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Neoliberalism

Et Sicut Radix Ad Arborem (As the Root So the Tree)

In the May–June issue of COMER, we carried a three-part series of articles by Ed Finn, first published in the CCPA (Canadian Centre for Policy Alternatives).

That series (accessible at comer.org) is an invaluable analysis of the “*thinking*” behind neoliberalism, and its consequences.

It’s an excellent place to begin for any of us serious about preserving life on this planet for, understanding this pernicious ideology is essential to finding our way out of the socio-economic trap in which we are *all* – proponents and critics alike – being driven to self-destruct.

Part I: What We Need to Know about Neoliberalism (Before It’s Too Late)

Monbiot’s definition of the neoliberal ideology is a provocative challenge to much of what our political economy has become over the past four decades, and emphasizes our need to take stock and *think* about where all that is taking us.

The notion that “everyone gets what they deserve,” for example, raises the question, “Just what *does everyone* deserve?” If the neoliberals are correct, a good number of us would seem to belong to George Bernard Shaw’s “undeserving poor,” while those responsible for the 2008 debacle are just too precious to fail, and rate the \$17 trillion bailout the US Fed coughed up.

Perhaps the most significant factor foiling the struggles of various activists worldwide to solve our outstanding problems, has been the failure to recognize that these problems are *all* connected.

George Monbiot’s definition sparks an insight into these connections by linking the manifestations of neoliberalism – of which we *are* only too aware – with the underlying

ideas that they reflect, naming – categorizing them.

How could you diagnose a disease without relating its *various* symptoms? More than one ailment can cause a rash.

It truly is “scary” that so many strong and lucid warnings about the growing power of the global corporate elite, and despite such stark and crushing examples of consequences, should have taken that long to raise awareness to its present level.

The suggestion that, however ugly its consequences may be, capitalism beats communism and anarchy is a prime example of the flawed black-and-white “thinking” that suffocates creative problem-solving. This is the same level of thinking that sold Maggi Thatcher’s “TINA” (there is no alternative): message.

While it is discouraging that, although the key prerequisite to accomplishing meaningful change has “clearly been achieved” it hasn’t led to the “strong political crack-down” anticipated – especially given the 2008 meltdown – that’s a valuable lesson, and grist to our mill. The better you know what you are up against, the more likely you are to succeed.

As for the politicians – that’s not an insuperable complication.

Pathological consumption is the built-in imperative of a pathological economic system, and is potentially and increasingly a powerful incentive to change.

The list of what is profitable is a potent condemnation of the profit priority, that could provide an excellent chapter in a good course on progressive economics.

The basic importance of “free trade” to the neoliberal takeover is a theme that deserves further scrutiny in future issues of this journal. Finn’s attention to particular clauses in trade deals bears out the sentiment cen-

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Neoliberalism — The Ideology at the Root of All Our Problems

By George Monbiot, The Guardian, April 15, 2016

Financial meltdown, environmental disaster and even the rise of Donald Trump – neoliberalism has played its part in them all. Why has the left failed to come up with an alternative?

Imagine if the people of the Soviet Union had never heard of communism. The ideology that dominates our lives has, for most of us, no name. Mention it in conversation and you’ll be rewarded with a shrug. Even if your listeners have heard the term before, they will struggle to define it. Neoliberalism: do you know what it is?

Its anonymity is both a symptom and cause of its power. It has played a major role in a remarkable variety of crises: the financial meltdown of 2007–8, the offshoring of wealth and power, of which the Panama Papers offer us merely a glimpse, the slow collapse of public health and education, resurgent child poverty, the epidemic of loneliness, the collapse of ecosystems, the rise of Donald Trump. But we respond to these crises as if they emerge in isolation, apparently unaware that they have all been either catalysed or exacerbated by the same coherent philosophy; a philosophy that has – or had – a name. What greater power can there be than to operate namelessly?

Inequality is recast as virtuous. The market ensures that everyone gets what they deserve.

So pervasive has neoliberalism become that we seldom even recognise it as an ideology. We appear to accept the proposition that this utopian, millenarian faith describes a neutral force; a kind of biological law, like Darwin’s theory of evolution. But the philosophy arose as a conscious attempt to reshape human life and shift the locus of power.

Neoliberalism sees competition as the defining characteristic of human relations. It redefines citizens as consumers, whose democratic choices are best exercised by buying and selling, a process that rewards merit and punishes inefficiency. It maintains that “the market” delivers benefits that could never be achieved by planning.

Attempts to limit competition are treated as inimical to liberty. Tax and regulation should be minimised, public services should

be privatised. The organisation of labour and collective bargaining by trade unions are portrayed as market distortions that impede the formation of a natural hierarchy of winners and losers. Inequality is recast as virtuous: a reward for utility and a generator of wealth, which trickles down to enrich everyone. Efforts to create a more equal society are both counterproductive and morally corrosive. The market ensures that everyone gets what they deserve.

We internalise and reproduce its creeds. The rich persuade themselves that they acquired their wealth through merit, ignoring the advantages – such as education, inheritance and class – that may have helped to secure it. The poor begin to blame themselves for their failures, even when they can do little to change their circumstances.

Never mind structural unemployment: if you don’t have a job it’s because you are unenterprising. Never mind the impossible costs of housing: if your credit card is maxed out, you’re feckless and improvident. Never mind that your children no longer have a school playing field: if they get fat, it’s your fault. In a world governed by competition, those who fall behind become defined and self-defined as losers.

Neoliberalism has Brought Out the Worst in Us

Among the results, as Paul Verhaeghe documents in his book *What About Me?* are epidemics of self-harm, eating disorders, depression, loneliness, performance anxiety and social phobia. Perhaps it’s unsurprising that Britain, in which neoliberal ideology has been most rigorously applied, is the loneliness capital of Europe. We are all neoliberals now.

The term neoliberalism was coined at a meeting in Paris in 1938. Among the delegates were two men who came to define the ideology, Ludwig von Mises and Friedrich Hayek. Both exiles from Austria, they saw social democracy, exemplified by Franklin Roosevelt’s New Deal and the gradual development of Britain’s welfare state, as manifestations of a collectivism that occupied the same spectrum as Nazism and communism.

In *The Road to Serfdom*, published in 1944, Hayek argued that government planning, by crushing individualism, would lead

inexorably to totalitarian control. Like Mises's book *Bureaucracy, The Road to Serfdom* was widely read. It came to the attention of some very wealthy people, who saw in the philosophy an opportunity to free themselves from regulation and tax. When, in 1947, Hayek founded the first organisation that would spread the doctrine of neoliberalism – the Mont Pelerin Society – it was supported financially by millionaires and their foundations.

With their help, he began to create what Daniel Stedman Jones describes in *Masters of the Universe* as “a kind of neoliberal international”: a transatlantic network of academics, businessmen, journalists and activists. The movement's rich backers funded a series of thinktanks which would refine and promote the ideology. Among them were the American Enterprise Institute, the Heritage Foundation, the Cato Institute, the Institute of Economic Affairs, the Centre for Policy Studies and the Adam Smith Institute. They also financed academic positions and departments, particularly at the universities of Chicago and Virginia.

As it evolved, neoliberalism became more strident. Hayek's view that governments should regulate competition to prevent monopolies from forming gave way – among American apostles such as Milton Friedman – to the belief that monopoly power could be seen as a reward for efficiency.

Something else happened during this transition: the movement lost its name. In 1951, Friedman was happy to describe himself as a neoliberal. But soon after that, the term began to disappear. Stranger still, even as the ideology became crisper and the movement more coherent, the lost name was not replaced by any common alternative.

At first, despite its lavish funding, neoliberalism remained at the margins. The postwar consensus was almost universal: John Maynard Keynes's economic prescriptions were widely applied, full employment and the relief of poverty were common goals in the US and much of western Europe, top rates of tax were high and governments sought social outcomes without embarrassment, developing new public services and safety nets.

But in the 1970s, when Keynesian policies began to fall apart and economic crises struck on both sides of the Atlantic, neoliberal ideas began to enter the mainstream. As Friedman remarked, “when the time came that you had to change...there was an alternative ready there to be picked up.” With the help of sympathetic journalists and

political advisers, elements of neoliberalism, especially its prescriptions for monetary policy, were adopted by Jimmy Carter's administration in the US and Jim Callaghan's government in Britain.

It may seem strange that a doctrine promising choice should have been promoted with the slogan “there is no alternative.”

After Margaret Thatcher and Ronald Reagan took power, the rest of the package soon followed: massive tax cuts for the rich, the crushing of trade unions, deregulation, privatisation, outsourcing and competition in public services. Through the IMF, the World Bank, the Maastricht treaty and the World Trade Organisation, neoliberal policies were imposed – often without democratic consent – on much of the world. Most remarkable was its adoption among parties that once belonged to the left: Labour and the Democrats, for example. As Stedman Jones notes, “it is hard to think of another utopia to have been as fully realised.”

It may seem strange that a doctrine promising choice and freedom should have been promoted with the slogan “there is no alternative.” But, as Hayek remarked on a visit to Pinochet's Chile – one of the first nations in which the programme was comprehensively applied – “my personal preference leans toward a liberal dictatorship rather than toward a democratic government devoid of liberalism.” The freedom that neoliberalism offers, which sounds so beguiling when expressed in general terms, turns out to mean freedom for the pike, not for the minnows.

Freedom from trade unions and collective bargaining means the freedom to suppress wages. Freedom from regulation means the freedom to poison rivers, endanger workers, charge iniquitous rates of interest and design exotic financial instruments. Freedom from tax means freedom from the distribution of wealth that lifts people out of poverty.

As Naomi Klein documents in *The Shock Doctrine*, neoliberal theorists advocated the use of crises to impose unpopular policies while people were distracted: for example, in the aftermath of Pinochet's coup, the Iraq war and Hurricane Katrina, which Friedman described as “an opportunity to radically reform the educational system” in New Orleans.

Where neoliberal policies cannot be imposed domestically, they are imposed internationally, through trade treaties incorporating “investor-state dispute settlement”: offshore tribunals in which corporations can

press for the removal of social and environmental protections. When parliaments have voted to restrict sales of cigarettes, protect water supplies from mining companies, freeze energy bills or prevent pharmaceutical firms from ripping off the state, corporations have sued, often successfully. Democracy is reduced to theatre.

Neoliberalism was not conceived as a self-serving racket, but it rapidly became one. Another paradox of neoliberalism is that universal competition relies upon universal quantification and comparison. The result is that workers, job-seekers and public services of every kind are subject to a pettifogging, stifling regime of assessment and monitoring, designed to identify the winners and punish the losers. The doctrine that Von Mises proposed would free us from the bureaucratic nightmare of central planning has instead created one.

Neoliberalism was not conceived as a self-serving racket, but it rapidly became one. Economic growth has been markedly slower in the neoliberal era (since 1980 in Britain and the US) than it was in the preceding decades; but not for the very rich. Inequality in the distribution of both income and wealth, after 60 years of decline, rose rapidly in this era, due to the smashing of trade unions, tax reductions, rising rents, privatisation and deregulation.

The privatisation or marketisation of public services such as energy, water, trains, health, education, roads and prisons has enabled corporations to set up tollbooths in front of essential assets and charge rent, either to citizens or to government, for their use. Rent is another term for unearned income. When you pay an inflated price for a train ticket, only part of the fare compensates the operators for the money they spend on fuel, wages, rolling stock and other outlays. The rest reflects the fact that they have you over a barrel.

Those who own and run the UK's privatised or semi-privatised services make stupendous fortunes by investing little and charging much. In Russia and India, oligarchs acquired state assets through firesales. In Mexico, Carlos Slim was granted control of almost all landline and mobile phone services and soon became the world's richest man.

Financialisation, as Andrew Sayer notes in *Why We Can't Afford the Rich*, has had a similar impact. “Like rent,” he argues, “interest is...unearned income that accrues without any effort.” As the poor become poorer and the rich become richer, the rich

acquire increasing control over another crucial asset: money. Interest payments, overwhelmingly, are a transfer of money from the poor to the rich. As property prices and the withdrawal of state funding load people with debt (think of the switch from student grants to student loans), the banks and their executives clean up.

Sayer argues that the past four decades have been characterised by a transfer of wealth not only from the poor to the rich, but within the ranks of the wealthy: from those who make their money by producing new goods or services to those who make their money by controlling existing assets and harvesting rent, interest or capital gains. Earned income has been supplanted by unearned income.

