIA coup against President Árbenz in Guatemala was not to help United Fruit but was inspired by Árbenz' purchase of Czech weapons and his purported strong ties to communism. MENDOZA, MONTANER, & VARGAS LLOSA, *supra* note 19, at 139. They offer no real support for such conclusions and their guilt-by-association indictment of Árbenz is reminiscent of the Red Scare of the McCarthy period at the time of the coup.

302 MENDOZA, MONTANER, & VARGAS LLOSA, *supra* note 19, at 209, 352; WILLIAMSON, *supra* note 122, at 67. *See also* NAOMI KLEIN, THE SHOCK DOCTRINE: THE RISE OF DISASTER CAPITALISM 99–100 (2007); PETER KORNBLUH, THE PINOCHET FILE: A DECLASSIFIED DOSSIER ON ATROCITY AND ACCOUNTABILITY 105 (2003).

303 MENDOZA, MONTANER, & VARGAS LLOSA, *supra* note 19, at 209, 181; WILLIAMSON, *supra* note 122**,** at 443–44.

304 ALBERT CAMUS, *Why Spain?*, *in* RESISTANCE, REBELLION, AND DEATH 75, 83 (Justin O'Brien trans., 1960) (replying to a December 1948 publication by Gabriel Marcel in COMBAT).

305 WILLIAMSON, *supra* note 122, at 588 (reporting that the CIA's overthrow of Árbenz "was the decisive factor in Che Guevara's decision to join Fidel Castro's insurgency in Cuba in 1956").

day, giving credence to conspiracy theories[306] and complicating U.S. efforts to build strong alliances in the region.[307]

But perhaps peace and stability, like democracy and human rights, are not the real objectives of many of those who defend the prerogatives of central bankers. In *The Shock Doctrine*, Naomi Klein exposed the right-wing strategy to consciously exploit crises to push through market reforms—"shock therapy"—that would never happen in less frightening times.[308] The crises could be actual or perceived, unexpected or intentional, from a natural disaster to a violent coup d'état.[309]

The mode of argument deployed in *The Perfect Idiot* also lives on and seems to be gaining strength in our political and popular and academic cultures. Ad hominem attacks have become standard fare in our public debates. Like *The Perfect Idiot* trio who vilify anyone who speaks up for social rights and economic justice, Glenn Beck, the right-wing Fox-TV talk show host, has equated Christian churches working for "social justice" with Nazism and Communism.[310] Samra and *The Perfect Idiot* trio invoke Hugo Chávez and Fidel Castro time and again to smear scholars and substantive arguments completely unconnected to Chávez or Castro. Likewise, Sarah Palin, the former vice presidential candidate, has used the same McCarthy-era style guilt-by-association tactics to attack the recent U.S. health care reform by invoking Fidel Castro, as if the fact that

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306 *Chavez Accuses CIA as Bombings Rock Venezuela*, TAIPEI TIMES, Oct. 8, 2003, at 7, *available at* http://www.taipeitimes.com/News/world/archives/2003/10/08/2003070877.

307 For instance, revelations that General Pinochet amassed a fortune of $28 million while in power, perhaps in part from manufacturing and smuggling cocaine, undermines U.S. efforts to build alliances in the region. Larry Rohter, *Former Aide Says Pinochet and a Son Dealt in Drugs*, N.Y. TIMES, July 11, 2006, at A3. The person who defeated Sebastián Piñero in Chile's 2005 presidential election was Michelle Bachelet, "a member of Allende's Socialist Party who had been exiled for a time in East Germany." WILLIAMSON, *supra* note 122, at 579.

308 KLEIN, *supra* note 302, at 7–8, 11–13.

309 *Id.* at 174–75, 230–31, 290–91, 320 (showing various examples of how certain crises have elicited the same policy responses as characterized by "shock therapy"). Of course, crisis has also had the effect of moving policy to the left; Roosevelt's New Deal was made possible by the massive hardships and dislocations of the Great Depression. However, right-wing governments seem more adept at creating and engineering crises, when not through violent coups then by gross mismanagement and looting of the economy. J. Lawrence Broz, *Partisan Financial Cycles* (draft dated April 18, 2010), *available at* http://cpe.ucsd.edu/assets/006/11488.pdf (finding "that governments in power prior to major financial crises are more likely than the average OECD country to be right-of-center in political orientation" and "more likely to be associated with policies that predict crises: large fiscal and current account deficits, heavy borrowing from abroad, and lax bank regulation").

310 Hanna Siegel, *Christians Rip Glenn Beck over 'Social Justice' Slam: Right-Wing Host Conflates Christian 'Social Justice' With Nazism, Communism*, ABC NEWS (Mar. 12, 2010), http://abcnews.go.com/WN/glenn-beck-social-justice-christians-rage-back-nazism/story?id=10085008.

Castro once said something positive about the reform has any bearing on its substantive merits or flaws.[311] These kinds of mindless hit-and-run attacks are lamentable in political discourse, and more so in scholarly discussion.

As for Samra's use of *The Perfect Idiot* in his defense of central bank independence, he attacks class-based critiques of the Washington Consensus model as ubiquitous, the "old dichotomy of the left against the right," semantic, emotional, frenzied, repetitive, Marxist Vulgate, and likened them to the Inquisition against Middle Age heresies.[312] That is an awful lot of name-calling to avoid a response on the substantive merits as to whether or not the Washington Consensus policy agenda is actually correlated to top heavy distributions of wealth and income, increased poverty levels, and diminished security. As discussed above, all of these distributional consequences are empirically verifiable, and it is precisely because these consequences have in fact been empirically verified[313] that Samra must engage in this distasteful name-calling.

Samra also apparently considers the use of the word "neoliberalism" to be an appeal to populist prejudices, an anathema that radical leftists attempt to lodge into the public conscience.[314] As a former legislative aide to the late U.S. Senator Paul Tsongas who was a leader in what was often referred to in the 1980s as a neoliberal movement within the Democratic Party,[315] I have witnessed the evolution of the term "neoliberal" from Tsongas's moderate liberalism to a more aggressive libertarian economic agenda that seeks a fantasy state in economic relations ("there's no government like no government") where owners of capital enjoy a world of rights without duties.[316] If repeating the "neoliberalism" word has some mesmerizing effect on the public conscience, perhaps all the more

311 Michael Muskal, *Ex-running Mates Reunite*, L.A. TIMES, Mar. 27, 2010, at A18 (reporting Sarah Palin's statement that "When it comes to Obamacare[,] . . . I see Fidel Castro likes Obamacare and we don't. Doesn't that tell you something?").

312 Samra, *supra* note 6, at 75. Perhaps Samra should also consult with *The Federalist Papers* which recognized the existence of social and class divisions, including along the line of creditor and debtor factions. THE FEDERALIST NO. 10, at 54–55 (James Madison) (E. H. Scott ed., 1898).

313 *See supra* notes 264–267, 312 and accompanying text.

314 Samra, *supra* note 6, at 75.

315 Even in the hands of Senator Tsongas, who held many traditional liberal values and supported many social welfare programs, the short-lived "Neoliberal" movement showed a disturbing indulgence for economic orthodoxy and financial deregulation. PAUL TSONGAS, THE ROAD FROM HERE: LIBERALISM AND REALITIES IN THE 1980S, at xii–xv (1981).

