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Article

The Financial Crisis of 2008–2009: Capitalism Didn't Fail, but the Metaphors Got a "C"

Jeffrey M. Lipshaw[†]

INTRODUCTION

This panel's topic within the symposium on the financial meltdown of 2008–2009 is the deliciously broad question: "Did capitalism fail?" I have taken it as an invitation to ponder not the merits and demerits of modern global financial systems, but instead to continue my assessment of how those of us who are not financial professionals might make sense of them, particularly when they are in catastrophic mode.¹ My thesis is that the question itself reveals the extent to which the financial crisis has not been so much about whether an economic system succeeds or fails (as Judge Richard Posner has tried to assess

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1. See Jeffrey M. Lipshaw, *The Epistemology of the Financial Crisis: Complexity, Causation, Law, and Judgment*, 19 S. CAL. INTERDISC. L.J. 299, 305–12 (2010). I am afraid that Professor Robert Miller of Villanova University may have made my point far more succinctly (and understandably) in a short essay that was part of another symposium on the financial crisis in which I participated:

There, I think, we touch on a strange truth about human nature. It is deeply unnerving for us to think that, even when everyone is behaving rationally and honestly, the result can be catastrophe. . . . Such events highlight the limits of the human condition; they remind us how limited our cognitive and other powers really are. Hence, when something terrible happens, it is much more emotionally satisfying for us to identify a villain and hang him from a light post in the town square. That way, justice is done, and order is restored to the universe. We achieve catharsis.

Robert T. Miller, *Morals in a Market Bubble*, 35 U. DAYTON L. REV. 113, 137 (2009).

in two apocalyptically titled books published since February 2009²), but the meaning we (including Judge Posner) as human beings draw from natural and human-made catastrophes.³ When the world discombobulates our sense of order, our expectations of cause and effect, we seem either to (a) question our most fundamental assumptions about science, progress, and social order, or (b) look for someone to blame.⁴

That is, in my view, a reflection of our long and difficult intellectual struggle with the extent to which order and regularity in nature and human affairs reflect purposes or ends. To Aristotle, “final cause” constituted the purpose or ends (the *te-*

2. See generally RICHARD A. POSNER, *A FAILURE OF CAPITALISM: THE CRISIS OF '08 AND THE DESCENT INTO DEPRESSION* (2009) [hereinafter POSNER, *FAILURE OF CAPITALISM*]; RICHARD A. POSNER, *THE CRISIS OF CAPITALIST DEMOCRACY* (2010) [hereinafter POSNER, *CRISIS*]. I return to Judge Posner's assessment of the crisis later, as I ought, given that his scholarly work over the last two years largely constitutes an affirmative answer to the question, “did capitalism fail?” See *infra* notes 51–52, 127–32 and accompanying text.

3. For an alternative (and exhaustive) approach to the relationship between the objective study of markets and the meanings that events in the market impart to participants, see generally Robin Paul Malloy, *Framing the Market: Representations of Meaning and Value in Law, Markets, and Culture*, 51 *BUFF. L. REV.* 1 (2003). Professor Malloy aptly captures the tensions between aspirations to scientific objectivity (what I discuss here as causation in the atelic verb usage) in the analysis of economic events, on one hand, and the subjective frames from which human observers interpret and accord significance to those events (tending to what I discuss here as causation in the telic verb usage), on the other. *Id.* at 17–18. Our projects, I believe, are similar and the approaches sympathetic. Professor Malloy employs Charles Sanders Peirce's work in semiotics, a study based on the concept that “humans are sign-making and sign-interpreting beings. Signs, as such, include language as spoken and written, visual images, colors, symbols, art, architecture, music, and a variety of other ways in which ideas are communicated.” *Id.* at 14. I employ Steven Pinker's recent work on meaning that we can observe in syntax, semantics, and metaphor, themselves subsets of the signs within the broader field of semiotics. See generally STEVEN PINKER, *THE STUFF OF THOUGHT: LANGUAGE AS A WINDOW INTO HUMAN NATURE* (2007).

4. The reflections in this Article grow out of my interest in this last point—namely, that a view of causation as the attribution of blame is central to “thinking like a lawyer” as that concept has developed in Langdellian legal science and legal philosophy. See generally H.L.A. HART & A.M. HONORÉ, *CAUSATION IN THE LAW* (1959). Such a view is fine when the object of the lawyer's activity is the attribution of blame or fault, the usual object of litigation, but is a real problem in the exercise of judgment in other areas, like counseling, transactions, policy, and regulation.