Neoliberal policies are everywhere beset by market failures. Not only are the banks too big to fail, but so are the corporations now charged with delivering public services. As Tony Judt pointed out in *Ill Fares the Land*, Hayek forgot that vital national services cannot be allowed to collapse, which means that competition cannot run its course. Business takes the profits, the state keeps the risk.

The greater the failure, the more extreme the ideology becomes. Governments use neoliberal crises as both excuse and opportunity to cut taxes, privatise remaining public services, rip holes in the social safety net, deregulate corporations and re-regulate citizens. The self-hating state now sinks its teeth into every organ of the public sector.

Perhaps the most dangerous impact of neoliberalism is not the economic crises it has caused, but the political crisis. As the domain of the state is reduced, our ability to change the course of our lives through voting also contracts. Instead, neoliberal theory asserts, people can exercise choice through spending. But some have more to spend than others: in the great consumer or shareholder democracy, votes are not equally distributed. The result is a disempowerment of the poor and middle. As parties of the right and former left adopt similar neoliberal policies, disempowerment turns to disenfranchisement. Large numbers of people have been shed from politics.

Chris Hedges remarks that “fascist movements build their base not from the politically active but the politically inactive, the ‘losers’ who feel, often correctly, they have no voice or role to play in the political establishment.” When political debate no longer speaks to us, people become responsive instead to slogans, symbols and sensation.

To the admirers of Trump, for example, facts and arguments appear irrelevant.

Judt explained that when the thick mesh of interactions between people and the state has been reduced to nothing but authority and obedience, the only remaining force that binds us is state power. The totalitarianism Hayek feared is more likely to emerge when governments, having lost the moral authority that arises from the delivery of public services, are reduced to “cajoling, threatening and ultimately coercing people to obey them.”

Like communism, neoliberalism is the God that failed. But the zombie doctrine staggers on, and one of the reasons is its anonymity. Or rather, a cluster of anonymities.

The invisible doctrine of the invisible hand is promoted by invisible backers. Slowly, very slowly, we have begun to discover the names of a few of them. We find that the Institute of Economic Affairs, which has argued forcefully in the media against the further regulation of the tobacco industry, has been secretly funded by British American Tobacco since 1963. We discover that Charles and David Koch, two of the richest men in the world, founded the institute that set up the Tea Party movement. We find that Charles Koch, in establishing one of his thinktanks, noted that “in order to avoid undesirable criticism, how the organisation is controlled and directed should not be widely advertised.”

The nouveau riche were once disparaged by those who had inherited their money. Today, the relationship has been reversed.

The words used by neoliberalism often conceal more than they elucidate. “The market” sounds like a natural system that might bear upon us equally, like gravity or atmospheric pressure. But it is fraught with power relations. What “the market wants” tends to mean what corporations and their bosses want. “Investment,” as Sayer notes, means two quite different things. One is the funding of productive and socially useful activities, the other is the purchase of existing assets to milk them for rent, interest, dividends and capital gains. Using the same word for different activities “camouflages the sources of wealth,” leading us to confuse wealth extraction with wealth creation.

A century ago, the nouveau riche were disparaged by those who had inherited their money. Entrepreneurs sought social acceptance by passing themselves off as rentiers. Today, the relationship has been reversed: the rentiers and inheritors style themselves entrepreneurs. They claim to have earned

their unearned income.

These anonymities and confusions mesh with the namelessness and placelessness of modern capitalism: the franchise model which ensures that workers do not know for whom they toil; the companies registered through a network of offshore secrecy regimes so complex that even the police cannot discover the beneficial owners; the tax arrangements that bamboozle governments; the financial products no one understands.

The anonymity of neoliberalism is fiercely guarded. Those who are influenced by Hayek, Mises and Friedman tend to reject the term, maintaining – with some justice – that it is used today only pejoratively. But they offer us no substitute. Some describe themselves as classical liberals or libertarians, but these descriptions are both misleading and curiously self-effacing, as they suggest that there is nothing novel about *The Road to Serfdom*, *Bureaucracy* or Friedman’s classic work, *Capitalism and Freedom*.

For all that, there is something admirable about the neoliberal project, at least in its early stages. It was a distinctive, innovative philosophy promoted by a coherent network of thinkers and activists with a clear plan of action. It was patient and persistent. *The Road to Serfdom* became the path to power.

Neoliberalism’s triumph also reflects the failure of the left. When laissez-faire economics led to catastrophe in 1929, Keynes devised a comprehensive economic theory to replace it. When Keynesian demand management hit the buffers in the ’70s, there was an alternative ready. But when neoliberalism fell apart in 2008 there was...nothing. This is why the zombie walks. The left and centre have produced no new general framework of economic thought for 80 years.

Every invocation of Lord Keynes is an admission of failure. To propose Keynesian solutions to the crises of the 21st century is to ignore three obvious problems. It is hard to mobilise people around old ideas; the flaws exposed in the ’70s have not gone away; and, most importantly, they have nothing to say about our gravest predicament: the environmental crisis. Keynesianism works by stimulating consumer demand to promote economic growth. Consumer demand and economic growth are the motors of environmental destruction.

What the history of both Keynesianism and neoliberalism show is that it’s not enough to oppose a broken system. A coherent alternative has to be proposed. For Labour, the Democrats and the wider left, the central task should be to develop an

economic Apollo programme, a conscious attempt to design a new system, tailored to the demands of the 21st century.

Our Comment

If the pressure to conform seems greater than the pressure to oppose, the worldwide slide from left to centre is, if not acceptable, understandable. The most obvious implication of that, however, is that real change must involve greater pressure from the opposition. The success of neoliberals offers many a clue as to how to go about that.

The idea that the system delivers what people “deserve” raises the question, What does “everybody” deserve? In assessing the impact of growing inequality this bears discussion.

The philosopher Hobbes observed that we live in society because otherwise life is nasty, poor, solitary, brutal, and short. When life in society is all these and more – what then?

Maggie Thatcher said that there is no such thing as society – an opinion disputed by climatologist Tim Flannery (*Here On Earth*), who attributed her view to a misinterpretation of Darwin. He went on to say, “either these ideas will survive, or *we* will”! It would help if we could evaluate our society in terms of what we *value*.

We need to better understand human behaviour, and to cultivate a high respect for *all* life. This won't happen without improving our badly battered education system, and accommodating and developing organized opportunities for discourse at the community level, around matters of social and political importance. Many neoliberal policies have made this increasingly difficult.

We can take a page or two from the neoliberals' book, like the practice of preparing for, watching for, and recognizing when it came the opportunity to implement change.

The political economy they have installed at almost every level of social organisation is retarding the very course of human evolution and threatening our survival. That should be an incentive!

The “left and centre” may not have come up with something new, but many others have. There is an excellent historical body of good thinking on all these issues, and a spirited and creative store of current thinking and engagement, in progress. We need to tap into all of that to come up with an “Apollo programme.”

That *is* going on! More of that, in forthcoming issues.

Élan

CETA — No Lawyers Left Behind

By Joyce Nelson, Watershed Sentinel, Sep-Oct 2016, Vol. 26, No. 4

The Canada-EU trade deal called CETA (Comprehensive Economic and Trade Agreement) is being rammed down our throats on both sides of the Atlantic. Portions of it could come into effect as soon as November 1, according to the Council of Canadians. PM Justin Trudeau is scheduled to sign CETA in Brussels on October 27.

This draconian treaty would give multinational corporations immense power to overrule elected local governments on numerous fronts. But one of its most controversial provisions is that it will allow for dozens more corporate lawsuits to be filed each year against the Canadian government under its investor-state dispute settlement (ISDS) mechanism.

The ISDS, first introduced in NAFTA, allows foreign corporations to sue governments over policy decisions or regulations that harm their future profits. For example, TransCanada Corporation is suing the US government (under NAFTA) for over \$15 billion for failing to approve the Keystone XL tar sands pipeline, even though the company invested just \$2.4 billion in the controversial project. With ISDS, there is no upper limit to how much a company can claim in “lost future profits.”

The year 2015 saw a record high of 70 new ISDS corporate lawsuits filed against countries under NAFTA and various bilateral treaties, raising concerns worldwide about ISDS and the ways corporations use it to bleed governments financially while putting a “chill” on any new regulations.

Current deals like CETA and TPP (Trans Pacific Partnership) would open up huge new vistas for ISDS lawsuits, which is one reason why the corporate sector is pushing the deals so relentlessly.

ISDS “Rewrite”

Canada's International Trade Minister Chrystia Freeland is enthusiastically touting CETA and hastening its implementation. On July 3 she told *The Globe and Mail* that concerns about ISDS in CETA have been eased: “Ms. Freeland said those concerns were addressed after the treaty's investment chapter was rewritten to strengthen the right of governments to regulate in areas of the environment, labour standards, public services, and a fairer arbitration process.”

In an op-ed for the same newspaper (July 8), Freeland and Cecilia Malmstrom (the EU's Trade Commissioner) asserted, “We also know that governments need to be free to act in the interests of their citizens. That's why, in February, we created in our trade agreement a deeply reformed approach reinforcing the sovereign right to regulate, making investor arbitration procedures fairer, independent and more transparent.”

Far from any “deeply reformed approach,” the rewritten chapter is little different from its predecessor, according to a March 2016 report from the Corporate Europe Observatory (CEO). The rewrite was basically a PR re-branding exercise, giving ISDS a new name: the Investment Court System (ICS). Otherwise, “the proposed ‘new’ ICS is ISDS back from the dead,” Pia Eberhardt wrote in the report appropriately called *The Zombie ISDS*.

The Council of Canadians calls the reforms “smoke and mirrors” and says the changes “actually make [the provisions] worse. The reforms enshrine extra rights for foreign investors that everyone else – including domestic investors – don't have. They allow foreign corporations to circumvent a country's own courts, giving them special status to challenge laws that apply equally to everyone through a [private] court system exclusively for their use.”

The “Inner Mafia”

In November 2012, CEO's Pia Eberhardt and Cecilia Olivet of the Transnational Institute exposed this ISDS private court system in a report called *Profiting from Injustice*. They revealed that a “small club of international law firms, arbitrators and financial speculators are fuelling an investment arbitration boom that is costing taxpayers billions of dollars and preventing legislation in the public interest” across the planet. They found a handful of legal firms “are actively encouraging corporate clients to sue governments” under investment treaties containing the ISDS clause, while “top arbitrators are using their influence to secure investor-friendly rules and sustain the flow of multi-million dollar lawsuits.”

At the heart of this “secretive but burgeoning legal industry,” they found an “inner mafia” of fifteen arbitrators who (as of 2012) had decided on 55% of all known ISDS disputes – earning millions in fees for

themselves and billions in ISDS settlements for their corporate clients. That “inner mafia” includes three Canadian lawyers: Marc Lalonde, L. Yves Fortier, and Henri Alvarez.

Profiting from Injustice also revealed that private investment funds are speculating on ISDS court cases: lending money to companies so they can sue governments, and then taking a percentage of the final financial award. Such a gamble can be very lucrative: in a recent ISDS lawsuit, a national government was ordered to pay a whopping \$50 billion to the claimant.

As of January 2015, there had been 37 known ISDS claims against Canada under NAFTA, with settled awards to corporations totalling about US\$341 million. As well, Canada has spent over \$65 million on ISDS court costs and legal fees, which can average \$8 million per case or more. Canada still faces more than \$2.5 billion in pending claims.

Under CETA’s rebranded ISDS, the three for-profit arbitrators (now to be called “judges”) who decide each case would be drawn from a pool of lawyers and would be paid US\$3,000 per day, on top of a monthly retainer fee of 2,000 euros per month. As well, they can moonlight as lawyers with the very same corporations launching the lawsuits.

The deal would allow for thousands more corporations to sue governments on both sides of the Atlantic.

CETA, also for the first time, prevents provinces and municipalities from favouring local contractors, so European companies will be vying for federal, provincial, and municipal procurement contracts worth more than \$100 billion per year. Dozens of Canadian municipalities (including the Union of BC Municipalities) are officially opposed to CETA. Legal experts predict that lawsuits over lost contracts will mushroom in Canada.

Think of CETA as a “no lawyers left behind” treaty.

“Illegal and Unconstitutional”

In 2012, the Canadian Union of Public Employees (CUPE) released a legal analysis of leaked negotiating texts showing CETA would “trump provincial powers over natural resources and public services” and “override areas of provincial jurisdiction set in the Constitution.”