316 *See* DAVID HARVEY, A BRIEF HISTORY OF NEOLIBERALISM 66, 69 (2005).

reason to invoke it.[317] At any rate, in more recent years, "neoliberalism" seems to have been replaced with the terms "Washington Consensus" and "market fundamentalism." All three of these terms are basically efficient short-hand for the same policy agenda that has been promoted by the International Monetary Fund, the U.S. Treasury, Wall Street interests, and other leading G-8 institutions: deregulation, trade liberalization, financial liberalization, privatization, fiscal austerity, and central bank independence.[318]

Is it politically incorrect to use words and phrases such as "neoliberalism," "Washington Consensus," and "market fundamentalism;" and how about the word "autism" to describe the abstract unreality of mainstream economics? Perhaps these too will be dismissed by Samra as the idiot's attempts to rouse the rabble through frenzied repetition. Samra's diatribe against terminology seems eerily reminiscent of right-wing thought police and left-wing guardians of political correctness.[319] The point of such name-calling, however, is to prevent any substantive discussion from moving forward about poverty rates, social insecurity, and distributions of wealth and income.

Samra continues his ad hominem attack by quoting from *The Perfect Idiot* trio that anyone is an idiot who believes that monetary issuance as a way of reactivating demand and making up for the shortage of resources "is also a means not only of development but of what he defines, with grandiloquent pomposity, as social investment."[320] Apparently, Samra would consider Abraham Lincoln to have been an idiot for signing the Legal Tender Acts that created nearly $450 million of U.S. Notes (a rather large sum in the 1860s), considered by many a financial necessity to finance the North's military effort in the Civil

317 Perhaps Samra sees "neoliberalism" as having the same kind of mesmerizing effect on populist movements that phrases like "freedom of contract" and "property rights" have on the leaders at the annual World Economic Forum in Davos, Switzerland. The latter terms, however, like "free trade" itself, embody a system of institutional double-standards. Carmen G. Gonzalez, *Deconstructing the Mythology of Free Trade: Critical Reflections on Comparative Advantage*, 17 BERKELEY LA RAZA L.J. 65, 67, 68 n.12 (2006).

318 KLEIN, *supra* note 302, at 204.

319 Of course, words like "left" and "right" and "center" are short-hand terms that are useful to move the discussion forward, efficient ways of describing relatively coherent political orientations characterized by lesser or greater degrees of support for economic regulation, social policy, military intervention, and a host of other policies. Perhaps Samra knows of some other way of describing such political orientations, but more likely his criticism of these terms is intended to simply prevent any critical discussion from taking place at all.

320 Samra, *supra* note 6, at 75 (quoting MENDOZA, MONTANER, & VARGAS LLOSA, *supra* note 19, at 69).

War.[321] But rather than discuss the many historical periods when currency issuance was used successfully to activate demand, activate supply, and spur economic development,[322] it is so much more convenient for Samra to quickly raise the specter again of Hugo Chávez whom he claims has been "'catastrophic' for the region."[323] Does Samra offer any empirical evidence of the catastrophe resulting from Chávez's monetary policies? No. He offers no discussion or acknowledge-ment of the empirical evidence showing a decline in poverty and more equitable distributions of income under Chávez. Instead, his only support for "the Chávez catastrophe" comes from *The Perfect Idiot* co-authors, the three Latin American journalists who lack any economic training or scholarly pretense.[324]

There is a final ad hominem attack that Samra offers against my own work: "[G]iven the collective Latin American experience over the last half-century, what is perhaps *most* striking about the sorts of arguments advanced by Professor Canova is their dogged persistence."[325] Recall that the reader is never provided with any empirical support to ascertain any collective Latin American experience over the last half century other than the flawed empirical studies that purport to correlate central bank independence with low inflation, and the very non-empirical conclusions of *The Perfect Idiot* co-authors and several other ideologues. Regardless, Samra contrasts my purported stridency (and dogged stridency at that[326]) with the "more

321 *See* Timothy A. Canova, *Lincoln's Populist Sovereignty: Public Finance Of, By, and For the People*, 12 CHAP. L. REV. 561, 565–66 (2009).

322 *Id.* at 569–74.

323 Samra, *supra* note 6, at 75.

324 *Id.* at 75 n.75 (citing MENDOZA, MONTANER, & VARGAS LLOSA, *supra* note 19, at 69). *The Perfect Idiot* trio also denounce John Maynard Keynes for providing the intellectual support for a mixed economy, government planning and intervention, and "monetary issuance as a way of reactivating demand and making up for the shortage of resources." MENDOZA, MONTANER, & VARGAS LLOSA, *supra* note 19, at 69. They also denounce the British welfare state as perfect idiocy that "has in fact generated catastrophic policies" in Latin America. *Id.* Nowhere is there any balanced discussion, nowhere any critical consideration of the empirical evidence. Instead, it is the same name-calling, guilt-by-association, and cartoonish condemnations. What a contrast to a thoughtful conservative like Judge Richard Posner who is not afraid to re-think his views in light of changing circumstances, empirical evidence, and theoretical inquiry. Richard A. Posner, *How I Became a Keynesian*, THE NEW REPUBLIC (Sept. 23, 2009, 12:00 AM), http://www.tnr.com/article/how-i-became-keynesian (conceding his conversion to Keynesian economics was prompted by reading Keynes's *The General Theory of Employment, Interest, and Money* for the first time).

325 Samra, *supra* note 6, at 76.

326 *Id.* at 65, 70–76. Apparently, according to Samra, populists are to be considered doggedly persistent, strident, grandiloquent, pompous, single-minded, frenzied, and fixated on immediate short-term results, while libertarian-conservatives are considered principled, consistent, forceful, even-keeled, wise, and concerned about long-term

cautious note" expressed by Ben Bernanke, the Federal Reserve chairman, that political elites and the broader public in Latin America should favor fiscal discipline, tree trade, and free markets.[327] This statement by Bernanke was made in 2005, at a time when he was promoting freedom for large financial institutions to do as they pleased in the subprime mortgage market, the market for securitized assets, and the market for derivative financial instruments. Of course, as many predicted, that experiment in deregulation ended badly.

Since then, Gentle Ben has been particularly gentle to his Wall Street clientele while preaching fiscal discipline for the middle class. He has supported extension of the Bush tax cuts for the wealthiest one percent of U.S. households, and he has used the Federal Reserve's power to create money on a grand scale, opening the monetary spigots to quench the thirst of a rather narrow constituency, a Wall Street cartel that has become increasingly out of touch with Main Street.[328]

For all of Samra's sound and fury and name-calling, he is correct about one thing. Those who advocate for accountability in central banking and for renewed economic democracy are indeed persistent. Aspirations for justice and economic freedom, including freedom from want and freedom from fear, are perennial. The recent efforts in Congress to reform the Federal Reserve suggest that this persistence is making slow but steady progress.

## IV. Persistence of Reform: Central Bank Transparency and Accountability

Conservative jurists and legal scholars routinely criticize the modern administrative state for overly broad delegations of lawmaking power from Congress to bureaucratic agencies.[329]

results—even as he engages in his breathless "ominous warnings" of "terrifying" consequences and impending doom.