For a sincere attempt to assess without demonization how various classes of actors impacted the subprime crisis, see Claire A. Hill, *Who Were the Villains in the Subprime Crisis, and Why It Matters*, 4 *ENTREPRENEURIAL BUS. L.J.* 323 (2010).

los) “for the sake of which” things happen⁵—the characteristic of nature that presents invariable sequences occurring not incidentally or by chance, but for a purpose.⁶ To Kant, there was no *a priori* reason for assuming that nature, not an intelligent being, has purposes as humans have them.⁷ Instead it was part of our nature, as minds observing the apparently orderly design of the world, to analogize purposiveness in nature from subjective human purposes (even though we nevertheless recognize proof or disproof of such purposes in nature to be beyond the capability of human knowledge).⁸

Modern behavioral psychology has systematized our knowledge about the relationship between minds and the world, recognizing that basic hardwired “frames” cause us to interpret data in light of ends or purposes. The noted behavioral psychologist Dan Ariely observed recently, for example, that multiple credit card borrowers regularly pay off small balances even if they are being charged higher rates on other cards with larger balances.⁹ “We have this incredible desire to feel we are making progress The satisfaction we get from fewer loans opened overwhelms our decision of what is the right thing to do.”¹⁰

Steven Pinker has written extensively about the ways in which language provides insight into, among other things, this purposive aspect of human nature.¹¹ In this Article, I apply some of those insights to reactions to the financial crisis captured in sentences like “did capitalism fail?” The question itself, in syntax and meaning (its semantic content), reveals our ambivalent relationship with *telos*. Pinker builds on the insight that verb usage in our language incorporates fundamental *human* (rather than physical or scientific) concepts of causation.¹² In other words, our language of causation is built on a human scale, evolved out of and shaped by metaphors derived from

5. *Aristotle on Causality*, STAN. ENCYCLOPEDIA PHIL. (Jan. 25, 2011), <http://plato.stanford.edu/entries/aristotle-causality/>.

6. ARISTOTLE, PHYSICS II, § 8 (W. Charlton trans., 1970). Thus, for example, animals grow teeth in regular patterns because such arrangements of teeth are good for the purpose or end of promoting the animal’s survival. *Id.*

7. IMMANUEL KANT, CRITIQUE OF JUDGMENT 152–53 (J.H. Bernard trans., MacMillan & Co. 2d ed. 1914) (1790).

8. *Id.*

9. Robert Langreth, *The Empirical Economist*, FORBES, May 10, 2010, at 22, available at <http://www.forbes.com/forbes/2010/0510/opinions-economics-dan-ariely-psychology-ideas-opinions.html>.

10. *Id.* at 22 (quoting Ariely).

11. *E.g.*, PINKER, *supra* note 3.

12. *Id.* at 228–33.

human experience, and has problems in dealing with the very small (quantum) and the very big (or very collective). Some verb usages convey *atelic* meaning (i.e., without imputed purposes or ends): things just happen without something purposively causing something. Some verb usages convey *telic* meaning (i.e., imputing purpose): the verb is telling us that the subject of the sentence did something to the object, and implicitly the subject acted with purpose. When we use verbs conveying telic meaning in connection with a particular subject (like something as abstract as “capitalism”), we are already suggesting the subject should be thought of as having purposes or ends.¹³

I will proceed as follows. First, I will parse the question “did capitalism fail?” to make it clear why I think it is ambivalent, syntactically, about the telos of the financial crisis. Grammatically, is the sentence transitive or intransitive? Second, I will tie the ambivalent syntax of the question to its equally ambivalent meaning—telic or atelic—in connection with the financial crisis itself. In the frame of the atelic metaphor, capitalism failed in the sense of getting sick or dying, and the real problem was the perception that the professionals did not know how to cure the patient. In the frame of the telic metaphor, a well-engineered modern society hums along smoothly, operated and regulated by well-trained professionals. In that case, either the machine or its operators failed our expectations. I conclude by suggesting that if we understand the source of the metaphoric frames themselves, we may not solve the financial crisis, but we may be able to calm the troubled waters of our fundamental assumptions and our concomitant desire to find human or divine villains to blame.