After CETA was approved in principle in October 2013 by the Harper government, renowned constitutional lawyer Rocco Galati stated publicly: “Your government

has told you that we have a CETA with Europe but we don’t know the details of it. We don’t know what’s in it. Have we gone back to the Middle Ages?”

Galati argues, “In the States, they cannot implement a treaty without passing it through Congress. In Canada we pretend and fantasize and continue to invoke the ‘Crown prerogative’ of the executive [i.e., the Prime Minister] to sign treaties.” But, Galati says, “There is no Crown prerogative left after the 1982 patriation of the Constitution.” Therefore, any treaty “should have Parliamentary approval before the treaty has any effect, to ensure that it’s reviewed for Constitutional conformity.”

In late September 2014, then PM Stephen Harper, European Commission President Jose Manuel Barroso, and European Council President Herman Van Rompoy signed a joint declaration marking the end of negotiations on CETA. That was the first time people in Canada and Europe were allowed to see the official text, although no changes would be allowed.

Just days after the signing, *The Globe and Mail* reported (September 30, 2014) that “The CETA must still be approved by the Canadian parliament and provinces and European parliaments,” although it is “unclear whether all [Canadian] provinces and territories will hold votes in their legislature, or whether some will approve the deal through regulation or other means.”

But Gus Van Harten, international investment law expert at Osgoode Hall Law School in Toronto, recently told me by email that CETA never was voted on by the Canadian parliament or any provincial/territorial legislature. Van Harten stated, “Personally I think trade agreements of this magnitude should be voted on federally and in each province or territory, prior to Canada’s ratification of the agreement, due to their broad-ranging implications for governments and legislatures.”

Rocco Galati goes further, calling CETA “illegal and unconstitutional.”

CETA Over Sovereignty

Galati has explained: “The federal government cannot sign a treaty in which they sign and bind exclusive provincial and First Nation rights vis-à-vis other countries that they can’t implement in Canada, but then have to compensate foreign countries and companies when they can’t do business under the treaty.”

An example is the pending C\$250 million ISDS lawsuit filed by Lone Pine Re-

sources (under NAFTA) after Quebec instituted a temporary moratorium against fracking.

CETA (like NAFTA) “puts the treaty above Canadian sovereignty,” Galati says. “It puts the treaty above the Constitution, private interest over the Constitution. That’s what’s wrong with it.”

As well, this situation sets up a framework in which “they’re giving away the family store to their friends, in essence,” Galati says, through the ISDS lawsuits that then happen. “My personal theory is this is just money going between friends in different countries,” Galati has stated publicly.

That “theory” was largely confirmed by the *Profiting from Injustice* report which showed the “inner mafia” of lawyers and law firms reaping vast sums from ISDS. The new report, *The Zombie ISDS*, states that the CETA investment rewrite raises “concerns that tribunals will be staffed with the same private lawyers who have until now driven the boom in investment arbitration.”

While CETA would allow thousands of European companies to sue Canada under ISDS for “lost future profits,” some 42,000 US multinationals that have branch plants in Canada could sue European governments through CETA – a kind of “back door” in case the equally controversial Transatlantic Trade and Investment Partnership (TTIP) between the US and the EU collapses.

Assault on Democracy

On June 28, a German news agency reported that European Commission (EC) President Jean-Claude Juncker told EU leaders the Commission is planning to push CETA through without giving national parliaments any say in it. After pushback from Germany and France, Juncker appeared to be backtracking, recommending as of July 5 that CETA is a “mixed” treaty that would require “both the approval of the European Parliament and national legislatures” in the 28-member EU bloc.

But the EC believes that 95% of CETA falls within EU jurisdiction and could be implemented immediately after the October 27 signing, leaving the other 5% of the deal to be voted on.

Apparently, that process has been planned for some time. In March, Canada’s chief negotiator, Steve Verheul told iPolitics, “After the agreement is approved by the European Parliament, the EU will pursue something called provisional application, which will allow them to put in place probably 95% of the agreement. And then mem-

ber [European] states could subsequently ratify, if that's required, over a period of time that would be of less concern to us."

The 95% of CETA that the EU considers part of its "jurisdiction" includes the investment chapter with its ISDS "reforms." Even worse, according to trade analyst Felix Heilmann, Article 30.8 of CETA states that countries "would be subject to corporate lawsuits even if they decide against CETA – for three whole years!" *Le Monde* and Council of Canadians have also reported that even if CETA is rejected in Europe, "claims under the ISDS chapter would still be possible up to three years afterwards for investments made during the provisional period."

Spinning CETA

On July 5, *The Globe and Mail* published an op-ed by business advisor Omar Allam, urging the private sector to "rally behind Ottawa" on CETA. "Our companies (especially our small- and mid-market firms) stand to benefit from CETA, which would open significant export and investment opportunities for Canadian companies to do business in and with Europe in a wide range of sectors," he wrote.

But according to federal figures cited by the *Toronto Star* in 2014, "Of the more than one million small-to-medium sized businesses in Canada, just one in 30 does any exports," and those are to the US. So one million Canadian companies aren't likely to benefit from CETA at all, and in fact, they could lose local procurement contracts to the Europeans.

Some Canadian companies that will benefit from CETA include Canadian multinational (banking, mining, defense, oil and gas, aerospace) and the big law firms like Bennett Jones LLP, which advised the Harper government on CETA, and which advertises "Investment Treaties and Disputes" as one of its legal services for corporate clients.

Of course, words like "investments" are always slippery in the legal world. In one infamous recent ISDS case, a company invested \$5 million in a "tourism" project in Libya, but claimed (and got) \$900 million in "lost future profits," even though construction had never started.

Joyce Nelson is an award-winning free-lance writer/researcher working on her sixth book, Beyond Banksters.

Our Comment

A stellar guide to understanding this

most imminent treachery!

So much for Chrystia Freeland's public forum on the TPP. She seems not to have heard a word of the informed, passionate discussion that went on there!

Clearly, this government is adamantly committed to the same basic, neoliberal

programme as the last!

Real change is going to be up to an informed and resolute citizenry. Joyce Nelson's CETA article provides an outstanding boost to both those qualifications and should be shared as widely as possible!

Élan

Needed: A Different Strategy to Resist Trade Agreements

By George H. Crowell

Political struggles against so-called "free trade agreements" have consumed vast amounts of time and energy from us social activists. Despite great efforts in Canada and the US against the Canada-US Free Trade Agreement (FTA) until 1988, we lost; and then together with Mexicans on until 1994 struggling against the North American Free Trade Agreement, we lost again. However, along with European activists, we achieved a major victory in 1998 by beating back the Multilateral Agreement on Investment (MAI). We then managed in 2005 at least temporarily to halt the Free Trade Area of the Americas (FTAA).

Now we are working furiously to prevent approval of yet another trade agreement – the Trans-Pacific Partnership (TPP). Here in Canada at the same time we and our European allies are burdened with having to continue a long battle against the Canada-European Comprehensive Economic and Trade Agreement (CETA). Even if we succeed in defeating the TPP, we still have not only the CETA, but also the Transatlantic Trade and Investment Partnership (TTIP) and the Trade in Services Agreement (TiSA) with which to contend as they surge toward us.

It should be well known by now that those of us who have long been opposing these destructive trade agreements are not against trade as such. We favour fair trade. We have been working hard to resist unjust trade agreements.

A host of particular issues is at stake in each of these agreements. We can generate considerable political opposition to the trade agreements by stressing their varying damaging consequences for different groups of people such as dairy farmers, auto workers, and seniors dependent upon reasonably priced pharmaceuticals. But based on all that we have seen about these trade agreements, it is clear that there is a central problem common to all of them that is of

profound concern to all of us, and this is where we need to focus our opposition. All the trade agreements are fundamentally anti-democratic. They are intended to override our democratic institutions. They are designed to establish control over public decision-making by profit-oriented businesses. They are constructed to achieve corporate rule.

The trade agreements are, therefore, unconstitutional in Canada, the US, and other participating nations as well. I approach this issue with no special expertise in constitutional law. But, from a common-sense perspective, the conclusion that these trade agreements are unconstitutional is inescapable. Our constitutions have been shaped to achieve democracy and to defend democracy against all kinds of attempts to displace it. While we cannot now give up our constant political struggles against trade agreements, we need to move decisively together to take legal action against them.

We need to push our democratically established law courts to declare them unconstitutional, and thus to set up a legal bulwark against any and all such anti-democratic institutions.

From the outset so-called "free trade agreements" have been anti-democratic – fully intended to achieve corporate rule. They have been initiated by corporations and, in cooperation with receptive governments, and have been bargained in secret, excluding participation by social justice and environmental advocates. They take up thousands of pages of highly technical language whose meaning is obscure not only to ordinary folk, but also to elected legislators who are pressured to approve them without fully understanding them.

The anti-democratic thrust of the TPP, along with other trade agreements including the FTA and NAFTA, is most obvious in their key provision for "Investor-State Dispute Settlement" (ISDS). This allows foreign corporations operating under the

agreements to sue democratically elected governments for actions they may take – even actions clearly in the public interest – which might deprive the corporations of

anticipated profits. Such lawsuits initiated by corporations are decided not through any democratically established public court system but by special tribunals, each com-

posed of three trade experts commissioned to enforce the rules of the trade agreements. Their decisions are final and no appeal to our courts is permitted. All the so-called

COMER at the World Social Forum

“A Better World is Possible”

By Herb Wiseman

Through the kind efforts of Joseph, representing the International Movement for Monetary Reform, (IMMR), COMER joined with Manfred Freund of Dinero Positivo, from Spain, and Manuel Klein of Monetative, from Germany, at the World Social Forum held during August, in Montreal.

Representatives from COMER included Ann Emmett, Herb Wiseman, Margaret Rao and Judy Lewis.

The WSF did not have an overall agenda or programme. Concerned activists were able to schedule workshops and set up booths where they could distribute their materials and do presentations.

COMER participated in three workshops on the first day of the forum. The other days we attended other presentations where our members would attempt to assist other groups to understand the seminal nature of monetary reform to achieve their goals. Following is a sample of the agenda for each session which was changed for each session because of time constraints and the audience in attendance.

Agenda

- Introduction by Joseph
- Kevin Deer – First Nations Greeting
- Pierre Dupras – Nature of Money
- Visual Summary by Joseph
- Three questions, and Neoliberalism and Bad Beliefs, by Herb Wiseman
- Manfred Freund – Where does the money come from?
- Ann Emmett – Reasons for the COMER Lawsuit
- Manuel Klein – Sovereign Money System
- Results of Herb's Three Questions

In each of the workshops Herb opened with three questions, two of which were to be answered by the audience members who placed their answers on file cards that were collected and analyzed. To set the stage for understanding the monetary problems as a part of neoliberalism, or as he termed it, the Neoliberal Age, he also asked who was born before and who after 1965 noting that those born after 1965 knew no other economic way than that of neoliberalism.

One question was the Bat and Ball problem, the next was, When people borrow money from the banks where do the banks

get the money from? And the last one was about being born prior to or after 1965.

There were some illustrations shown on overheads of what transpired after the mid 70s with respect to debt, deficits, income changes, etc.

The presentations made by Manuel and Manfred were excellent and well received.

The booth allowed us to talk to people about our purpose, on a one-on-one basis. We had posters and handed out a pamphlet discussing the problem and pointing out the solution that could be made possible if we used the Bank of Canada.

We all found it well worth our time and effort. We made some connections with other people in the world and were impressed at the energy and efforts now being devoted to monetary reform around the world.

Our Comment

These contacts represent an exciting development in COMER's operation. The group have been invited to attend an international conference on monetary reform, organized by Monetative, to be held in Berlin, this coming February. We hope to attend.

Manfred and Manuel each gave an excellent presentation, well integrated into the workshop, and stimulated good discussion.

We thoroughly enjoyed working together, and spent time over meals together, to the pleasure and benefit of all.

Joseph's hard work in preparation and throughout the event, was deeply appreciated, and the barbeque with his charming wife and 3-month-old son in their beautifully treed backyard, a delight.

Heartfelt thanks to all for a memorable and enjoyable time together!

The calibre and dedication of such people – and they exist all over the world – and the work they are doing, inspires hope and *absolutely* rules out giving up. Pessimism is an excuse that we can not afford, because *a better world is possible*.