327 *Id.* at 76.

328 Perhaps Samra and other gatekeepers of discourse will take exception to the use of the term "Main Street" as another false dichotomy between those who have plenty (Wall Street) and those who have less (the middle and lower classes), and as an "old scholastic stratagem" to vilify anyone who disagrees by lodging another anathema "into the public conscience through frenzied repetition." *Id.* at 75.

329 Richard E. Levy, *Escaping Lochner's Shadow: Toward a Coherent Jurisdprudence of Economic Rights*, 73 N.C. L. REV. 329, 346 (1995). *See generally The Constitution and the Economy: Accountability and Autonomy in a Time of Financial Market and Regulatory Transformations*, Association of American Law Schools (AALS) 2010 Annual Meeting Hot Topic Programs (Jan. 7, 2010) [hereinafter *The Constitution and the Economy*], *available at* https://memberaccess.aals.org/eWeb/DynamicPage.aspx?Site=AALS&WebKey=b8e081a5-3c1b-41ca-8c1f-c9d84b62a02f&RegPath=EventRegFees&REg_evt_key=e95fe6b3-00bd-4570-950c-d1bfa09e510c. In this panel discussion, conservative scholar

Liberal scholars and jurists are more likely to defend broad delegations that allow administrative agencies to operate with enormous policy-making discretion.[330] This is unfortunate since such broad delegations often invite "agency capture," the dynamic in which regulated industries are able to influence and dominate the agencies charged with their regulation. The symbiotic relationships between regulators, legislators, and private industry are often referred to as "iron triangles," with each group exchanging favors to remain entrenched at the expense of the general public, taxpayers, and consumers.[331]

In September 2010, *Reuters* published a special investigation report of the Federal Reserve's selective disclosure of sensitive information about monetary policy to its favored clientele in the private financial sector. These backroom exchanges are among the many quid pro quos in a system of opaque subsidies and part of a bigger problem of private financial influence over economic decision-making.[332] It is the Public Choice school that has perhaps most thoroughly analyzed the market for legislation and political favors: private industry provides significant campaign contributions to Congress and lobbies on behalf of agency prerogatives while also providing lucrative jobs for their allies when they retire from the legislative branch and regulatory agencies—the so-called "revolving door" phenomenon.[333]

The present financial crisis has added to our understanding of agency capture in at least two important ways. First, we see that the "revolving door" swings both ways as private industry

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Richard Epstein criticized the Troubled Asset Relief Program (TARP) as an abuse of discretion by the Treasury Department, while liberal scholar Mark Tushnet defended broad delegations as consistent with the requirements of the modern administrative state. This author questioned the constitutionality of the Federal Reserve as a violation of the Appointments Clause and the private non-delegation doctrine. For audio, see http://www.aalsweb.org/2010podcasts/thursday/hottopicstheconstitutionoftheeconomy.mp 3.

330 David B. Spence & Frank Cross, *A Public Choice Case for the Administrative State*, 89 GEO. L. J. 97, 141 (2000). *See generally The Constitution and the Economy*, *supra* note 329. Today, conservative hostility to the modern administrative state takes the form of privatization and fiscal austerity, major features of the Washington Consensus policy agenda. With the courts no longer vigilant about scrutinizing delegations, the action has shifted to Congress to downsize the administrative state by keeping the agencies underfunded while privatizing more and more of their functions. This agenda has the perverse effect of making administrators more dependent on industry alliances and therefore more susceptible to capture.

331 Timothy A. Canova, *Campaign Finance, Iron Triangles & the Decline of American Political Discourse*, 12 NEXUS 57, 58 (2007).

332 Cooke et al., *supra* note 205.

333 *See generally* Robert D. Tollison, *Public Choice and Legislation*, 74 VA. L. REV. 339 (1988) (discussing the economic theory of legislation); Stigler, *supra* note 193; Sam Peltzman, *Toward a More General Theory of Regulation*, 19 J. L. & ECON. 211 (1976); Canova, *Financial Market Failure*, supra note 15, at 384.

officials take on key roles in government and then move easily back to the private sector. For instance, Robert Rubin moved from Goldman Sachs to the Clinton White House and Treasury Department, and then back to Citigroup.[334] Former President Bill Clinton earned more than $109 million within seven years of leaving the White House, nearly half as a speaker hired by large financial companies that contributed to Hillary Clinton's 2008 presidential campaign.[335] It should not be forgotten that the Clinton administration did more to deregulate financial institutions than perhaps any administration since the 1920s.[336] Likewise, there are many similar examples involving central bank officials. For instance, Alan Greenspan, before chairing the Fed, was a board member of J.P. Morgan.[337] After leaving the Fed, Greenspan landed on his feet advising the Pacific Investment Management Company (Pimco), the world's largest mutual fund, as well as Deutsche Bank's investment banking team.[338]

The second development made apparent in recent years is the way top central bank and government officials revolve not into traditional salaried positions but into investment opportunities with hedge funds and private equity firms. For instance, former Fed vice chairman David Mullins became a partner in Long-Term Capital Management, a hedge fund that became extremely overleveraged in 1998, suffered catastrophic losses on derivative bets, and required a multibillion dollar assistance package brokered by the New York Fed.[339] Larry Summers, after serving as Treasury secretary in the Clinton administration and before chairing the National Economic Council in the Obama White House, became a managing director for D.E. Shaw & Co., one of the nation's largest hedge funds.[340] Meanwhile, former President Clinton brought in more than $15 million from a private equity investment partnership.[341] Perhaps more troubling, if that is possible, is the path of Alan Greenspan, who after leaving the Fed became an advisor at

334 Canova, *Financial Market Failure*, supra note 15, at 386–87.

335 Matthew Mosk, James V. Grimaldi & Joe Stephens, *Clintons Earned $109 Million in 8 Years*, WASH. POST, April 5, 2008, at A1.

336 *See* Canova, *Financial Market Failure*, *supra* note 15, at 387.

337 *Alan Greenspan Says Risk Was Underpriced*, WHARTON NEWS (Oct. 20, 2008), http://www.wharton.upenn.edu/news/featured-story2966.cfm.

338 *PIMCO Hires Greenspan as Consultant*, REUTERS (May 16, 2007, 7:30 AM), http://www.reuters.com/article/idUSN1546703720070516; *Alan Greenspan to Consult for Deutsche Bank Corporate and Investment Bank*, DEUTSHE BANK (Aug. 13, 2007), http://www.db.com/presse/en/content/press_releases_2007_3606.htm.

339 *See* Canova, *Financial Market Failure*, supra note 15, at 387.

340 *Id.*

341 *See* Mosk, Grimaldi & Stephens, *supra* note 335.

Paulson & Co, a giant U.S. hedge fund that earned billions of dollars in 2007 "when it [correctly] called the collapse in the sub-prime mortgage market," a collapse which has been widely blamed on Greenspan for keeping interest rates low while neglecting any meaningful regulation of financial institutions.[342]

Each of these revolving door and "revolving hedge fund" examples raises the appearance of impropriety and the possibility of outright quid pro quo corruption, and suggests that the private financial sector has already compromised and largely captured our "independent" central bank as well as elected branches of government.[343] The corruption of the elected branches raises issues beyond the scope of this article, including proposals to reform the political process, campaign finance and election laws that have entrenched a feeble two-party system.[344] However, even the presently compromised Congress, responding to pressure from an outraged public, managed to enact provisions in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 that should provide some measure of increased transparency for the Federal Reserve.