I. PARSING THE QUESTION

A. THE SYNTAX OF “DID CAPITALISM FAIL?”

The first part of the argument deals with the ambivalent syntax of the question “did capitalism fail?” Steven Pinker has persuaded me that there is a relationship between parts of speech—the place of nouns, verbs, subjects, objects, and predicates in language—and the fundamental concepts by which human minds make sense of the world.¹⁴ Before getting to

13. See *id.* at 219–25; see also discussion *infra* Part I.

14. PINKER, *supra* note 3, at 24.

Pinker's insights, however, I need to be clear about the grammatical structure. The declarative construction of the question is: "Capitalism did fail." The subject of the sentence is the word "capitalism." The verb is the past tense of "to fail" supplemented by an auxiliary or helping verb "did," which serves only to set the tense more precisely.

Let us first clarify the semantic content of the subject of the sentence, "capitalism."¹⁵ In the context of this particular financial crisis, we are not talking about Adam Smith's idealized capitalism, "the free action of profit-seeking men bound together only by the market itself."¹⁶ Nor is it the Marxian caricature that "arises only when the owner of the means of production and subsistence finds the free worker available, on the market, as the seller of his own labour-power."¹⁷ If anything "failed," it is our modern mixed capitalism in which the means of production are substantially in private hands but governments intervene to temper the effects of laissez-faire capitalism. Governments regulate markets in a variety of ways, such as setting quality standards for meat, safety standards for automobiles and airplanes, and fairness standards for the distribution of and trading in securities. Governments actually create markets, such as establishing profit-making, publicly traded corporations like Fannie Mae and Freddie Mac that purchase residential home mortgages from "mortgage originators."¹⁸ And,

15. Pinker analyzes nouns in terms of their relationship to our thoughts about physical substance and more "vaporous entities," but that analysis is not directly relevant to my discussion here. *Id.* at 163–74.

16. ROBERT L. HEILBRONER, *THE WORLDLY PHILOSOPHERS* 35 (4th ed. 1972).

17. 1 KARL MARX, *CAPITAL* 274 (Ben Fowkes trans., Vintage Books 1977) (1867).

18. Fannie Mae, formerly known as the Federal National Mortgage Association, describes itself as follows:

Fannie Mae is a government-sponsored enterprise (GSE) chartered by Congress with a mission to provide liquidity, stability and affordability to the U.S. housing and mortgage markets.

Fannie Mae operates in the U.S. secondary mortgage market. Rather than making home loans directly to consumers, we work with mortgage bankers, brokers and other primary mortgage market partners to help ensure they have funds to lend to home buyers at affordable rates. We fund our mortgage investments primarily by issuing debt securities in the domestic and international capital markets.

About Fannie Mae, FANNIE MAE, <http://www.fanniemae.com/kb/index?page=home&c=aboutus> (last visited Apr. 9, 2011).

Freddie Mac, "one of America's biggest buyers of home mortgages, is a stockholder-owned corporation chartered by Congress in 1970 to keep money flowing to mortgage lenders in support of homeownership and rental housing."

perhaps not finally, governments modulate the macroeconomy, either by a combination of spending and taxing, or by expanding or restricting the money supply. I have to believe, when we panel members are asked the question “did capitalism fail?,” we are no longer being asked about the capitalism of Vanderbilt, Stanford, Rockefeller, and Carnegie, much less Smith and Marx, but this mixed version that has evolved mainly since 1933.¹⁹

So much for the subject of the sentence. Now we need to discuss the verb. There is an interesting syntactical ambiguity, and how we come out on the syntax likely impacts the semantic import of the sentence. The word play of my title highlights the issue: Is the verb “fail” intransitive or transitive? Recall elementary English grammar. A transitive verb requires a direct object. The syntax tells us X is doing something to Y. “Jeff blew his nose.” “Suzy sold seashells.” “Suzy sold” is a strange sounding sentence because the transitive verb usage requires an object of Suzy’s action: something she sold. An intransitive verb appears without a direct object. “Joe slept.” “Mary died.” Indeed, if we use what is normally an intransitive verb in a transitive way, we either get something that sounds nonsensical, like “Mary died Joe” (instead of the transitive “killed”), or something that we accept as emphasizing the action, as in “the baby slept the night” (here we have truncated the adverbial phrase “through the night” into syntax that sounds like the baby actually *did* something to the night).