Ann Emmett



Left to right: Ann Emmett, Manfred Freund, Kevin Deer, Margaret Rao, Herb Wiseman, Judy Lewis, Manuel Klein.

“free trade agreements” contain ISDS provisions, and we can fully expect to find such provisions – potent anti-democratic tools promoting corporate rule – in all future trade agreements.

In addition to ISDS provisions, the persistent, pervasive drive of trade agreements toward ever more privatization – conversion of public institutions serving the public interest into private enterprises seeking private profit – is also profoundly anti-democratic. To draw an illustration from US experience, the 1954 US Supreme Court decision in

the case of *Brown versus Board of Education* declared that racially segregated education is “inherently unequal,” and therefore unconstitutional. Like the US Constitution, the Canadian Charter of Rights and Freedoms strongly affirms the principle of equality. We need to be gathering documentation to make the case in our law courts that privatization is inherently unequal. It favours the rich, and disadvantages the poor. It is therefore unconstitutional.

A decision based on this principle would be far reaching. It would include the drive

toward privatization presently dominating public policy beyond trade agreements, and it would open possibilities not only for preventing privatization, but also for shifting assets from private to public control. Especially important is the present need to move from privately controlled banking – the mother of all privatizations – to public banking. Trade agreements coming down the pipe reflect an awareness of the growing movement for public banking and are designed to thwart this effort.

The obstacles against success in lawsuits

The Conspiracy Theory Narrative: Are You a Mind-Controlled CIA Stooge?

By Dr. Paul Craig Roberts, *Global Research News*, August 31, 2016, *Centre for Research on Globalization*, www.globalresearch.ca

Conspiracy Theorist: Someone who Questions the Statements of Known Liars

Do you smirk when you hear someone question the official stories of Orlando, San Bernardino, Paris or Nice? Do you feel superior to 2,500 architects and engineers, to firefighters, commercial and military pilots, physicists and chemists, and former high government officials who have raised doubts about 9/11? If so, you reflect the profile of a mind-controlled CIA stooge.

The term “conspiracy theory” was invented and put into public discourse by the CIA in 1964 in order to discredit the many skeptics who challenged the Warren Commission’s conclusion that President John F. Kennedy was assassinated by a lone gunman named Lee Harvey Oswald, who himself was assassinated while in police custody before he could be questioned. The CIA used its friends in the media to launch a campaign to make suspicion of the Warren Commission report a target of ridicule and hostility. This campaign was “one of the most successful propaganda initiatives of all time.” So writes political science professor Lance deHaven-Smith, who in his peer-reviewed book, *Conspiracy Theory in America*, published by the University of Texas Press, tells the story of how the CIA succeeded in creating in the public mind reflexive, automatic, stigmatization of those who challenge government explanations. This is an extremely important and readable book, one of those rare books with the power to break you out of The Matrix.

Professor deHaven-Smith is able to write this book because the original CIA Dispatch #1035-960, which sets out the CIA plot, was obtained through a Freedom of Information Act request. Apparently, the bureaucracy did not regard a document this old as being of any importance. The document is marked “Destroy when no longer needed,” but somehow wasn’t. CIA Dispatch #1035-960 is reproduced in the book.

The success that the CIA has had in stigmatizing skepticism of government explanations has made it difficult to investigate State Crimes Against Democracy (SCAD) such as 9/11. With the public mind programmed to ridicule “conspiracy kooks,” even in the case of suspicious events such as 9/11 the government can destroy evidence, ignore prescribed procedures, delay an investigation, and then form a political committee to put its imprimatur on the official story. Professor deHaven-Smith notes that in such events as Kennedy’s assassination and 9/11 official police and prosecutorial investigations are never employed. The event is handed off to a political commission.

Professor deHaven-Smith’s book supports what I have told my readers: the government controls the story from the beginning by having the official explanation ready the moment a SCAD occurs. This makes any other explanation a “conspiracy theory.” This is the way Professor deHaven-Smith puts it:

“A SCAD approach to memes assumes further that the CIA and other possibly participating agencies are formulating memes well in advance of operations, and therefore SCAD memes appear and are popularized very quickly before any competing concepts are on the scene.”

The CIA’s success in controlling public perception of what our Founding Fathers would have regarded as suspicious events involving the government enables those in power positions within government to orchestrate events that serve hidden agendas. The events of September 11 created the new paradigm of endless war in behalf of a Washington-dominated world. The CIA’s success in controlling public perceptions has made it impossible to investigate elite political crimes. Consequently, it is now possible for treason to be official US government policy.

Professor deHaven-Smith’s book will tell you the story of the assassination of President Kennedy by elements of the US military, CIA, and Secret Service. Just as the Warren Commission covered up the State Crime Against Democracy, Professor deHaven-Smith shows why we should doubt the official 9/11 story. And anything else that the government tells us.

Read this book. It is short. It is affordable. It is reality preparation. It will inoculate you against being a dumbshit, insouciant, brainwashed American. I am surprised that the CIA has not purchased the entire print run and burned the books. Perhaps the CIA feels secure from its success in brainwashing the public and does not believe that American democracy and accountable government can be restored.



Our Comment. Of course, to question at all is a highly subversive activity apt to earn you this label. It helps to remember that to *conspire* simply means to “breathe together.” Surely that is not always a bad thing. *Élan*

against anti-democratic trade agreements are intimidating. Deep-pocketed corporations could and would hire hosts of lawyers to fight against them.

This is not the sort of case to be left to the initiative of a single civil society voluntary organization with a single heroic lawyer, however competent, courageous, committed, and willing to work pro bono. We need (in each affected nation) a consortium of social justice and environmental organizations, along with labour unions to take on each case. Here in Canada support of the Canadian Labour Congress with its 3.3 million members is crucial. Participation by civil society organizations already involved in litigation – especially the Canadian Civil Liberties Association, Ecojustice, and Environmental Defence – is also needed. Those who are involved in the current political struggle against the TPP could begin to include calls for a lawsuit as part of their campaign.

How could a lawsuit against trade agreements as unconstitutional begin? Since the TPP is not yet in effect, an injunction against it on constitutional grounds to prevent its enactment would be needed. But we already have NAFTA in effect, and ISDS

decisions are already reversing actions taken in the public interest by democratically elected legislative bodies, especially here in Canada. We cannot expect our government which has already participated in the ISDS process to take the NAFTA-forbidden route of appealing to our court system. Civil society organizations acting in the public interest for environmental protection and/or public benefit would have to take the initiative, arguing in our courts that trade agreements which override legislative actions for public welfare and abscond with public funds are unconstitutional. Once we get a favourable court decision in one case, it would apply in that nation to all other similar situations.

But first we need careful consideration among civil society organizations of the urgent need for such lawsuits. We need to recognize that political struggle against the endless stream of anti-democratic trade agreements – a struggle which is burning out many social activists, nearly all of whom are mere volunteers working against well-paid professionals – cannot always succeed. Eventually legislators favouring corporate interests become elected and vote to approve the next trade agreement. Some of us activ-

ists now need to pour some of our efforts into developing the strategy of taking legal action against the unconstitutional trade agreements.

We need a corps of activist lawyers and law students working in this direction. And we need strong moral and financial support from civil society organizations for this work.

Gaining favourable court rulings against trade agreements will greatly strengthen our hand in our struggle against corporate rule. But we can be sure that the corporate community will be working tirelessly to use other strategies, as they already are, to impose their long-desired goal of corporate rule. For example, they lobby legislators to suppress union organization, they almost entirely control the media, and they seek allowance for unlimited spending to influence elections. The struggle to achieve and to maintain a benevolent democracy is a permanent human responsibility even though it must always rely heavily upon voluntary commitment.

We must not forget that success in the struggle against corporate rule would not be a panacea guaranteed to bring some utopian society. Power concentrated in public hands by leftist governments can also become corrupted. This, however, is not our problem here now. We need now to recognize that our present political struggles against anti-democratic trade agreements at best can give us only temporary victories.

We have every indication that there is no limit to endless assault on democracy through ever more such agreements because the corporate community recognizes them as exceptionally powerful tools for achieving corporate rule. We need to pursue protection from them through constitutional means.

Professor George Crowell, taught Social Ethics in the Department of Religious Studies at the University of Windsor, 1968-1996, and since his retirement has continued his social activism. George is a long-time active member of COMER.

Neoliberalism *from page 1*

tral to George Crowell's article, included in this issue.

The TPP is also a litmus test for the rest of us. Anyone who doesn't know why, should tap into the vigorous movement against it. Will Canadians have what it takes to pressure Trudeau into rejecting the TPP?

Part II: Free Trade Extends Scope and Power of Corporate Oligarchy

Finn's account of his spirited defence of the use of the term "barbaric" reflects one of the most curious tendencies that sometimes protect us from realizing or acknowledging awkward insights – a kind of political protocol to protect us from too uncomfortable a 'rocking' of the boat.

I used to worry about criticizing people for taking the stand they did, when perhaps they sincerely believed it was the right thing to do. Then I attended a Frazer Institute conference on Canada's deficit. I came away convinced that whether or not they really believed their own arguments *they were wrong*, and had to be resisted. The problem is to determine who is "right" and who is "wrong" – hence such institutions as political, economic and legal systems.

Then, the problem lies in who's best interests those institutions come to serve. Then what?

Finn certainly doesn't underestimate the challenge to change! It is indeed "*formidable*"! But he does equip us with, however negative, the bad news that we need to know if we are to succeed.

The good news is that while the barriers may be formidable, they are not insuperable.

His is an objective appraisal.

Despite the note of despair expressed in his conclusion, Ed Finn is neither self-deluded nor cynical – a feat, given what he *knows*.

There is a note of optimism in the title of Part III: "The Future's Not Ours to See – But It Is Ours to Shape.

And Finn's contribution does not smack of giving up!

We have a lot going for us. There is encouraging evidence that a good many of us are getting the message and working hard to get out of that pot while we still can. Besides, quitting is not an option, morally or pragmatically. We need to start where we are and do what we can.

Élan

About Our Commenter

Élan is a pseudonym representing two of the original members of COMER, one of whom is now deceased. The surviving member could never do the work she is now engaged in were it not for their work together over many years. This signature is a way of acknowledging that indebtedness.

The 21st Century Doesn't Need a New Deal — It Needs a New Economic Model

By C.J. Polychroniou, www.truth-out.org, August 6, 2016

In today's global economy, neoliberalism reigns supreme, organized labor is in deep retreat and public debt has shot through the roof. In the face of these crises, is a global 21st century remaking of the 1930s-era New Deal what people on the left should be fighting for?

Contemporary progressive parties, such as Syriza in Greece and Podemos in Spain, have rallied around the idea of a “new New Deal,” while the European Citizen's Initiative for a “New Deal 4 Europe” appears to have the backing of both Labor and Green party leaders in several European countries. In the US, Bernie Sanders has also been a strong advocate of this idea as the way out of our troubles.

However, a closer look at the history of the 1930s-era New Deal reveals that a new New Deal would do little to solve the underlying problems of capitalism and could even delay efforts to combat climate change through its emphasis on boosting growth via a new era of state capitalism.

Although New Deal-style programs have the potential to alleviate poverty in the short term, they are deeply limited by the core constraint that the *raison d'être* of active state intervention in a capitalist regime is none other than to save capitalism. Moreover, any program in the mold of President Franklin D. Roosevelt's New Deal would also be limited by its failure to give workers a greater say in decision-making.

Historical Realities of FDR's New Deal

Back in the 1930s, when the US economy had plunged into the worst economic crisis in its history, major financial and corporate interests initially opposed FDR's New Deal programs, partly out of horror that they represented a step towards “socialism,” and partly out of fear that they would pose an obstacle to their profit-maximizing pursuits by narrowing the scope of labor exploitation. In reality, however, these programs kept capitalism alive and staved off social unrest and rebellion. The New Deal planners achieved this by abandoning the myth of pro-market solutions to economic crises and relying instead on a set of massive government interventions.

Among other things, the New Deal programs centralized planning (*National Industrial Recovery Act*) and funded under this plan the construction of large-scale public works (Public Works Administration) as a means of providing employment for millions of jobless workers; reformed the banking system with the *Glass-Steagall Act*; provided integrated solutions to the needs of the economies of several depressed Southern states (Tennessee Valley Authority) and set up a federally-guaranteed pension system (*Social Security Act*).

The New Deal programs provide a glowing example of how powerful the role of government can be in rescuing an economy from complete collapse, delivering relief to millions of lives tossed aside by a socioeconomic system with an inherent tendency to treat people as if they were things, and reducing the gap between rich and poor.