The dynamics of agency capture and unaccountable central banking also raises important rule of law and constitutional concerns. The first sentence of the Constitution states that all legislative powers shall be vested in Congress.[345] When Congress delegates its legislative powers to an administrative agency without providing any guidance or limitations on the agency's exercise of discretion, it runs afoul of the so-called nondelegation doctrine.[346] Courts therefore require that Congress provide an "intelligible principle" to guide agency action.[347] Although courts are often satisfied with rather vague and indeterminate

342 Angela Monaghan, *Greenspan to Join Paulson as Advisor*, DAILY TELEGRAPH, Jan. 16, 2008, at B4.

343 In 1996, it was revealed that the Federal Reserve had amassed a $3.7 billion contingency fund (it was unclear what this slush fund was intended to be used for), and was favoring certain sources in its contracting and procurement, thereby raising conflict of interest concerns. Richard W. Stevenson, *Study Criticizes Federal Reserve as Lax Manager*, N.Y. TIMES, Mar. 26, 1996, at A1. These revelations certainly pale by comparison with the trillions of dollars in Federal Reserve spending in more recent years.

344 Kiersh, *supra* note 212 (documenting that the financial sector is "far and away the largest source of contributions to federal candidates").

345 U.S. CONST. Art. I, § 1.

346 *See generally* Louis L. Jaffe, *Law Making by Private Groups*, 51 HARV. L. REV. 201 (1937). *See also* Nadine Strossen, *Delegation as a Danger to Liberty*, 20 CARDOZO L. REV 861, 863–64 (1999) (outlining four ways in which the delegation of Congress' constitutionally defined lawmaking power undercuts the protection of liberty).

347 Cass R. Sunstein, *Nondelegation Canons*, 67 U. CHI. L. REV. 315, 317–18 (2000) (dismissing the nondelegation doctrine without reference to delegations to private groups).

delegation standards,[348] agency discretion is also confined by Congress through a tapestry of procedural requirements imposed by legislation, including the Administrative Procedure Act,[349] the Freedom of Information Act,[350] the Government in the Sunshine Act,[351] and the Federal Advisory Committee Act.[352]

The elected branches also retain some practical ability in confining agency discretion when the delegations are made to *public* administrative agencies, to officials who are appointed by the President and confirmed by the Senate, and when there is ongoing budgetary oversight by Congress. How much more problematic when the delegation is being made to an ostensibly *private* agency, in which top administrators are not appointed by the President or confirmed by the Senate, and there is no budgetary oversight by Congress—the exact kind of *private* delegation granted to the Federal Reserve. Judicial insistence on an intelligible principle is far less meaningful for a private delegation since privately appointed officials can more easily defy intelligible principles and other policy guidance provided by the legislative branch.

During the early- to mid-1930s, when the Supreme Court was striking down New Deal legislation, often in narrow 5 to 4 votes, there was a consensus among liberal and conservative justices that such *private* delegations were illegitimate and unconstitutional, a violation of the so-called private nondelegation doctrine.[353] In 1935, a unanimous Supreme Court in *A.L.A Schechter Poultry v. United States* (the so-called "Sick Chicken case") struck down the National Recovery Administration (NRA), the centerpiece of the early New Deal, as an unconstitutional delegation of lawmaking power.[354] The NRA, like the Federal Reserve, was concerned with price stability, only this time it was attempting to stop a deflationary spiral by setting minimum prices and wages through private industry

348 Yakus v. United States, 321 U.S. 414, 420, 424 (1944) (upholding the Office of Price Administration's authority to impose price controls because Congress provided an intelligible principle to guide administrators by mandating that prices set be "generally fair and equitable").

349 *See generally* Administrative Procedure Act, 5 U.S.C. §§ 551 et seq. (2007). George B. Shepherd, *Fierce Compromise: The Administrative Procedure Act Emerges from New Deal Politics*, 90 N.W. U. L. REV. 1557, 1558 (1996) (describing the APA as "the bill of rights for the new regulatory state").

350 *See generally* Freedom of Information Act, 5 U.S.C. § 552 (2007).

351 *See generally* Government in the Sunshine Act, 5 U.S.C. § 552(b) (2007).

352 *See generally* Federal Advisory Committee Act, 5 U.S.C. App. § 1 et seq. (2007).

353 *See, e. g.*, Carter v. Carter Coal Co., 298 U.S. 238, 311 (1936) ("This is legislative delegation in its most obnoxious form; for it is not even delegation to an official or an official body, presumptively disinterested, but to private persons whose interests may be and often are adverse to the interests of others in the same business.").

354 A.L.A. Schechter Poultry Corp. v. United States, 295 U.S. 495, 541–42 (1935).

trade councils which were dominated by the largest firms in each industry.[355] Justice Cardozo, in his concurring opinion, characterized the delegation to these private industry trade councils as a "delegation running riot."[356]

Since the late 1930s, the Court has routinely upheld the authority of administrative agencies through a more expansive interpretation of the Commerce Clause, while largely ignoring delegation challenges as long as Congress provided some intelligible principle in the delegation.[357] Many scholars have criticized this lack of judicial scrutiny of democratic processes ever since. For instance, in *Democracy and Distrust*, John Hart Ely lamented the demise of the nondelegation doctrine as a "death by association" with pre-1937 substantive due process decisions and narrow readings of the Commerce Clause: "when those doctrines died the nondelegation doctrine died along with them."[358]

Delegations to private entities are particularly troubling for rule of law purposes. According to Mark Bernstein:

> Even if one accepts the necessity of broad delegations of legislative power, the sharing of that power with private interests raises questions about the recipients' conflict of interest and accountability and about agency capture. The risk is not only that power will be concentrated, but that it potentially may be concentrated in those unaccountable for their actions.[359]

As Bernstein further recognized, since such delegations can shortcut the legislative process, they also create a separation of power issue and threaten "to upset the delicate balance of institutional interests that the framers believed would check the influence of factions."[360]

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355 *Id.* at 550.

356 *Id.* at 553 (Cardozo, J., concurring).

357 *See* JOHN HART ELY, DEMOCRACY AND DISTRUST: A THEORY OF JUDICIAL REVIEW 132 (1980).

358 *Id.* at 132, 133. Likewise, such leading political scientists as Theodore Lowi have derided broad delegations to administrative agencies. THEODORE J. LOWI, THE END OF LIBERALISM: THE SECOND REPUBLIC OF THE UNITED STATES 96–97 (2d ed. 1979). *See also* Alan Brinkley, *The Challenge to Deliberative*, *in* THE NEW FEDERALIST PAPERS: ESSAYS IN DEFENSE OF THE CONSTITUTION 23, 25 (Alan Brinkley, Nelson W. Polsby & Kathleen M. Sullivan eds., 1997) (arguing that an anti-populist critique of deliberative democracy "is visible in the extraordinary, and largely unchallenged, authority of presumed experts on the Federal Reserve Board to chart the course of our economy").

359 Mark F. Bernstein, Note, *The Federal Open Market Committee and the Sharing of Governmental Power with Private Citizens*, 75 VA. L. REV. 111, 127 (1989).