What about the word “fail”? The dictionary gives both intransitive and transitive usages.²⁰ As an intransitive verb, “fail” means to fade or die away, to stop functioning, or to be or become absent or inadequate.²¹ What is the significance of the intransitive verb? The syntax means that we think of capitalism failing as something that simply happens, as in:

About Freddie Mac, FREDDIE MAC, http://www.freddiemac.com/corporate/about_freddie.html (last visited Apr. 9, 2011).

19. Judge Posner, as usual, has a clear explanation of the term:

[C]apitalism is not a synonym for free markets. It is the name given to a complex system with many moving parts. The buying and selling and borrowing and other activities carried on in private markets are only some of those moving parts. Others include a system of laws for protecting private property and facilitating transactions, institutions for enforcing those laws, and regulations designed to align private incentives with the goal of achieving widespread prosperity.

POSNER, *CRISIS*, *supra* note 2, at 1–2.

20. MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 449 (11th ed. 2003).

21. *Id.*

- (1) "Life evolved."
- (2) "The universe expanded."
- (3) "Climate changed."
- (4) "Johnny grew."
- (5) "Obama won."
- (6) "Eliot Spitzer imploded."
- (7) "Capitalism failed."²²

If we ask the question "did capitalism fail?" intransitively, we are asking whether it got sick or died.

The verb "fail" also has a transitive usage. Here, "fail" means to disappoint the expectations of someone or something ("Joe failed Mary in her time of need"), or to miss performing an expected service or function for someone ("My legal education failed me in my search for a job").²³ If we ask the question transitively, we are asking whether capitalism disappointed us, blew the test, failed our expectations.²⁴

Now we can proceed to Pinker's insights.

B. THE SEMANTICS OF "DID CAPITALISM FAIL?": AGONIST OR ANTAGONIST IN THE FORCE DYNAMICS MATRIX?

Pinker's contention is that language of causation reveals a human proclivity to import purposiveness and intentionality into causation.²⁵ This is so even when we would immediately agree with the proposition that nature has no such human-like intention. Consider these sentences that employ transitive verb usages: "Nature abhors a vacuum." "The system seeks equilibrium." We (or I at least) do not believe nature abhors vacuums the way I abhor hearing iPod music coming from the headphones of the person sitting next to me on the subway. Nor do I believe a system is seeking equilibrium in the same way I am

22. These are examples of nonpurposive intransitive usages. There can, however, be purposive intransitive usages where the subjects are volitional agents, like "Mary jumped" or "Plato philosophized," but as discussed *infra* note 46, my concern here is the possibility that our language permits attribution of purpose and intention to events *not* initiated by a volitional agent.

23. MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY, *supra* note 20, at 449.

24. It may seem odd to think of "capitalism" as a subject that is capable of failing a test, but that is semantic and not syntactical. There are verb constructions that make perfect sense in which capitalism is the subject and does something to someone: "Capitalism gave us one hundred years of prosperity." In this sentence, "capitalism" is the subject, "one hundred years of prosperity" is the direct object, and "us" is the indirect object.

25. PINKER, *supra* note 3, at 153–63.

seeking peace and quiet or my dog is seeking a comfortable position on the sofa.

Thus Pinker attempts to reconcile the syntax and semantics of intentionality in causation (what he calls the “oomph” of our causal intuitions) with the more deterministic and scientific concepts of causation.²⁶ Two common philosophical propositions about causation, for example, are constant conjunction and counterfactuals. Hume’s view was the classic statement of the first proposition.²⁷ There is no “metaphysical” causation: what we see as “cause and effect” is merely an expectation based on the constant repeated conjunction of events. There is no necessary reason the billiard ball moves in a certain direction after being struck; it just always does, and we expect it always will. In the counterfactual conception, “A caused B” means B would not have happened but for the occurrence of A. The problem Pinker points out is that we do not experience counterfactual worlds, and they can be anything; counterfactual causation taken to its logical extreme counts too much as causation.²⁸

An example might involve a Type I diabetic diagnosed in childhood who, as an adult, commits a murder. Frederick Banting and Charles Best first isolated insulin and purified it for use in the treatment of Type I diabetes, which until then was a terminal disease.²⁹ Under counterfactual causation, this discovery (A) caused the murder (B) because the murder would not have happened but for the discovery of insulin (the murderer would have died in childhood). Pinker thus notes a moderating amendment to the counterfactual theory: we make sense of counterfactual causation by only invoking possible worlds that are “close” to our own.³⁰ Indeed, that is what we do when we control the variables in an experiment to determine causation rather than mere correlation.³¹

Causation in the natural and social sciences remains the subject of philosophical debate. Pinker’s approach is slightly different. He contends language reveals, if not an answer to the philosophical conundrum, then at least an insight into human

26. *Id.* at 218.