The New Deal wasn't a revolution, but it did save many people's lives. It did not end the depression, but it might have (although this is still highly debatable) if FDR hadn't decided in 1937 to cut back stimulus because of his concerns about inflation and the federal deficit. The New Deal also laid the basis for what could have been very positive changes in the years that followed, had it not been beaten back by the bitter class war fought by what Noam Chomsky calls “the highly class-conscious American business sector,” assisted by the powerful weapon of anti-communist hysteria.

The New Deal is widely seen as one of the greatest experiments of active state intervention under capitalism, so it's little wonder why the political thinking behind the New Deal-era projects is also regarded by many as an ideal model to inform policy intervention in today's world as the advanced capitalist economies are once again in the throes of a serious economic and social crisis marked by stagnant or anemic growth, rising unemployment and social exclusion, extreme levels of inequality, and rapidly declining standards of living.

While far from being thoroughly Keynesian, some of the New Deal projects fall firmly into counter-cyclical demand management schemes, especially some of the second New Deal programs, such as the Works Progress Administration (1935-1943). And

it is primarily these aspects of the New Deal experimental programs (including the Civil Conservation Corps) that serve as a guide to the call of many progressive and non-orthodox economists, such as Heikki Patomaki and Thomas Piketty, for the adoption of a New Deal for the 21st Century.

Limitations of the New Deal Model

Contemporary progressives who are interested in creating a new New Deal would do well to consider some core limitations of the model before throwing their energy into this particular project.

First and foremost, active state intervention in a capitalist regime is inevitably structured toward the end goal of saving capitalism itself. The recent bailouts of the financial system both in the United States and in Europe constitute the most blatant form of active state intervention for the purpose of saving capitalism from collapse. Indeed, when the collapse of the capitalist system seems imminent, suddenly “socialism” is a great idea. In this case, active state intervention in the form of bank bailouts and quantitative easing is socialism for the rich. The same goes for the outrageous taxpayer subsidies to business, which has led to the creation of an enormous corporate welfare state.

Second, New Deal-inspired projects are limited by the fact that most of those seeking to reform capitalism through programs such as these are opposed to more radical schemes advocating the creation of a socioeconomic system whereby collective ownership — either at the national or community level — and participatory democracy constitute the principal elements of the new social order.

While this is not to suggest by any stretch of the imagination that reform is undesirable or useless (the New Deal experience should have dispelled such narrow-minded views long ago), reforms by those committed to an alternative social order must necessarily be assessed on grounds for laying the basis for the transcendence of capitalism and eventually the emergence of a new socioeconomic order.

Capitalism is an inherently crisis-prone socioeconomic system and thus, much more needs to be done than temporarily taming

the appetites of the beast for waste, exploitation, inequality, ecological degradation, dispossession and violence. Even under the New Deal programs, millions of people were still without jobs and the Great Depression ended only with the outbreak of World War II and the full incorporation of the US economy into the war effort. Moreover, the New Deal programs did not seek to end exploitation or give workers a greater say in decision-making.

Any economic doctrine advocating “abstract growth” and/or relying on policies that aim to attain continuous economic growth under the current system (as the old-fashioned Keynesians are still striving for in a constant attempt to save capitalism from its own contradictions) needs to be completely rejected. As Herman E. Daly and John B. Cobb, Jr. have argued in their book *For the Common Good*, at this point in the evolution of society, a successful economy without the drive for continuous economic growth via capital accumulation should be both very much possible and desirable.

The Ultimate Effects of the Great Depression

Just like the financial crisis of 2007-08 that was initiated with the collapse of Lehman Brothers, the collapse of the US stock market in October 1929, which led to the Great Depression of the 1930s, took capitalists by surprise, although there were clear signs that the US economy was in trouble several years before the crash, as the late economic historian Charles Kindleberger has shown in his now classic work, *The World in Depression, 1929-1939*.

Like the contemporary era prior to the outbreak of the 2007-08 financial crisis, income inequality in the US was growing at a tremendous pace throughout the 1920s. Between 1920 and '29, the top 5 percent of the population increased its share of the national income from 24 to 34 percent, as documented in Richard B. Duboff's book, *Accumulation and Power*. The collapse of thousands of banks before the crash pointed to a severe malfunction in the US banking and financial system.

Following the collapse of the stock market, the US economy took a rapid and catastrophic nose-dive. As the depression set in, nearly forcing capitalists to close shop for good, industrial production fell by over 50 percent in 1932, salaries decreased by 40 percent, manufacturing wages shrank by 60 percent, more than 200 banks closed and one-fourth of the labor force was un-

employed, according to *American Epoch: A History of the United States Since 1900*.

Meanwhile, the labor movement had experienced an abrupt decline in union membership and activities throughout the 1920s, partly as a result of the red scare of the late 1910s and early 1920s. In their book, *American Workers, American Unions*, Robert H. Zieger and Gall J. Gilbert depict how the red scare not only made joining a union seem “un-American,” but “helped to wreck the momentum of labor’s wartime gains,” partly as a result of anti-union ruling by US courts in the 1920s, and partly as a result of the booming economy of the 1920s which reduced substantially the number of strikes throughout the nation as it made workers feel secure about their job and their income. All that remained, therefore, was some type of Keynesian state capitalism or some variation of fascism inspired by the ideologies of Mussolini and Hitler.

Herbert Hoover, who had been in office only a few months before the Wall Street crash of 1929, and FDR, who beat him in the presidential election of 1932, in reality shared many economic views. They both espoused conventional views on fiscal policy and were staunch supporters of capitalism and firm believers in the individual capitalist ethos. As Nancy E. Rose shows in her book, *Put to Work: The WPA and Public Employment in the Great Depression*, it is also beyond doubt that both Hoover and FDR began to advance public works programs because they feared working class rebellions, which would have made any effort to restore capitalism a vain undertaking.

Lessons for the 21st Century

What the world needs today is not a return to the traditional economics of rescuing capitalism but a new global economic model based on new economic values, balanced growth, and the introduction of cooperative economics. A reversal of today’s globalization trends may also be necessary for the realistic transition into a new economic model, one that breaks free from a political economy paradigm which, as I have argued previously, “revolves around finance capital, is based on a savage form of free market fundamentalism and thrives on a wave of globalizing processes and global financial networks that have produced global economic oligarchies with the capacity to influence the shaping of policymaking across nations.”

The economic environment of contemporary capitalism is shaped by three interre-

lated forces: financialization, neoliberalism and globalization. It is the combined effects of these three forces that have given rise to a new form of predatory capitalism in the late 20th and early 21st centuries. As such, any project driven by New Deal aspirations needs to implement political processes that will undermine and bring to a halt all three of the above forces.

Having said that, it would be naive to think that the proponents of a new New Deal – who tend to be mostly of a social democratic ilk and remain firmly committed to a capitalist socioeconomic order – would have the political will to engage in such an undertaking. Indeed, their arguments for a New Deal for Europe and the US rest on convincing the current economic elite that such a project would be best for the future of capitalism itself. In fact, most contemporary New Dealers do not call for the re-organization of the economy, nor do they advocate anything resembling economic democracy.

The answers to the problems confronting today’s advanced capitalist economies and societies cannot come from within the logic of the very system that is responsible for causing massive unemployment and constantly widening the gap between the haves and have-nots. The capitalist system is threatening human civilization through its incessant fueling of global warming, which has resulted from the dynamics of a specific system of economic and social organization that thrives on capital accumulation.

The answers to the problems of unemployment, inequality, poverty, violence and environmental degradation can come only through the end of capitalism and its replacement by democratically run forms of economic and social organization, which probably mandate a return to economic localization.

In this context, putting an end to global free trade regimes, reversing the globalization trends of the last 40 years, resisting corporate takeovers and the privatization of national economies, and creating new networks of political activism based on class-politics and centered around a vision of democratic socialism is the only way to put an end to capitalist barbarism.

Whether today’s Left is up to the task, however, is another story.

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Our Comment

It's no longer enough to "kiss it and make it all better." As John McMurtry has argued, we are living through *The Cancer Stage of Capitalism*, and the disease is life-threaten-

ing. It is laying waste our society and our planet. The system, as Michael Hudson has explained, is *Killing The Host* and, as Naomi Klein has described it, has brought us to the point where "our economic system and our planetary system are now at war...."

What the climate needs to collapse is a contraction in humanity's use of resources; what our economic model demands to avoid collapse is unfettered expansion. Only one of these sets of rules can be changed, and it's not the laws of nature.... So, we are left with a stark choice: allow climate disruption to change everything about our world, or change pretty much everything about our economy to avoid that fate" (Naomi Klein, *This Changes Everything: Capitalism vs. The Climate*).

Just as the crisis of their day forced the

New Deal Planners to "[abandon] the myth of pro-market solutions...and to [rely] instead on a set of massive government interventions," so in our time, surely, we are going to have to abandon the myths-without-end that have come to prop up our fatally ill economic system, and come up with an economic model that will sustain us and the 21st-century world in which we live – a model that will address the underlying problems of capitalism. Our recent history is a cautionary tale of short-lived solutions – counter-productive truces in the "ongoing class war."

Einstein's observation that we can't expect to solve our problems at the same level of thinking at which we created them, bears repeating!

Élan

The Secret Court that Allows Corporations to Avoid Punishment for Enormous Crimes

By Chris Hamby, *BuzzFeed*, September 1, 2016

Imagine a private, global super court that empowers corporations to bend countries to their will.

Say a nation tries to prosecute a corrupt CEO or ban dangerous pollution. Imagine that a company could turn to this super court and sue the whole country for daring to interfere with its profits, demanding hundreds of millions or even billions of dollars as retribution.

Imagine that this court is so powerful that nations often must heed its rulings as if they came from their own supreme courts, with no meaningful way to appeal. That it operates unconstrained by precedent or any significant public oversight, often keeping its proceedings and sometimes even its decisions secret. That the people who decide its cases are largely elite Western corporate attorneys who have a vested interest in expanding the court's authority because they profit from it directly, arguing cases one day and then sitting in judgment another. That some of them half-jokingly refer to themselves as "The Club" or "The Mafia."

And imagine that the penalties this court has imposed have been so crushing – and its decisions so unpredictable – that some nations dare not risk a trial, responding to the mere threat of a lawsuit by offering vast concessions, such as rolling back their own laws or even wiping away the punishments of convicted criminals.

This system is already in place, operating behind closed doors in office buildings and conference rooms in cities around the world. Known as investor-state dispute settlement, or ISDS, it is written into a vast network of treaties that govern international trade and investment, including NAFTA and the Trans-Pacific Partnership, which Congress must soon decide whether to ratify.

These trade pacts have become a flashpoint in the US presidential campaign. But an 18-month BuzzFeed News investigation, spanning three continents and involving more than 200 interviews and tens of thousands of documents, many of them previously confidential, has exposed an obscure but immensely consequential feature of these trade treaties, the secret operations of these tribunals, and the ways that business has co-opted them to bring sovereign nations to heel.

The BuzzFeed News investigation explores four different aspects of ISDS. In coming days, it will show how the mere threat of an ISDS case can intimidate a nation into gutting its own laws, how some financial firms have transformed what was intended to be a system of justice into an engine of profit, and how America is surprisingly vulnerable to suits from foreign companies.

The series starts today with perhaps the least known and most jarring revelation: Companies and executives accused or even convicted of crimes have escaped punish-

ment by turning to this special forum. Based on exclusive reporting from the Middle East, Central America, and Asia, BuzzFeed News has found the following:

- A Dubai real estate mogul and former business partner of Donald Trump was sentenced to prison for collaborating on a deal that would swindle the Egyptian people out of millions of dollars – but then he turned to ISDS and got his prison sentence wiped away.

- In El Salvador, a court found that a factory had poisoned a village – including dozens of children – with lead, failing for years to take government-ordered steps to prevent the toxic metal from seeping out. But the factory owners' lawyers used ISDS to help the company dodge a criminal conviction and the responsibility for cleaning up the area and providing needed medical care.

- Two financiers convicted of embezzling more than \$300 million from an Indonesian bank used an ISDS finding to fend off Interpol, shield their assets, and effectively nullify their punishment.