360 *Id.* at 127 n.72 (citing David Schoenbrod, *Separation of Powers and the Powers that Be: Constitutional Purposes of Delegation Doctrine*, 36 AM. U. L. REV. 355, 372–73 (1987)).

The Federal Reserve is indeed "the poster child of an unconstitutional private delegation."[361] Like the NRA, which was struck down in *Schechter Poultry*, the Federal Open Market Committee (FOMC) is dominated by private actors.[362] The presidents of the twelve regional Federal Reserve Banks participate on the FOMC are appointed by privately selected board members.[363] Meanwhile, unlike delegations to public agencies, the Federal Reserve does not rely on Congress for budgetary appropriations since it is effectively able to print money by simply purchasing government securities (and now toxic assets) with Federal Reserve Notes and credits representing Federal Reserve Notes.[364] In addition, the Federal Reserve is exempt in whole or in part from much of the tapestry of administrative procedural requirements that apply to most other federal agencies.[365]

The private nature of the regional Federal Reserve Banks may also skew the dynamics of the publicly appointed Board of Governors (BOG).[366] The seven members of the BOG, who serve for fourteen-year terms, are likely to be pre-screened in the appointments process to prevent any nominees who would challenge the private nature of the regional Federal Reserve Banks, the composition of the FOMC, or the prerogatives of the largest private bank members of the system—the so-called "Too Big To Fail" banks.[367] For instance, the Federal Reserve is provided with considerable discretion in its open market operations, deciding what assets to purchase from which financial settings, as well as in setting capital standards for individual banks, bringing formal capital enforcement actions, entering written agreements, ordering hearings, imposing cease and desist orders, ordering prompt corrective action directives, appointing a receiver, and conducting "stress tests" to determine

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361 Once again, I credit the late John Hart Ely, for this description of the Federal Reserve. *See* Canova, *Closing the Border*, *supra* note 224, at 407 n.326.

362 Bernstein, *supra* note 359, at 111.

363 THE FEDERAL RESERVE SYSTEM: ITS PURPOSES AND FUNCTIONS 1947, *supra* note 2, at 53–54; Canova, *Closing the Border*, *supra* note 224, at 407.

364 THE FEDERAL RESERVE SYSTEM: ITS PURPOSES AND FUNCTIONS 1947, *supra* note 2, at 2, 62–64.

365 *See* Freedom of Information Act, 5 U.S.C. § 552(b)(5) (2007) (providing exemption for certain Federal Reserve directives and information that is part of its deliberative process); Federal Advisory Committee Act, 5 U.S.C. App. § 4 (b) (2007) (exempting any advisory committee of two entities, the Federal Reserve System and the Central Intelligence Agency, from provisions of the Federal Advisory Committee Act).

366 THE FEDERAL RESERVE SYSTEM: ITS PURPOSES AND FUNCTIONS 1947, *supra* note 2, at 56.

367 *Id. See also Too Big to Fail*, BUSINESSDICTIONARY.COM, http://www.businessdictionary.com/definition/too-big-to-fail.html (last visited Jan. 6, 2011).

how much capital is needed by the largest bank holding companies.[368] Such discretion presents challenges for fair enforcement and supervision by any federal agency, such as the Federal Deposit Insurance Corporation or the Office of the Comptroller of the Currency. The problem becomes magnified when the discretion is vested in an institution like the Federal Reserve that is largely directed by the financial industry.

Although there have been numerous challenges to the Federal Reserve System in the 1970s and 1980s on Appointments Clause and nondelegation grounds, all have been dismissed by the U.S. Court of Appeals for the D.C. Circuit on narrow procedural grounds (and the Supreme Court has denied certiorari).[369] The D.C. Circuit has held that private plaintiffs lack standing because they cannot show any injury caused directly by the Federal Reserve since they lack any privity of contract with the Fed.[370] When the plaintiff has been a U.S. Senator, the court has created the doctrine of "equitable discretion" to avoid ruling on the substantive merits.[371] If standing and justiciability could be found in some future case, perhaps for a private financial institution or state governments challenging the Fed's denial of assistance, the issue may turn to redressability.

Most recently, in *Free Enterprise Fund v. Public Co. Accounting Oversight Board*,[372] the Supreme Court struck down the removal provisions of the Public Company Accounting Oversight Board (PCAOB),[373] a creation of the Sarbanes-Oxley Act of 2002,[374] since PCAOB board members could be removed only for good cause by the Securities and Exchange Commission (SEC) and the SEC Commissioners could in turn only be removed by the President for good cause.[375] In his dissenting opinion, Justice Breyer warned of a host of other federal agencies that may be put in jeopardy by the majority's ruling, and he included

368 Julie Andersen Hill, *Ad Hoc Bank Capital Requirements* 3–5, 8, 11, 15, 19, 21–22, 37 (July 7, 2010) (working draft) (on file with author).

369 Canova, *Closing the Border*, *supra* note 224, at 404–05 n.309–11, 313 (citing Melcher v. Fed. Open Mkt. Comm., 836 F.2d 561 (D.C. Cir. 1987) (dismissed on grounds of equitable discretion); Comm. for Monetary Reform v. Bd. of Governors of the Fed. Reserve Sys., 766 F.2d 538 (D.C. Cir. 1985) (dismissed for lack of standing); Riegle v. Fed. Open Mkt. Comm., 656 F.2d 873 (D.C. Cir. 1981) (dismissed on grounds of equitable discretion); Reuss v. Balles, 584 F.2d 461 (D.C. Cir. 1978), cert. denied, 439 U.S. 997 (1978) (dismissed for lack of standing)).

370 *Id.* at 404. *See also Reuss*, 584 F.2d at 470–71.

371 Canova, *Closing the Border*, *supra* note 224, at 404.

372 Free Enter. Fund v. Pub. Co. Accounting Oversight Bd., 130 S. Ct. 3138 (2010).

373 *Id.* at 3147.

374 *Id.*

375 *Id.*

the Federal Reserve Board although its members are subject to good cause removal by the President.[376] Justice Breyer follows a long line of liberal scholars, including most famously Cass Sunstein, who confuse the Federal Reserve Board of Governors, properly appointed by the President of the United States and confirmed by the Senate, with the constitutionally far more problematic presidents of the regional Federal Reserve Banks who sit on the Federal Open Market Committee.[377] Of particular importance in light of *Free Enterprise Fund* is the fact that those regional Federal Reserve Bank presidents are removed only by the privately-elected boards of directors of the privately-owned regional Federal Reserve Banks.[378] It appears that for any challenge to the Federal Reserve System, the *Free Enterprise Fund* holding would provide redressability in the form of striking down the removal provisions of the regional Federal Reserve Bank presidents.