27. *Id.* at 157.

28. *Id.* at 211–15.

29. *Lilly History*, ELI LILLY & CO., <http://www.lilly.com/about/history/> (last visited Apr. 9, 2011).

30. See PINKER, *supra* note 3, at 213.

31. *Id.*

intuitions about causation.³² I want to explore that insight in the context of the question “did capitalism fail?” Put otherwise, I find ridiculous the following proposition about nature: “The earthquake punished Haiti because its people practiced voodoo.” The syntax and the semantics here are starkly consistent with a meaning that the earthquake (or God) actually had a human-like intention, and I reject it. I am far less troubled syntactically or semantically by this: “When the levee broke, the floodwaters in New Orleans sought the level of Lake Pontchartrain.” The syntax suggests intentionality on the part of the water, but I do not, when I think about it, actually believe the water had a mind. But when somebody says to me not “capitalism died” but “capitalism failed us,” I do wonder about the relationship of syntax and meaning. That is, causation in the natural world and human views of causation are different, but they are nevertheless inextricably linked, particularly when we are talking not about a discrete, observable physical system, but a conceptual scheme (like “capitalism” or “academia”) that is the creation of the observers themselves.³³

Pinker begins with the word usages that convey the meaning of causation: verbs.³⁴ Verbs express the state of something, whether something, namely the subject, exists, acts, or occurs.³⁵ Verbs like “bring,” “make,” “cause,” and “force” express a kind of pure causation. The subject acts on the object, as in “the earthquake caused the tsunami.” Other verbs express causation but their meanings import a particular kind of effect, as in “the wind dried the sheets” or “Fred shook his fist.” Other verbs express concepts like prevention, as in “the glare impaired my vision.” Some verbs express enabling, as in “Mary helped me.”³⁶

32. The legal analog to the moderating amendment in counterfactual causation is “but for” causation versus “proximate” causation. See HART & HONORÉ, *supra* note 4, at 95–96. In my view, this is simply a subset of Pinker’s broader point: language reveals a human intuition about causation and, not surprisingly, law’s language does so as well.

33. See Stephen P. Turner & Paul A. Roth, *Ghosts and the Machine: Issues of Agency, Rationality, and Scientific Methodology in Contemporary Philosophy of Social Science*, in THE BLACKWELL GUIDE TO THE PHILOSOPHY OF THE SOCIAL SCIENCES 1, 11–13 (Stephen P. Turner & Paul A. Roth eds., 2003).

34. PINKER, *supra* note 3, at 25–87.

35. MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY, *supra* note 20, at 1389 (“[A verb is] a word that characteristically is the grammatical center of a predicate and expresses an act, occurrence, or mode of being . . .”). A predicate is “the part of a sentence or clause that expresses what is said of the subject and that usually consists of a verb with or without objects, complements, or adverbial modifiers.” *Id.* at 978.

36. PINKER, *supra* note 3, at 219.

The primary insight on the *human* intuition about causation comes from an application of the linguist Len Talmy's "force dynamics" matrix to those verbs.³⁷ According to Talmy (by way of Pinker), most of the world's languages capture causal intuitions by way of a pattern involving the relationship of *agonists* and *antagonists*.³⁸ (We will return shortly to the question of whether "capitalism" is an agonist or an antagonist in the sentence under discussion.) The agonist is an entity with an intrinsic tendency to motion or rest.³⁹ The antagonist is an entity that exerts a force on the agonist, usually counter to the tendency of the agonist.⁴⁰ The matrix distinguishes among verb usages based on whether humans are inclined to see purposes or ends in the relationship between agonist and antagonist being expressed by the verb that connects them.⁴¹

In atelic settings (i.e., those in which we do not intuit purpose or intention), the observer is "dropping in on a situation that is already in progress."⁴² What makes it atelic is that the sentence means "W is occurring" rather than "Y does something to Z." In the sentence "W is occurring," W is the agonist. Agonists, according to the Talmy matrix, have a tendency to move or be at rest, and can be either moving or resting on account of their relationship with an antagonist that was already present when we dropped in to observe.⁴³ The matrix thus gives us these atelic possibilities, which are expressed in *intransitive* verb usages:

Causation. When the agonist has a tendency to rest, but it moves on account of the antagonist, we intuit causation, as in "the earth revolves around the sun because of the sun's gravitational pull." The earth is W, the agonist. It would not move but for the pull of the sun, the antagonist.