When the US Congress votes on whether to give final approval to the sprawling Trans-Pacific Partnership, which President Barack Obama staunchly supports, it will be deciding on a massive expansion of ISDS. Donald Trump and Hillary Clinton oppose the overall treaty, but they have focused mainly on what they say would be the loss of American jobs. Clinton's running mate, Tim Kaine, has voiced concern about ISDS

in particular, and Sen. Elizabeth Warren has lambasted it. Last year, members of both houses of Congress tried to keep it out of the Pacific trade deal. They failed.

ISDS is basically binding arbitration on a global scale, designed to settle disputes between countries and foreign companies that do business within their borders. Different treaties can mandate slightly different rules, but the system is broadly the same. When companies sue, their cases are usually heard in front of a tribunal of three arbitrators, often private attorneys. The business appoints one arbitrator and the country another, then both sides usually decide on the third together.

Conceived of in the 1950s, the system was intended to benefit both developing nations and the foreign companies that sought to invest in them. The companies would gain a fair, neutral referee if a rogue regime seized their property or discriminated against them in favor of domestic companies. And the countries would gain the roads or hospitals or industries that those foreign corporations would, as a result, feel confident building.

"It works," said Charles Brower, a long-time ISDS arbitrator. "Like any system of law, there will be disappointments; you're dealing with human systems. But this system fundamentally produces as good justice as the federal courts of the United States."

He defended the lawyers who often serve as arbitrators, saying they "are very aware of their responsibilities. Unlike politicians, we are up for election every minute of every day – somewhere in the world, somebody is trying to figure out whom to appoint in a case. We're only as good as our reputations."

As proof that ISDS delivers justice, Brower pointed to a wave of nationalizations by the Venezuelan government, many while Hugo Chávez was in charge, that led to "huge awards against them for uncompensated expropriation."

ISDS has not only put rapacious leaders on notice, its defenders say, but it has also encouraged investment, especially in poor countries, helping to raise overall economic development. Some even say that it helps avoid gunboat diplomacy and tense international showdowns because countries have agreed on a forum where they can resolve disputes involving major investments.

But over the last two decades, ISDS has morphed from a rarely used last resort, designed for egregious cases of state theft or blatant discrimination, into a powerful tool that corporations brandish ever more fre-

quently, often against broad public policies that they claim crimp profits.

Because the system is so secretive, it is not possible to know the total number of ISDS cases, but lawyers in the field say it is skyrocketing. Indeed, of the almost 700 publicly known cases across the last half century, more than a tenth were filed just last year.

Driving this expansion are the lawyers themselves. They have devised new and creative ways to deploy ISDS, and in the process bill millions to both the businesses and the governments they represent. At posh locales around the globe, members of The Club meet to swap strategies and drum up potential clients, some of which are household names, such as ExxonMobil or Eli Lilly, but many more of which are much lower profile. In specialty publications, the lawyers suggest novel ways to use ISDS as leverage against governments. It's a sort of sophisticated, international version of the plaintiff's attorney TV ad or billboard: *Has your business been harmed by an increase in mining royalties in Mali? Our experienced team of lawyers may be able to help.*

A few of their ideas: Sue Libya for failing to protect an oil facility during a civil war. Sue Spain for reducing solar energy incentives as a severe recession forced the government to make budget cuts. Sue India for allowing a generic drug company to make a cheaper version of a cancer drug.

In a little-noticed 2014 dissent, US Chief Justice John Roberts warned that ISDS arbitration panels hold the alarming power to review a nation's laws and "effectively annul the authoritative acts of its legislature, executive, and judiciary." ISDS arbitrators, he continued, "can meet literally anywhere in the world" and "sit in judgment" on a nation's "sovereign acts."

That fate has not yet befallen the United States – but largely because of sheer luck, former government lawyers said. In theory, ISDS arbitrators must follow the rules laid down in trade pacts. But in practice, they have interpreted the vague language of many treaties as enshrining broad, unwritten rights far beyond protections against property seizures and blatant discrimination – even finding, in one case, a right to a "reasonable rate of return."

Some entrepreneurial lawyers scout for ways to make money from ISDS. Selwyn Seidel, an attorney who represented clients in ISDS suits, now runs a specialty firm, one that finds investors willing to fund promising suits for a cut of the eventual award.

Some lawyers, he said, monitor governments around the world in search of proposed laws and regulations that might spark objections from foreign companies. "You know it's coming down the road," he said, "so, in that year before it's actually changed, you can line up the right claimants and the right law firms to bring a number of cases."

The US officials who negotiated the Trans-Pacific Partnership have argued that it contains new ISDS safeguards, including opening up hearings and legal filings to the public. The changes, however, have loopholes, and lawyers at some big firms are already advising clients how they might use the new deal to their benefit.

Opposition to ISDS is spreading across the political spectrum, with groups on the left and right attacking the system. Around the world, a growing number of countries are pushing for reforms or pulling out entirely. But most of the alarm has been focused on the potential use of ISDS by corporations to roll back public-interest laws, such as those banning the use of hazardous chemicals or raising the minimum wage. The system's usefulness as a shield for the criminal and the corrupt has remained virtually unknown.

Reviewing publicly available information for about 300 claims filed during the past five years, BuzzFeed News found more than 35 cases in which the company or executive seeking protection in ISDS was accused of criminal activity, including money laundering, embezzlement, stock manipulation, bribery, war profiteering, and fraud.

Among them: a bank in Cyprus that the US government accused of financing terrorism and organized crime, an oil company executive accused of embezzling millions from the impoverished African nation of Burundi, and the Russian oligarch known as "the Kremlin's banker."

Some are at the center of notorious scandals, from the billionaire accused of orchestrating a massive Ponzi scheme in Mauritius to multiple telecommunications tycoons charged in the ever-widening "2G scam" in India, which made it into *Time* magazine's top 10 abuses of power, alongside Watergate. The companies or executives involved in these cases either denied wrongdoing or did not respond to requests for comment.

Most of the 35-plus cases are still ongoing. But in at least eight of the cases, bringing an ISDS claim got results for the accused wrongdoers, including a multimillion-dollar award, a dropped criminal investigation, and dropped criminal charges. In another,

the tribunal has directed the government to halt a criminal case while the arbitration is pending.

Of course, there are governments that don't have clean hands themselves, and some claims by businesses have been justified. The legal systems of some countries are flagrantly unfair or riddled with corruption. Moreover, authoritarian or kleptocratic regimes sometimes do use their justice systems as political weapons. For example, arbitrators ordered Russia to pay compensation after finding that Vladimir Putin and his administration had used criminal and tax proceedings to destroy his political rival Mikhail Khodorkovsky's oil company.

Lawyers say that some governments, faced with a legitimate ISDS claim, will even trump up a criminal charge to deflect from their own wrongdoing. For example, arbitrators found there was evidence suggesting that Bolivia had launched a fraud case against mining-company executives as a ploy to get the company's ISDS claim thrown out.

But even some members of The Club said they were concerned by how often credible allegations of criminality arise. Many ISDS lawyers say that the system helps promote the rule of law around the world. If ISDS is seen as protecting criminals, they fear, it could delegitimize a system that is working well for many others.

One lawyer who regularly represents governments said he's seen evidence of corporate criminality that he "couldn't believe." Speaking on the condition that he not be named because he's currently handling ISDS cases, he said, "You have a lot of scuzzy sort-of thieves for whom this is a way to hit the jackpot."

Even in the world of ostentatious opulence that Dubai real estate moguls inhabit, Hussain Sajwani and his company, Damac Properties, stand out. His promotions are gaudy – buy an apartment, get a Jaguar. He's partnered with Donald Trump on a golf course for a Damac resort in Dubai. He's raffled off a private jet and a private Caribbean island.

In the midst of his meteoric rise, he began looking beyond the oil-rich United Arab Emirates and, in 2006, ventured into an attractive new market: Hosni Mubarak's Egypt. Top officials from the notoriously corrupt regime, including the prime minister, traveled to Dubai and cemented the new partnership with a signing ceremony for a splashy deal.

Within five years, in the wake of the his-

toric 2011 revolution that ousted Mubarak, an Egyptian court would find Sajwani and the by-then former tourism minister guilty of working in cahoots on a land deal that would fleece the Egyptian people, sentencing both to five years in prison.

Egypt was in tumult, with the military controlling the government, frequent protests still roiling the streets, and the Muslim Brotherhood jockeying for what would become its electoral victory. Criminal trials in Egypt were often still gravely flawed, and corporate lawyers in Cairo said the military government was pursuing corruption trials to placate protesters and settle political scores. But anticorruption fervor had helped fuel the occupation of Tahrir Square, and to some activists and ordinary Egyptians, this once unthinkable verdict signaled that the elites who had enriched themselves through sweetheart deals with the regime might no longer be above the law.

But then some of those elites wielded a new weapon: ISDS. One of the first to do so was Sajwani.

The son of a disciplinarian shop owner in Dubai, Sajwani had rebelled against his conservative father and eventually found his way to the United States, where he earned a bachelor's degree in economics from the University of Washington. Back in the United Arab Emirates, he sold timeshares and started a catering company.

By 2002, he'd determined the real money was in real estate, and he founded Damac Properties. The company quickly asserted itself as a major player in the booming Dubai property market and began expanding abroad.

Egypt beckoned. Hosni Mubarak's authoritarian government had rolled out the red carpet to well-connected foreign businesses. A cabal of ministers sold off state assets – land, factories, retail chains – at bargain-basement prices and, in the process, accumulated far more wealth than their government salaries alone could possibly explain.

At the time Sajwani bought into Egypt, corruption was costing the nation about \$6 billion every year, according to an analysis by Global Financial Integrity, a nonprofit based in Washington, DC, that tracks illegal financial flows. Meanwhile, hospitals and schools deteriorated; unemployment soared; and about 1 in 5 Egyptians got by on less than \$2 a day, according to the World Bank. By some estimates, the majority of Cairo's roughly 17 million citizens languished in "informal housing" – slipshod

buildings or fetid slums, largely cut off from basic services such as water and electricity.

Amidst this squalor, verdant billboards selling Sajwani's lavish properties emerged from the city's oppressive sand-tinted haze. "It was clear and obvious, in your face on a daily basis," said Maher Hamoud, who was editor-in-chief of a major Egyptian newspaper at the time. "Everyone saw these billboards, and everyone knew of this parallel world that the majority of the population have no access to."

Sajwani's first project wasn't going to be just a luxury resort. He would build the Middle East's largest tourist paradise – 11 square miles of villas, shopping centers, apartments, marinas, and even an extreme sports theme park, all along the sunny coastline of the Red Sea, a popular haven for foreign vacationers and rich Egyptians. Soon, those who could afford it would be able to "Live the Luxury" – Damac's slogan – just a few hours' drive from Cairo.

But when Hamoud's newspaper asked what Damac had paid for this huge stretch of land, which previously had belonged to the Egyptian people, a company executive refused to answer. "Invasion of privacy is unacceptable," he said, "and we are a private company."

A state committee had determined that the land should be sold for no less than \$3 per square meter. But court documents reviewed by BuzzFeed News reveal that Mubarak's tourism minister, Zuhair Garana, had sold the prime real estate to Damac for just \$1 per square meter.

Almost five years later, Damac still hadn't built the resort, nor had it fully paid Egypt even that bargain-basement price, prosecutors' files show.

In March 2011, shortly after the revolution felled Mubarak, prosecutors accused Sajwani and Garana of collaborating on the deal, which would cheat the Egyptian people out of about \$41 million. What's more, prosecutors alleged, the land on the Red Sea sat atop an oil deposit, so it was illegal under Egyptian law to sell the area as a tourism project. Through his lawyers, Sajwani has maintained he did nothing wrong.

Two months later, an Egyptian court found Sajwani and Garana guilty on corruption-related charges. (A court would later vacate Garana's conviction.) A judge ordered Sajwani, who had not returned to Egypt for the trial, to forfeit the land, pay a penalty, and serve a five-year prison sentence.

The verdict rippled through the business

community, stoking anxiety, according to a half-dozen corporate lawyers in Cairo. Many other businesses had cut land deals in the frenzied sell-off of once-public assets during the past decade, and they wondered if they might be next.

Sajwani himself had two other projects planned in Egypt – an exclusive gated community named Hyde Park and an upscale shopping mall dubbed Park Avenue – and authorities were investigating those, too, previously secret documents show. In these deals, authorities alleged in the documents, Sajwani worked with the housing minister, improperly reaped the equivalent of about a half-billion dollars by selling units earlier than allowed, funneled the money abroad using a web of holding companies, and still failed to pay the government the full amount owed for the land. Sajwani was never charged in relation to this investigation.