It is not surprising that unelected judges would be reluctant to rule on the substantive merits and strike down key features of the nation's central bank. Nor that public opinion and populist dissatisfaction with Wall Street bailouts finally pushed Congress to act—even a Congress so compromised and influenced by Wall Street campaign contributions. Significantly, the impetus for action came not from the center, but from the populist libertarian right joining hands with the populist progressive left. Representative Ron Paul, a Republican libertarian from Texas, introduced a bill to subject the Federal Reserve to an audit by the Government Accountability Office (GAO), the non-partisan investigative arm of Congress.[379] Ron Paul's bill was cosponsored on the left by such Democratic and progressive Congressmen as Dennis Kucinich from Ohio and Alan Grayson from Florida.[380] Until now, the Federal Reserve's exercise of monetary policy has evaded such scrutiny. But the trillions of dollars in opaque Federal Reserve subsidies for Wall Street interests finally fueled

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376 Free Enter. Fund v. Pub. Co. Accounting Oversight Bd., No. 08-861, slip op. at 39 (U.S. June 28, 2010) (Breyer, J., dissenting).

377 Canova, *Closing the Border*, *supra* note 224, at 404 n.310.

378 Federal Reserve Act, 12 U.S.C. § 341 *Fifth* (2000). Unlike the PCAOB removal provision that was struck down in *Free Enterprise Fund*, the President of the United States has no role, direct or attenuated, in the removal of Federal Reserve Bank presidents. *Free Enterprise Fund* restricts PCAOB board members to a single level of insulation from the President; Federal Reserve Bank presidents are completely insulated from the President of the United States. *See* Ira Stoll, *Free Enterprise Fund v. PCAOB*, FUTUREOFCAPITALISM.COM (June 28, 2010, 12:39 PM), http://www.futureofcapitalism.com/2010/06/free-enterprise-fund-v-pcaob.

379 Arnold Kling, *The Case for Auditing the Fed is Obvious*, CATO INSTITUTE BRIEFING PAPERS no. 118, Apr. 27, 2010, *available at* http://www.cato.org/pubs/bp/bp118.pdf.

380 Federal Reserve Transparency Act of 2009, H.R. 1207, 111th Cong. (2009), *available at* http://thomas.loc.gov/cgi-bin/bdquery/z?d111:HR01207:@@@P.

reform efforts. Inquiring minds wanted to know who the Federal Reserve has showered with its largesse—which "Too Big To Fail" Wall Street banks and which politically connected hedge funds—and the terms of such support, including the price paid for toxic assets and the collateral required for Fed loans.

In December 2009, the House passed a financial regulatory reform bill by a vote of 223 to 202 which incorporated several provisions on reforming the Federal Reserve, including the GAO audit provision.[381] The Senate passed a financial reform bill in May 2010 that included a provision that would have required the president of the Federal Reserve Bank of New York to be appointed by the president of the United States and confirmed by the Senate.[382] The Senate bill also prohibited bank officers from serving on the boards of the twelve regional Federal Reserve Banks and voting for the regional bank presidents.[383] In addition, the Senate voted 96 to 0 to include a provision requiring a one-time audit of the Federal Reserve by GAO, a measure that was pushed from the left by Senator Bernard Sanders, an independent from Vermont.[384]

With two differing versions of financial regulatory reform, the legislation moved to a House-Senate Conference Committee, where reform efforts often get watered down or die. The final version of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) did not include any significant change in the appointment of any of the regional Federal Reserve Bank presidents.[385] Previously, they were appointed by the boards of directors of the regional Federal Reserve Banks, which consists of three Class A directors representing the commercial bank members of the Federal Reserve district, three Class B directors also elected by the same commercial banks but purporting to represent the public, and three Class C directors appointed by the Board of Governors.[386] Under section 1107 of the Act, the regional presidents will now be appointed by the

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381 *Comparing the House and Senate Financial Reform Bills*, N.Y. TIMES, Mar. 17, 2010, http://www.nytimes.com/interactive/2010/03/16/business/financialreform-billcompare.html#tab=2.

382 *Id.*

383 *Id.*

384 David M. Herszenhorn, *Senate Votes Unanimously for an Audit of Fed's Actions in Financial Crisis*, N.Y. TIMES, May 12, 2010, at B3; Alan Grayson, *We Beat the Fed*, THE HUFFINGTON POST (May 11, 2010, 10:16 PM), http://www.huffingtonpost.com/rep-alan-grayson/we-beat-the-fed_b_572713.html.

385 In the Senate version, section 1157 proposed that the President of the United States appoint the president of the Federal Reserve Bank of New York for a term of five years. H.R. 4173, 111th Cong. (2010) (Senate version). However, this proposal was not in the final version signed by President Obama. *See infra* note 388 and accompanying text.

386 THE FEDERAL RESERVE: PURPOSES & FUNCTIONS 2005, *supra* note 4, at 10.

Class B and Class C directors of the regional Federal Reserve Banks, with the approval of the Board of Governors.[387] This is a baby step in the right direction, but with the Federal Reserve System already captured by the big banking interests, limiting the appointment process to Class B and Class C directors will likely have no actual impact on outcomes.

In addition, the prohibition against bank officers serving on the boards of the twelve regional Federal Reserve Banks was dropped by the Conference Committee and did not appear in the final Dodd-Frank Act.[388] However, the Comptroller General is now required to complete an audit of the governance of the Federal Reserve Banks, including an examination of whether the current system of appointing Federal Reserve Bank directors effectively represents the public "with due but not exclusive consideration to the interests of agriculture, commerce, industry, services, labor, and consumers."[389] The audit must also "examine whether there are actual or potential conflicts of interest created when directors of the Federal reserve banks" are elected by member banks.[390] Finally, the audit is charged with identifying changes to the selection procedures for Federal Reserve Bank directors that would improve how the public is represented, eliminate actual or potential conflicts of interest in bank supervision, and increase the availability of information and Federal Reserve transparency, effectiveness and efficiency.[391]

More controversial were the provisions dealing with the GAO audit of the Federal Reserve's open market operations and lending facilities over the past two years, as well as Federal Reserve's transparency provisions. It is worth wading through the maze of statutory provisions to understand the subterfuges attempted by the Federal Reserve and its allies in the Conference Committee. According to section 1109(a), the GAO will conduct a one-time audit of all loans and other financial assistance provided by the Federal Reserve System during the period beginning December 1, 2007 and ending on the date of enactment of the Dodd-Frank Act.[392] This, at first glance, seems to be a

387 Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, H.R. 4173, 111th Cong. (2010) § 1107(a). In addition, § 1108 (d) limits the ability of the Board of Governors to delegate certain authority to the presidents of the Federal Reserve Banks.

388 The Senate version of section 1157 proposed that no officer, past or current, may serve on the board of directors. H.R. 1157, 111th Cong. (2010) (Senate version). This prohibition did not appear in the final version signed by President Obama; instead, an audit is required. *See infra* note 389.

389 Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, H.R. 4173, 111th Cong. (2010) § 1109 (b)(1)(B)(i).

390 § 1109 (b)(1)(B)(ii).

391 § 1109 (b)(1)(B)(iv).

392 The Mortgage-Backed Securities (MBS) Purchase Program, by which the Federal

success for transparency efforts since the GAO audit should apparently cover the several trillion dollars in loans and outright purchases made by the Federal Reserve since the onset of the financial crisis.