Prevention. When the agonist has a tendency to move, but it rests on account of the antagonist, we intuit prevention, as in "the car stayed parked on Nob Hill because the wheels hit the curb." Now the car is

37. *Id.* at 219–25.

38. *Id.* at 219.

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.* at 220.

43. *Id.* at 220–21.

W, the agonist. It would move, but for the resistance of the curb, the antagonist.⁴⁴

The intransitive usage (and atelic meaning) as in “capitalism got sick” or “capitalism died” comes naturally, at least to a modern social scientific sensibility. “Capitalism” is an agonist. It is a process, or a system, that simply *moves*. How or why it moves may or may not be explicable (say, by virtue of the invisible hand of self-interest). In the Pinker-Talmy allusion, we have simply dropped in to find it moving.⁴⁵ Antagonists, like regulators, may get in its way or not (for better or worse, depending on one’s political orientation), as the case may be.

Moreover, causation-inferring sentences in the atelic setting are entirely sensible without the inference of purposes or ends in the form of human-like intentions. It may well be that Smith thought there was a divine purpose underlying the invisible hand, or others see animism in the forces of nature, but we are entirely capable of making sense of the intransitive construction of “capitalism did fail” without such purposiveness.⁴⁶

The alternative force dynamics matrix is in a telic setting. Here the agonist still has a tendency to move or to rest, but the

44. The other two possibilities in the matrix involve the concept of “despite.” The agonist either has a tendency to move or to rest and, in each case, does so despite the opposition of the antagonist. An example of the first is “the Omaha Beach invasion pushed forward *despite* fierce German resistance.” An example of the second is “the goal posts stood *despite* the push of the crowd against them.”

45. PINKER, *supra* note 3, at 220.

46. My colleague, Pat Shin, notes that there are intransitive but telic usages like “Mary jumped” or “Plato philosophized.” I agree. While all verb usages that are semantically atelic would seem to be intransitive grammatically, there are intransitive verbs that convey purposiveness. Talmy addresses this in his discussion of force dynamics. He contends that force dynamics are built into language structure, and hence structure reasoning about causal concepts across a broad range of fields, including the physical, social, and psychological domains. 1 LEN TALMY, TOWARD A COGNITIVE SEMANTICS 410 (2000). As Talmy notes, he deliberately uses (as does Pinker) nonsentient examples, because the inclusion of an agent in a sentence, though often yielding a syntactically simpler construction, actually involves an additional semantic complex. An agent that intends the occurrence of a particular physical event, say a vase’s breaking, is necessarily involved in initiating a causal sequence leading to that event. The sequence must begin with a volitional act by the agent to move certain parts or all of his body.

Id. at 421. The syntactical causal structures, in other words, are clearer when the agonists and antagonists are not volitional agents. The point is to demonstrate how human language structures causal concepts even in the physical domain, not to suggest that a human being cannot intend an action that might be expressed by an intransitive verb.

antagonist appears rather than having always been there (at least to our observation), and the agonist either moves or rests on account of its relationship with the newly appeared antagonist. In “Y does something to Z,” Z is the agonist and Y is the antagonist. This matrix gives us telic possibilities, which are expressed in *transitive* verb usages:

Causation. When the agonist has a tendency to rest, but it starts on account of the antagonist, we intuit causation, as in “the limb’s falling on it caused the windshield to break” or “the dog jumping on it made the chair collapse.” The windshield or the chair is Z, the agonist. The subject doing something to Z is the limb or the dog—in other words, Y, the antagonist.

Prevention. When the agonist has a tendency to move, but it stops on account of the antagonist, we intuit prevention or blocking, as in “the pain in her knees made the marathoner stop at mile twenty-two.” Here the marathoner is Z, the agonist. The pain in her knees is Y, the antagonist.