But, though Mubarak was gone, he had left behind a gift for investors like Sajwani: one of the world's largest networks of investment treaties – twice the size of the United States' – that allowed foreign businesses to file ISDS claims against Egypt. Within a week of Sajwani's conviction over the Red Sea deal, Damac invoked one of these treaties and sued Egypt before the international arbitration arm of the World Bank.

The company announced the case with a defiant statement from one member of the powerhouse legal team it had assembled – an American who'd started his career as the youngest Republican state legislator in Texas.

"The criminal prosecution and conviction of Mr. Sajwani were a classic case of guilt by association," wrote Ken Fleuriet, of the US firm King & Spalding. "No crime was committed by simply conducting business with the former regime." The deal, he said, was "entirely proper" and "fully vetted by the appropriate Egyptian officials at the time of purchase." Fleuriet did not respond to requests for comment. (A different law firm, the London-based Clifford Chance, later took over the case.)

This argument – that the government at the time gave its blessing, so the sweetheart deal couldn't be criminal – became the template for other businesses facing similar accusations.

Sue Ellen, a native Egyptian named after the matriarch on the TV show *Dallas*, started working for Damac as its in-house counsel in Egypt after the land deal that resulted in Sajwani's legal troubles. She resigned after only a year because, she said,

she was uncomfortable with some company practices. When questioned about the Red Sea deal, she said, "I haven't asked," and said she doesn't know any of its details. But she wrote her master's thesis on Egypt's rampant white-collar crime.

Speaking generally, she said, "They are very, very, very smart – the investors and the government." She gave an example of how bribery can go undetected: "I provide you with a villa, a townhouse, but not in your name. The name will be someone else, but you will be the beneficiary." She ticked off other common ploys: "It could be Rolex watches, free apartments. If you have a son, he could work" at the company "with a huge amount of salary. So it's not only bribery. Sometimes you goof around the bribery and do something not visible."

By filing an ISDS claim, Sajwani took his case out of the Egyptian court system and placed it in the hands of three private lawyers convening in Paris. For the arbitrator he was entitled to choose, Sajwani appointed a prominent American lawyer who had often represented businesses in ISDS cases. And to press his case, Sajwani hired some of the world's best ISDS attorneys.

For Egypt, the potential losses were big and would come as the country struggled to revive its floundering economy.

It decided to settle.

The terms of the settlement are confidential, but three lawyers who represented the company at the time described the key provisions. Damac paid some money to the government; Sajwani's lawyers refused to say how much, though one called it a "savvy business deal."

But the key benefit for Sajwani, according to all three: In exchange for dropping his ISDS case, Egypt would wipe away his five-year prison sentence and close out the probes of the other deals. The man who had been convicted of collaborating on a deal that would bilk the Egyptian people out of millions of dollars was now free and clear.

A Damac spokesperson declined to make Sajwani available for an interview. In response to a letter detailing the points in this story, the spokesperson wrote: "This story relates to issues that were resolved and settled in 2013. The assertions you make in your letter are factually wrong. As the matter was the subject of formal settlement, we are not in a position to comment any further." Asked which facts were wrong, the spokesperson declined to answer.

The Damac case – one of the first post-revolution criminal convictions and one of

the first ISDS claims filed as a result – set an example that other embattled executives soon followed. As Egypt groped for stability, a wave of ISDS claims rattled the new government.

"Damac, followed by multiple other cases filed, made them say, 'You know what, no; there should be another way,'" said Girgis Abd el-Shahid, a lawyer who represents corporate clients and assisted with Sajwani's arbitration claim. "I believe that, after Damac, Egypt learned its lesson."

By the one-year anniversary of the revolution, Egypt faced more known ISDS claims than all but a handful of other countries, and corporate lawyers in Cairo told BuzzFeed News that still more businesses were threatening to file cases.

The potential liabilities from these claims were ruinous – one company alone was threatening to sue for \$8 billion. What's more, the ISDS cases were helping to sour the country's business reputation at a time when the fragile Egyptian economy desperately needed foreign investment.

Virtually across the board, the government began trying to settle.

In one case, an Egyptian court had declared a foreign company's purchase of a factory corrupt and nullified the deal, court records show. But after the company filed an ISDS claim, the government agreed to pay \$54 million in a settlement – roughly twice the price the company had paid for the factory just a few years earlier, according to news reports and documents reviewed by BuzzFeed News. A lawyer for the company said that his client had not been found guilty of a crime and that the company had made "significant investments" in the factory after acquiring it.

In another case, a second Dubai developer was under investigation – until he threatened an ISDS claim, according to the Cairo lawyer Hani Sarie-Eldin, who has represented the company. Instead of a criminal trial, the government opted for a settlement, and the mogul's company went forward with its project, Sarie-Eldin said.

Other ISDS cases are ongoing. Two involve a notorious deal that sent Egyptian natural gas to Israel, even as Egyptians suffered energy shortages at home. Egypt asked ISDS arbitrators to throw out both cases, alleging that the deal was a corrupt arrangement by Mubarak-regime officials and cronies to reap huge profits. In both cases, the request was denied. Investors in the gas company, like the Dubai developer, did not respond to requests for comment....

Japan’s “Helicopter Money” Play: Road to Hyperinflation or Cure for Debt Deflation?

By Ellen Brown, *OpEdNews*, July 26, 2016

Fifteen years after embarking on its largely ineffective quantitative easing program, Japan appears poised to try the form recommended by Ben Bernanke in his notorious “helicopter money” speech in 2002. The Japanese test case could finally resolve a longstanding dispute between monetarists and money reformers over the economic effects of government-issued money.

When then-Fed Governor Ben Bernanke gave his famous helicopter money speech to the Japanese in 2002, he was talking about something quite different from the quantitative easing they actually got and other central banks later mimicked. Quoting Milton Friedman, he said the government could reverse a deflation simply by printing money and dropping it from helicopters. A gift of free money with no strings attached, it would find its way into the real economy and trigger the demand needed to power productivity and employment.

What the world got instead was a form of QE in which new money is swapped for assets in the reserve accounts of banks, leaving liquidity trapped on bank balance sheets. Whether manipulating bank reserves can affect the circulating money supply at all is controversial. But if it can, it is only by triggering new borrowing. And today, according to Richard Koo, chief economist at the Nomura Research Institute, individuals and businesses are paying down debt rather than taking out new loans. They are doing this although credit is very “accommodative” (cheap), because they need to rectify their debt-ridden balance sheets in order to stay afloat. Koo calls it a “balance sheet recession.”

As the Bank of England recently acknowledged, the vast majority of the money supply is now created by banks when they make loans. Money is created when loans are made, and it is extinguished when they are paid off. When loan repayment exceeds borrowing, the money supply “deflates” or shrinks. New money then needs to be injected to fill the breach. Currently, the only

way to get new money into the economy is for someone to borrow it into existence; and since the private sector is not borrowing, the public sector must, just to replace what has been lost in debt repayment. But government borrowing from the private sector means running up interest charges and hitting deficit limits.

The alternative is to do what governments arguably should have been doing all along: issue the money directly to fund their budgets. Having exhausted other options, some central bankers are now calling for this form of “helicopter money,” which may finally be raining on Japan if not the US.

The Japanese Trial Balloon

Following a sweeping election win announced on July 10, Prime Minister Shinzo Abe said he may proceed with a JPY10 trillion (\$100 billion) stimulus funded by Japan’s first new major debt issuance in four years. The stimulus would include establishing 21st century infrastructure, faster construction of high-speed rail lines, and measures to support domestic demand.

According to Gavyn Davies in the July 17 *Financial Times*: “Whether or not they choose to admit it – which they will probably resist very hard – the Abe government is on the verge of becoming the first government of a major developed economy to monetise its government debt on a permanent basis since 1945....”

“The direct financing of a government deficit by the Bank of Japan is illegal, under Article 5 of the *Public Finance Act*. But it seems that the government may be considering manoeuvres to get round these roadblocks.

“Recently, the markets have become excited about the possible issuance of zero coupon perpetual bonds that would be directly purchased by the BoJ, a charade which basically involves the central bank printing money and giving it to the government to spend as it chooses. There would be no buyers of this debt in the open market, but it could presumably sit on the BoJ balance sheet forever at face value.”

Bernanke’s role in this maneuver was suggested in a July 14 Bloomberg article, which said: “Ben S. Bernanke, who met Japanese leaders in Tokyo this week, had floated the idea of perpetual bonds during earlier discussions in Washington with one of Prime Minister Shinzo Abe’s key advisers.... He noted that helicopter money – in which the government issues non-marketable perpetual bonds with no maturity date and the Bank of Japan directly buys them – could work as the strongest tool to overcome deflation....”

Key is that the bonds can’t be sold and never come due. In QE as done today, the central bank reserves the right to sell the bonds it purchases back into the market, in order to shrink the money supply in the event of a future runaway inflation. But that is not the only way to shrink the money supply. The government can just raise taxes and void out the additional money it collects. And neither tool should be necessary if inflation rates are properly monitored.

The Japanese stock market shot up in anticipation of new monetary stimulus, but it dropped again after the BBC aired an interview with Bank of Japan Governor Haruhiko Kuroda recorded in June. He ruled out the possibility of “helicopter money” – defined on CNBC.com as “essentially printing money and distributing payouts” – since it violated Japanese law. As *The Wall Street Journal* observed, however, Bernanke’s non-marketable perpetual bonds could still be on the table, as a way to “tiptoe toward helicopter money, while creating a fig leaf of cover to say it isn’t direct monetization.”

Who Should Create the Money Supply, Banks or Governments?

If the Japanese experiment is in play, it could settle a long-standing dispute over whether helicopter money will “reflate” or simply hyperinflate the money supply.

One of the more outspoken critics of the approach is David Stockman, who wrote a scathing blog post on July 14 titled “Helicopter Money – The Biggest Fed Power

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The Two Necessary Words to Describe the Dominant Economic “Regime” of the Past 35 Years

By William R. Neil, *Real-World Economics Review Blog*, July 15, 2016

It’s hard not to notice, during the American Presidential election drama, that despite all the debates and speeches, and multiple candidates, the terms “Neoliberalism” and “austerity” have yet to be employed, much less explained, these being the two necessary words to describe the dominant economic “regime” of the past 35 years. And this despite the fact that most observers recognize that a “populist revolt” driven by economic unhappiness is underway via the campaigns of Donald Trump and Bernie Sanders. With Trump, of course, we are getting much more, the uglier side of American populism: racism, xenophobia and misogyny, at least; the culture wars at a higher pitch.

Yet when Trump commented on the violence which canceled his Chicago rally on the evening of March 11, he stated that the underlying driver of his supporters’ anger is economic distress, not the ugly cultural prejudices. The diagnoses for the root cause of this anger thus lie at the heart of the proposed solutions. For students of the Great Depression, this will sound very familiar. That is because, despite many diversions and sub-currents, we are really arguing about a renewed New Deal versus an ever more purified *laissez-faire*, the nineteenth century term for keeping government out of markets – once those markets had been constructed. “Interventions,” however, as we will see, are still required, because no one, left or right, can live with the brutalities of the workings of “free markets” except as they exist in the fantasyland of the American Right.

Americans have never been known to be systematic thinkers about policy matters, least of all in an election year, but still, it is a remarkable thing not to be able to name in public forums the ideas which have ruled the economics profession for decades now, and therefore the policy options of elected officials who turn to economists for guidance. Barry Goldwater, renowned, if not done in, for his candor, had no difficulty naming the system he opposed in his acceptance speech in San Francisco, 1964, or in his ghostwritten book, the *Conscience of a Conservative*: it was liberalism in all its

forms, but especially its interventions into private markets – Keynesianism. For Goldwater, that included federal Civil Rights legislation and even Society Security.

Therefore, some clarification is called for when deploying these two terms, or the Market Fundamentalism/Market Utopianism others have chosen, myself included, to more polemically describe the dominant economic orthodoxy of our time.