However, section 102(a) prevents the Comptroller General from disclosing "to any person or entity, including Congress, the names or identifying details of specific participants in any . . . covered transaction" including the amounts transferred in any covered transaction.[393] GAO disclosure can only occur if the Board of Governors first decides to publicly disclose the identity or identifying details of the transaction.[394] There is concern that these provisions could be used to effectively prevent disclosure by either the Federal Reserve or the GAO of any of the trillions of dollars of Federal Reserve loans and open-market purchases conducted between the beginning of the financial crisis in late 2007 and July 2010.[395]

However, section 1109(c), the final provision in the Title XI Federal Reserve provisions of the Dodd-Frank Act, required the Board of Governors to publish on its website no later than December 1, 2010 the identities of each business, individual, entity, or foreign central bank that has received specifically listed Federal Reserve loans and financial assistance beginning on

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Reserve purchased some $1.25 trillion in toxic assets, is indeed covered by the GAO's one-time audit as an expressly listed program (it is specifically listed as "the agency-guaranteed mortgage-backed securities program"). According to the Federal Reserve, the MBS Purchase Program for large-scale asset purchases (LSAP) was conducted pursuant to section 14 of the Federal Reserve Act (and therefore was not within the Fed's section 13(3) powers). *See* Board of Governors of the Federal Reserve System, *Federal Reserve System Monthly Report on Credit and Liquidity Programs and the Balance Sheet January 2010*, at 4 (2010), http://www.federalreserve.gov/monetarypolicy/files/monthlyclbsreport201001.pdf; Board of Governors of the Federal Reserve System, *Federal Reserve System Monthly Report on Credit and Liquidity Programs and the Balance Sheet March 2010*, at 4, 5 (Mar. 2010), http://www.federalreserve.gov/monetarypolicy/files/monthlyclbsreport201003.pdf.

393 § 1102(a).

394 *Id.* Presumably, the GAO would not be empowered to disclose the details of non-covered transactions. Meanwhile, according to section 1102 the Board of Governors must disclose the names and identifying details of each counterparty in any covered transaction. *Id.* (enacting a new section 11(s) of the Federal Reserve Act). However, section 1102 requires Federal Reserve to disclose identifying details of only certain transactions conducted after the date of enactment of the Dodd-Frank Act. The GAO's non-disclosure obligation expires with respect to any transaction "on the date on which the Board of Governors, directly or through a Federal reserve bank, publicly discloses the identity" or identifying details of any transaction. *Id.* Therefore, when the Board of Governors discloses details of any post-July 2010 transaction, the GAO may at that time also disclose such details. But the inverse is also true, that as long as the Board of Governors does not disclose details of any post-July 2010 transaction, the GAO may not disclose such details.

395 While the GAO should be able to audit Federal Reserve loans and open-market transactions under section 1109, the GAO would apparently be prevented from disclosing the identities and identifying details of these transactions under section 1102. *Id.*; § 1109.

December 1, 2007.[396] Why, one might ask, were these provisions so convoluted? Why prevent the GAO from disclosing identifying information when the Federal Reserve is required to do so on its website, and why tack that latter requirement onto the very final section of the legislation? According to a Capitol Hill staffer who worked on this legislation, "When you are fighting the Fed and the Senate and Treasury and they won't show you language, this is what happens."[397]

On December 1, 2010, the Fed complied with section 1109(c) by disclosing the identities of those receiving some $3.3 trillion in Federal Reserve loans and financial assistance. The list of wards of the Fed included the largest financial institutions in the United States and abroad, a who's who of Wall Street and foreign banks.[398]

Finally, section 1103(b) states expressly that it is not intended to affect any pending litigation or lawsuit previously filed under 5 U.S.C. § 552, the Freedom of Information Act.[399] This provision was meant to protect suits that had been filed against the Federal Reserve by Bloomberg News and other media outlets seeking the identity of financial institutions receiving emergency *Federal Reserve* loans from the Federal Reserve's discount window and the collateral posted for such assistance.[400] This was the one Fed lending program that Congress ultimately excluded from the transparency and disclosure requirements in the Dodd-Frank Act.[401] Bloomberg News was granted summary judgment in August 2009 by the federal District Court for the Southern District of New York,[402] which was affirmed by the Court of Appeals for the Second Circuit in March 2010.[403] Apparently there was no need for the Federal Reserve to appeal the decision to the Supreme Court. The Clearing House

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396 § 1109(c).

397 Email from unnamed Capitol Hill staffer to author, July 28, 2010 (adding, "The process was a clusterfuck done at the last minute"). *Clusterfuck*, URBANDICTIONARY.COM, http://www.urbandictionary.com/define.php?term=clusterfuck (last visited Jan. 8, 2011) (Clusterfuck is a "[m]ilitary term for an operation in which multiple things have gone wrong" and is related to SNAFU and FUBAR).

398 Craig Torres and Scott Lanman, *Fed Names Recipients of $3.3 Trillion in Crisis Aid*, BLOOMBERG (Dec. 1, 2010, 10:52 AM), http://www.bloomberg.com/news/2010-12-01/fed-names-recipients-of-3-3-trillion-of-aid-during-u-s-financial-crisis.html.

399 § 1103(b) (enacting a new section 11(s)(8) of the Federal Reserve Act).

400 *See generally* Bloomberg, L.P. v. Bd. of Governors of the Fed. Reserve Sys., 649 F. Supp. 2d 262 (S.D.N.Y. 2009).

401 Torres & Lanman, *supra* note 398.

402 *Id.* at 282.

403 Bloomberg, L.P. v. Bd. of Governors of the Fed. Reserve Sys., 601 F.3d 143, 151 (2d Cir. 2010).

Association LLC, a group of the biggest commercial banks in the country, filed for certiorari in October 2010.[404]

The Fed has never disclosed the identities of borrowers of its discount window lending since the program was created in 1914.[405] As Senator Bernie Sanders said, the Dodd-Frank Act disclosure and transparency requirements is "a significant step forward in opening the veil of secrecy that exists in one of the most powerful agencies in government."[406] Whether or not the Fed is ultimately compelled to disclose details about its discount window lending, the information already disclosed under Dodd-Frank contributes to our understanding of the Fed's cozy relationship with Wall Street's biggest banks and financial institutions. Most recently, the Federal Reserve is engaged in its second round of quantitative easing (QE2), purchasing some $600 billion in long-term Treasury securities in an attempt to push down mortgage interest rates and to prop up housing and consumption.[407] The Fed's disclosures under Dodd-Frank show how the first round of quantitative easing helped transfer $1.25 trillion of toxic assets from the balance sheets of Wall Street's

404 Bob Ivry & Greg Stohr, *Fed Won't Join Supreme Court on Loan Disclosures*, BLOOMBERG (Oct. 26, 2010, 11:15 AM), http://www.bloomberg.com/news/2010-10-26/fed-won-t-join-banks-appeal-to-high-court-over-emergency-loan-disclosures.html; *Pending Cases Involving the Board of Governors*, BOARD OF GOVERNORS OF THE FEDERAL RESERVE, http://www.federalreserve.gov/bankinforeg/legaldevelopmentscases.htm (last updated Jan. 19, 2011) (reporting the Clearing House filing as intervenor in *Board of Governors v. Bloomberg, LP* and *Fox News Network v. Board of Governors*); Bob Ivry, *Fed Given 60 Days for Supreme Court Appeal of Document Disclosure Order*, BLOOMBERG (Aug. 27, 2010), http://www.bloomberg.com/news/print/2010-08-27/federal-reserve-given-60-days-to-appeal-disclosure-order-to-supreme-court.html.