Pinker observes that telic meanings in these transitive verb constructions are “awkward” because they are meant to demonstrate the relationship of events to events.⁴⁷ In the first example, the limb did not just happen to fall; something must have acted on it. Pinker notes, however, that “everyday language glosses over this. An autonomous force, like the wind, waves, or fire, or a person exerting free will, appears as the subject of a predicate, and the predicate expresses the final event in the causal chain, with the intervening links left unspoken.”⁴⁸ Hence the sentence about the limb is particularly stilted; the one about the dog less so; and the dog sentence would be even more natural if it said, “the dog collapsed the chair.” This, as Pinker observes, is because causal language can be compressed: “[W]hen an antagonist acts directly on the agonist, the act and effect [are both expressed in the ‘causation

47. PINKER, *supra* note 3, at 221.

48. *Id.* As in the atelic matrix, the telic matrix has two other possibilities, but these involve the concept of “permit.” When the agonist has a tendency to rest, and stops even in the face of the antagonist, we intuit “permit,” as in “Mom’s quieting the dogs let her son sleep.” Son is Z, the agonist. Mom’s action is Y, the antagonist. Son was going to keep sleeping, and Mom’s action permitted that to continue. When the agonist has a tendency to move, and starts even in the face of the antagonist, we intuit “permit,” as in “the failure of the levee let the lake flood the city.” The water is Z, the agonist; it wants to find a certain level. The event constituting the failure of the levee is the antagonist, Y; the occurrence of the event permitted the water to do what it “wanted.”

plus effect' verb described above]."⁴⁹ Moreover, in the prototype of causal verbs, "language's most concise causative construction," the antagonist "directly and intentionally caus[es] a passive agonist to change from its intrinsic state."⁵⁰

The transitive grammatical construction (and telic meaning) of "capitalism did fail," as in "capitalism failed us," or "capitalism failed our expectations," seems to me to be more troubling because now *we* or our expectations are agonists, and capitalism is the antagonist that did something (or not) to us. I could propose variations on this theme:

"In the state of nature we were happy, and capitalism made us unhappy."

"Under laissez-faire capitalism, we were happy, but mixed capitalism made us unhappy."

"Mixed capitalism of the kind in place until George Bush got his hands on it made us happy, but deregulation and a return to laissez-

49. *Id.*

50. *Id.* I need to be clear that Pinker substantially abridges Talmy's exceedingly complex work, which proposes at length generalizations about the way grammar reflects force dynamics (Chapter 7, "Force Dynamics in Language and Cognition"), and the semantics of causative sentences (Chapter 8, "The Semantics of Causation"). TALMY, *supra* note 46, at 409–549. I have simply tried to inform this panel's topic with Pinker's insights on Talmy's treatment of the intersection of syntax, semantics, and causation. Talmy's actual classification of causative relationships in human language involves, among other things, distinctions between volitional or nonvolitional subjects, alternative transitive or intransitive verb usages, alternative syntax involving stress on agonists and antagonists, and the role of the meanings of the nouns and verbs involved.

For example, Pat Shin and I had an extended discussion of the sentence "Mary hears a birdsong." Pat thought that this might be a transitive sentence with an atelic meaning. My reaction was that this might be akin to the force dynamic of a sentence like "the earth basked in the sun's rays." Those could be restated as "the bird's singing caused Mary to hear it" or "the sun's rays caused the earth to bask." Those would be atelic situations, with the song or the rays as agonists (i.e., songs and rays have a tendency to move) and people and planets, respectively, as antagonists (they impede the movement of the songs and rays). We simply drop in to observe this all happening.

Talmy has an extended discussion in Chapter 8 of this kind of relationship and would answer Pat's concern this way. Talmy would refer to Mary as an "Undergoer" and the sentence as one not really reflecting a causative relationship:

While an Undergoer . . . does not intend the event mentioned, she also has not undertaken actions that culminate in the event. . . . In other words, it impinges on the personal state—that is, affects the subjective state—of a sentient entity. Although the construction involved is considered here because of its look-alike mistakability, it is not really interpreted as a causative at all.

Id. at 517.

faire unleashed Wall Street's greed, and ended up making us unhappy."