By Neoliberalism it is meant the revival of “classical economics” which first arose in the late 18th and early 19th centuries in England, with the founders’ famous names living on into our own time: Smith, Ricardo, Townsend, Malthus, Mill and Bentham and a few others. Early economic writers tended to reach into the world of biology, of Nature, for their metaphors and analogies, and these excursions had two main tendencies: to cite nature’s cooperative features, or alternatively, its tooth and claw brutalities, which was Malthus’ grim legacy, one which we have not fully shaken to this day. Continuing this tradition, classical economics later flirted seriously with Social Darwinism (see the influence of William Graham Sumner in the US and Herbert Spencer in England), almost becoming engaged to it, and then underwent the “micro” revolution of marginal costs in the late 19th century as the profession strained for its “scientific” laurels.

David Harvey, the prolific, polymath Marxist writer, links the term Neoliberal to the later Victorian economists – Alfred Marshall, William Jevons and Leon Walras – who succeeded their earlier classical colleagues from the first decades of the 19th century. But the realities of the past 30 years in America leads one back to the primal cruelties described by Karl Polanyi in those early industrial days, in his masterpiece *The Great Transformation*, and the religious intensity of the first classicals, not the later Victorian ones, those who worked in an era when life for workers was supposed to have gotten much better, although the London of those better days still horrified savvy American observers like Jane Addams of the Settlement House movement.

Neoliberalism was later greatly influenced by the conservative work – the de-

fense of markets against governmental interventions – of Friedrich von Hayek and Ludwig von Mises (The preference here is to keep the “von” in the names: it makes them sound more sinister...) in the 1920s and 1930s, and Milton Friedman in the 1970s, thinking which eventually eclipsed the Keynesian “revolution” of the 1930s, and its demand-labor focused “macro” policies and accompanying federal fiscal interventions. Friedman’s great debates with John Kenneth Galbraith in the 1970s usefully date the decline of Keynesianism for the general public, and the rise of “supply-side” economics: keeping entrepreneurs happy (and hopefully, inventive) through tax breaks without end. Many of us recall the linking of justice in-the-law with justice in-the-economy, courtesy of the old Smith Barney television advertisements from the 1980s, starring John Houseman from the movie *The Paper Chase*: these noble stock brokers “make money the old fashioned way, they earn it.” Decided British accent too, he had.

The “liberalism” part of Neoliberalism is confusing to the average citizen thinking about the modern political spectrum, since Neoliberalism is most certainly a conservative doctrine aimed at undermining every intellectual pillar of Keynesian true “liberals,” Social Democrats, and Socialists of all stripes. In its formative years of 1790-1840, liberalism and its liberal economists were hell-bent on overturning the last vestiges of late feudalism, then mercantilism, which guided the treatment of the agricultural workforce in rural England. That workforce was about to be “conscripted,” under threat of starvation, as labor in the new industrial mills of the English Midlands, the infamous “Satanic Mills.” In this sense these economists were “liberal” reformers, urging dramatic individualism and heroic entrepreneurship upon society, to free economic activity from the last ethical restraints which Judeo-Christian morality had insisted upon. Ironically for the secular left of the 21st century, those biblical strictures, against usury, for example, are looking better and better as credit card interest rates soar between 18-25%, the rates being even higher for the notorious “pay day loans,” the last borrow-

ing resort for the poorest in the workforce. However, the words “freedom” and economic “liberty” do not explain much in the “abstract”: historical eras and context text tell us much more about what they meant, the impacts for different parts of society.

And this is where the term “Market Fundamentalism” or Market Utopianism comes in. Karl Polanyi (1886-1964), in his magisterial work from 1944, *The Great Transformation*, explains that the English economy of those years, 1790-1840, was the landscape for the first great attempt in human history

to consciously construct all-embracing markets for land, labor and money, to turn these many-faceted features of traditional human economic life into pure commodities, thus yanking them from their more organic historical connections to other, older governing values in traditional societies.

Our Comment

Naming something enables us to identify, recognize, and deal with it. Confusion, ignorance and error on the part of those who follow, may benefit some would-be

leaders enormously, and put other would-be leaders – especially reformers – at a considerable disadvantage. Hence, the need for, and the virtue of calling “a spade a spade.”

Poor Polanyi must be stirring in his grave! He celebrated what he believed was the end of *market fundamentalism* – proclaimed that his was the last generation to suffer it. Alas, to quote Macbeth, they had “scotch’d the snake, not killed it.”

Neoliberalism is not “the great transformation” that Polanyi envisaged!

Élan

Japan from page 17

Grab Yet.” Outraged at the suggestion by Loretta Mester of the Cleveland Fed (whom he calls “clueless”) that helicopter money would be the “next step” if the Fed wanted to be more accommodative, Stockman said: “This is beyond the pale because “helicopter money” isn’t some kind of new wrinkle in monetary policy, at all. It’s an old as the hills rationalization for monetization of the public debt – that is, purchase of government bonds with central bank credit conjured from thin air.”

Stockman, however, may be clueless as to where the US dollar comes from. Today, it is *all* created out of thin air; and *most of it is created by private banks when they make loans*. Who would we rather have creating the national money supply – a transparent and accountable public entity charged with serving the public interest, or a private corporation solely intent on making profits for its shareholders and executives? We’ve seen the results of the private system: fraud, corruption, speculative bubbles, booms and busts.

Adair Turner, former chairman of the UK Financial Services Authority, is a cautious advocate of helicopter money. He observes: “We have been left with so much debt we can’t just grow our way out of it – we should consider a radical option.”

Not that allowing the government to issue money is so radical. It was the innovative system of Benjamin Franklin and the American colonists. Paper scrip represented the government’s IOU for goods and services received. The debt did not have to be repaid in some other currency. The government’s IOU *was* money. The US dollar is a government IOU backed by the “full faith and credit of the United States.”

The US Constitution gives Congress the power to “coin money [and] regulate the value thereof.” Having the power to regulate the value of its coins, Congress could legally issue trillion dollar coins to pay its debts if

it chose. As Congressman Wright Patman noted in 1941: “The Constitution of the United States does not give the banks the power to create money. The Constitution says that Congress shall have the power to create money, but now, under our system, we will sell bonds to commercial banks and obtain credit from those banks. I believe the time will come when people [will] actually blame you and me and everyone else connected with this Congress for sitting idly by and permitting such an idiotic system to continue.”

Beating the Banks at Their Own Game

Issuing “zero-coupon non-marketable perpetual bonds with no maturity date” is obviously sleight of hand, a convoluted way of letting the government issue the money it needs in order to do what governments are expected to do. But it is a necessary charade in a system in which the power to create money has been hijacked from governments by a private banking monopoly engaged in its own sleight of hand, euphemistically called “fractional reserve lending.” The modern banking model is a magician’s trick in which banks lend money only a fraction of which they actually have, effectively counterfeiting the rest as deposits on their books when they make loans.

Governments today are blocked from exercising their sovereign power to issue the national money supply by misguided legislation designed to avoid hyperinflation. Legislators steeped in flawed monetarist theory are more comfortable borrowing from banks that create the money on their books than creating it themselves. To satisfy these misinformed legislators and the bank lobbyists holding them in thrall, governments must borrow before they spend; but taxpayers balk at the growing debt and interest burden this borrowing entails. By borrowing from its own central bank with

“non-marketable perpetual bonds with no maturity date,” the government can satisfy the demands of all parties.

Critics may disapprove of the helicopter money option, but the market evidently approves. Japanese shares shot up for four consecutive days after Abe announced his new fiscal stimulus program, in the strongest rally since February. As noted in a July 11 ZeroHedge editorial, Japan “has given the world a glimpse of not only how ‘helicopter money’ will look, but also the market’s enthusiastic response, which needless to say is music to the ears of central bankers everywhere.” If the Japanese trial balloon is successful, many more such experiments can be expected globally.

Ellen Brown is an attorney, founder of the Public Banking Institute, and author of twelve books including the best-selling Web of Debt. In The Public Bank Solution, her latest book, she explores successful public banking models historically and globally. Her websites are <http://EllenBrown.com>, <http://PublicBankSolution.com>, and <http://PublicBankingInstitute.org>.

Our Comment

What a neat summary of the “idiotic” money system! Ours is even more idiotic in that we do not have to resort to “sleight of hand” to use government-created money. We have only to adhere to our constitution and the *Bank of Canada Act*.

Neither can our Bank Governor tell the government what to do. The *Bank of Canada Act* makes it very clear that should a difference of opinion over monetary policy arise between the government and the Governor of the Bank, the Bank must comply with the government’s directive. We should be calling our government to account for a monetary policy that puts private profit ahead of the public interest! (As, of course COMER is doing.)

Élan

Plenty of Reasons Not to Privatize Hydro One

Toronto Star Option Readers' Letters, August 19, 2016

Timing is everything. Currently, along with a several other Ontarians, I am particularly interested in the timing of the Ontario Liberals' Climate Change Action Plan.

Last November 15, the Ontario Liberals privatized Hydro One when they sold off 15 percent of the former Crown Corporation. Sad but true.

In April, they sold off another 15 percent. The following month, Ontario's Minister of the Environment and Climate Change let the world know that Ontario is moving away from natural-gas home heating. Some back-peddling followed. Shortly after that, the Liberals released their official Climate Change Action Plan.

It indicated their intention to move to a more electricity-based society. Once complete, Ontario is to have far more electric vehicles, electric charging hubs, electric home initiatives, etc.

In summary, the Liberals are moving Ontario to a more electricity-based society after privatizing our province's transmission grid and largest local distribution company! That means Hydro One will now go on to make record profits and a huge amount of potential income is being stripped away from Ontarians.

But why? To balance the current Liberal budget and dangle some shiny gifts ahead of the 2018 election. All this at the expense of Ontarians.

The whole thing reeks of corruption. Just waiting for the smoking gun to be revealed. Timing is everything.

Joel Usher, Newcastle

Thanks to Linda McQuaig for detailing the long history of support in Ontario for a

public monopoly on electricity right up to today. The public instinct is right: it is best to keep this rare and valuable asset so that profits go back to our treasury, and to avoid the risk of the monopoly control falling into the hands of those who would maximize their returns at the expense of consumers and the environment.

Ms. McQuaig could have added that selling off Hydro One is a bad deal, as concluded by Ontario's Financial Accountability Officer. After all, investors are not stupid.

They will not pay full price for the value of the future Hydro One profits they would get as minority shareholders, due to the risk, because key decisions affecting profits are taken by government. The monopoly is worth more to the government as the decision-maker.

If you must sell an asset, this is a particularly bad one to sell.

Kim Jarvi, Toronto

What's most disturbing about reading Linda McQuaig's strong case against privatizing Hydro One is that it reveals clearly that Premier Wynne seems to be selling it for no worthwhile reason.

When 73 percent of Ontarians disagree with the sale and she insists on it, then she is not serving the public will. Further, to trade off the long-term benefits of Hydro One for a short-lived infusion of cash for infrastructure is economically incomprehensible.

With this kind of foolish, arbitrary decision, which is symptomatic of the disconnect between the public will and its leadership, Wynne will certainly join the infamous ranks of other failed premiers of Ontario, such as Mike Harris and Dalton McGuinty, who also carried out their personal agenda while forsaking the common good of the

electorate.

Pity the serious voters.

Tony D'Andrea, Toronto

There is at least one more compelling reason for not selling off part of Hydro One that Linda McQuaig does not mention, and that is the refusal of the federal government of Justin Trudeau to make proper use of the Bank of Canada.

The Bank of Canada was created in the 1930s to make interest-free loans to the various levels of government in Canada to allow them to finance the construction of infrastructure. That allowed Canada to build our health-care system, the Trans-Canada Highway, the St. Lawrence Seaway and more.

The Bank of Canada still has the power to make those interest-free loans but refuses to do so. Federal Finance Minister Bill Morneau has the power to order the Bank of Canada to make these interest-free loans to the governments of Canada. Instead, the CETA and TTP trade agreements, which are about to be ratified, will eliminate the Bank of Canada's ability to make those loans.

My question: who do our politicians work for, the people of Canada or corporations and international bankers?

There is currently a case before the courts the purpose of which is to force the government of Canada to make proper use of the Bank of Canada. The Toronto group taking the case to court is the Committee for Monetary and Economic Reform (COMER), who are represented by Toronto lawyer Rocco Galati.

Rick Tufis, Toronto

The partial privatizing of Hydro One proves that none of the economists at Queen's Park knows any thing about future value. After we all have our own solar panels, the Hydro One lines and pylons will no longer be needed and the rights of way will have a tremendous value as transit corridors, province-wide.

Ed Goertzen, Oshawa



Our Comment. Surely – in a truly democratic country – *no* government should enjoy the option of arbitrarily selling off such public assets! *Élan*