405 Ivry & Stohr, *supra* note 404.

406 Torres & Lanman, *supra* note 398.

407 Wessel, *supra* note 204, at A4 (reporting that Quantitative Easing is "when the Fed turns up its electronic printing presses" and creates money to purchase financial assets). Section 1101 of the Dodd-Frank Act continues to grant the Federal Reserve very broad discretion to engage in emergency lending—the Fed's so-called section 13(3) lending authority—"for the purpose of providing liquidity to the financial system, and not to aid a failing company . . . ." Dodd-Frank Wall Street Reform and Consumer Protection Act, H.R. 4173, 111th Cong. § 1101(a)(6)(B)(i) (2010). There is nothing in the Dodd-Frank Act that would prevent the Federal Reserve from create new money to purchase more trillions of dollars in paper assets through open market transactions. Paul Krugman has suggested that the Federal Reserve may need to purchase between $8 trillion and $10 trillion in government bonds to produce a full recovery. Paul Krugman, *On Quantitative Easing and the Currency Situation*, CNBC (Oct. 13, 2010, 5:30 PM), *available at* http://www.marketobservation.com/blogs/index.php/2010/10/14/paul-krugman-on-quantitative-easing-and-the-currency-situation?blog=10 (providing an audio broadcasting of Paul Krugman's predictions). This is another way of saying that the federal government needs to find outlets to spend on that scale. The Federal Reserve already has all the authority it needs to purchase government bonds in any amount, while it would take an act of Congress to authorize the federal government to spend such amounts (or any amount) on economic recovery programs.

biggest banks to the Federal Reserve's own balance sheet.[408] Meanwhile, as home foreclosures have climbed to an all-time high,[409] economists on both sides of the spectrum have called on the Federal Reserve to lend directly to Main Street, from proposals to finance the write-down and modifications of mortgages to lending directly to local governments and for job creation through infrastructure investment.[410] Unfortunately, these proposals have fallen on deaf ears at the Fed.

The Federal Reserve sits at the center of these double standards. Sanctity of contract and market discipline result in millions of underwater mortgages, foreclosed homes, and a broken American Dream. But for powerful Wall Street insiders, failure is rewarded through the central bank's programs such as quantitative easing. This is essentially free money for the interests that have captured the central bank, while state and local governments around the United States, and sovereign borrowers elsewhere face rising interest rates and negative assessments from the credit rating agencies tied to the big banks. Populist proposals to reverse these trends are routinely dismissed by Washington and Wall Street. One such proposal, for the Federal Reserve or Treasury to provide interest-free loans to state and local governments for capital investment projects, has met orthodox opposition.[411] For instance, Don Brash, the former head of New Zealand's central bank, indicated his concern about the opportunity cost of having the government provide easy credit for public sector capital investment.[412] However, as long as central bankers remain unaccountable there is no

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408 Dick Armey & Matt Kibbe, *Fed Chairman Ben Bernanke's Bailout Redux*, WASH. EXAMINER (Nov. 4, 2010, 10:00 PM), http://washingtonexaminer.com/op-eds/2010/11/dick-armey-and-matt-kibbe-fed-chairman-ben-bernankes-bailout-redux; Larry Doyle, *Barack Obama Has Ben Bernanke by the Balls*, SENSE ON CENTS (Mar. 16, 2010, 3:23 PM), http://www.senseoncents.com/2010/03/barack-obama-has-ben-bernanke-by-the-balls/.

409 *See Foreclosure Activity Hits Record High in Third Quarter*, REALTYTRAC (Oct. 15, 2009), http://www.realtytrac.com/foreclosure/foreclosure-rates.html (reporting a new high in quarterly mortgage foreclosure rate).

410 For instance, on the right, Nobel laureate Vernon Smith has proposed that the Federal Reserve finance lending modification of home mortgages. Vernon L. Smith, *Mired in Disequilibrium: Do for Households What the Fed Sought for Banks*, NEWSWEEK (Jan. 24, 2011), http://www.newsweek.com/2011/01/23/mired-in-disequilibrium.html. On the left, William Greider proposes that the Fed use its section 13(3) authority to lend to nonfinancial entities in "unusual and exigent circumstances" to lend directly to local governments and for building infrastructure and creating jobs. William Greider, *Will the Federal Reserve's $900 Billion Be Enough?*, AGENCE GLOBAL (Nov. 18, 2010), http://www.agenceglobal.com/Article.asp?Id=2452.

411 Canova, *supra* note 321, at 586–87 n.167–73 (discussing H.R. 1452, the State and Local Government Empowerment Act of 1999).

412 Discussion with Don Brash, Chapman University, Argyros Hall, Feb. 22, 2010. "[T]he opportunity cost of using a particular resource is defined as the value of the next best alternative use of that resource . . . . '[W]henever you have a choice, there is a cost.'" HENRY N. BUTLER, ECONOMIC ANALYSIS FOR LAWYERS 4 (1998).

incentive for them to ask what the opportunity cost is for providing trillions of dollars in support to Wall Street banks and hedge funds.

The movement to reform central banks and make them accountable has been around for as long as there has been both democracy and privatized central banking. Reigning in privilege and financial aristocracy was the basis for Jefferson's opposition to the First Bank of the United States[413] and Jackson's veto of the recharter of the Second Bank of the United States.[414] Likewise, today many have come to see the independent Federal Reserve as the linchpin of a government-nurtured cartel and emblematic of the ossification of the political process.[415] Without genuine accountability, independent central banking has become a euphemism for plutocracy and financial oligarchy.

Those concerned about our present economic impasse must ask what kind of central bank we need. They may find that the Federal Reserve we want looks a lot like the Federal Reserve we once had during the 1940s—strictly accountable to the elected branches and far more transparent and efficient in regulation than today. Of course, there are other models of civic republicanism, such as a central bank that remains independent from direct executive branch political control, while including a fair representation of "business, labor, farmers, consumers," debtors, and other constituencies that have been left outside the present system.[416] This would transform the central bank into a marketplace for ideas, internalizing checks and balances, and a forum for what Madison called faction confronting faction.[417]

It has been said that war is too important to be left to the generals. Likewise, the economy is too important to be left to the bankers. Yet, we have largely turned over the nation's central bank to a self-interested banking elite. The result has been to corrupt the culture of the central bank, entrench a system of self-regulation for the biggest banks, and constrain fiscal policy at every level of government. Ultimately, what is at stake is the nature of representative democracy itself.

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413 *Primary Source: Thomas Jefferson's Opinion on the National Bank*, (PBS/KCET 2008), http://www.pbs.org/kcet/andrewjackson/edu/jeffersononbank.pdf.

414 *American President: Jackson Vetoes Bank Bill—July 10, 1832*, Miller Center of Public Affairs, University of Virginia, http://millercenter.org/academic/americanpresident/events/07_10.

415 Jacob Heilbrunn, Op-Ed., *Bernanke Bashers*, L.A. TIMES, Nov. 19, 2010, at A27.

416 *See, e.g.*, COMMONS, *supra* note 22, at 900–01; Whalen, *supra* note 84, at 564–65; KEYSERLING, *supra* note 22, at 111.

417 THE FEDERALIST NO. 10, *supra* note 312, at 54–55.