If this seems like a stretch, note that by early 2009 Judge Posner had already published *The Failure of Capitalism*,⁵¹ and a year later in *The Crisis of Capitalist Democracy*, he noted that the "title alarmed some readers, who thought I meant that capitalism has failed us and we need something different."⁵²

The point here is that the discussion, both in the symposium and in public discourse generally, is ambivalently atelic and telic, with different entities, some volitional beings and some not—us, the economic system known as capitalism, Wall Street, the Federal Reserve, mortgage originators, Fannie Mae, and so on—sometimes playing the role of agonist and sometimes antagonist. That it was not really capitalism that failed us (instead it was many of the actors within the system) was Judge Posner's point even in the first book, though his readers' reaction to the title was some evidence of the proposition that the verb "fail" in this context is indeed transitive. Our first inclination may be that we could not possibly believe that capitalism is an antagonist with purposive and rational intentions, and thus capable of being the subject in a sentence with telic meaning, even if the sentence is transitive like "capitalism harmed us." Despite our progress, I suggest, we are not always that modern. Instead, we are still ambivalent about purposes in nature and human affairs, and in times of crisis, we hearken back to a more satisfying telos, one that finds intentionality in humans, gods, or demons.

C. USAGE AND MEANING SUMMARIZED

I summarize this comparison of transitive versus intransitive usage, as well as telic versus atelic meaning, in Figure 1. Above the line is a series of intransitive sentences, beginning with "Capitalism failed," whose meanings are increasingly atelic. Below the line is a series of transitive sentences, beginning with "Capitalism failed us," whose meanings are increasingly telic. Part II addresses two issues. First, is there something to the idea that the intransitive usage in "Capitalism failed" evokes the metaphor of "Grandmother weakened," on one hand and that the transitive usage in "Capitalism failed us" evokes the metaphor of "Father ruined us." Second, if so, what is the implication?

51. POSNER, FAILURE OF CAPITALISM, *supra* note 2.

52. POSNER, CRISIS, *supra* note 2, at 1.

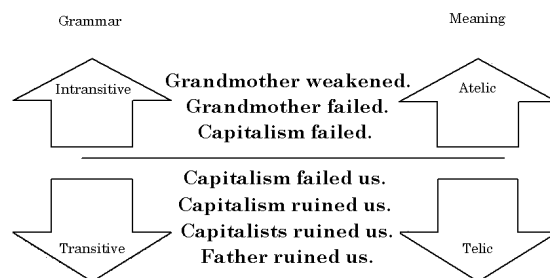


Figure 1

II. THE TELOS OF THE FINANCIAL CRISIS

In this Part, I tie the verb usages addressed in Part I to the interaction of physical and human nature that reveals itself in the imputation of telos to both. In other words, the structure of our language of causation is intricately bound up with our concepts of causation, the semantic content of the proposition. I think the financial crisis is as much about the transitive usage (what the system failed to do as against our expectations) as it is about the intransitive usage (a system either dying and or needing emergency life support). The ambiguous meaning, either telic or atelic or both, is an insight into the aspect of human nature that resists purposelessness, even in abstract social systems like capitalism. In short, the question “did capitalism fail?” invokes explanatory metaphors that may not fail, but on the other hand, may have deserved no more than a C grade. A better insight into human nature may lie in the complexity of our language and thought that permits the grammatical and semantic ambiguity of the question. While we aspire to science, we are not beyond invoking gods and demons, whether human or divine (and not beyond hoping for a *deus ex machina* to rescue us).

My argument in this section proceeds in four parts. First, I adopt, for purposes of this Article, a still controversial and debated view of metaphor as “not simply an ornamental aspect of language, but a fundamental scheme by which people conceptualize the world and their own activities.”⁵³ How we see cause and effect is a matter of the framing metaphor we employ in the analysis.

⁵³ Raymond W. Gibbs, Jr., *Metaphor and Thought: The State of the Art*, in *THE CAMBRIDGE HANDBOOK OF METAPHOR AND THOUGHT* 3, 3 (Raymond W. Gibbs, Jr. ed., 2008).

Second, the atelic meaning of “capitalism failed,” while consistent with modern notions of purposelessness in nature, nevertheless evokes an implicit metaphor about human limitations in the face of natural catastrophe. I recall my father describing my grandmother’s physical condition near the end of her life as “she is failing.” In this usage, “failing” equals “dying,” as in “capitalism is dying” and we seem to have been incapable of preventing it, or “capitalism got sick” and we seem to have not known how to cure it. The metaphor is to other catastrophic forces, like earthquakes or tsunamis or asteroids on a collision course with the earth. In our modernity, we have come to terms with many atelic realities, at least in the abstract or long term: the sun rises and sets, seasons pass, we grow old and die, and the sun will turn into a red giant and envelope the earth in billions of years. But even though we are modern enough to know not to blame the asteroid for what it is going to do, many of us, nevertheless, try to reconcile its purposelessness with our own desire for meaning (purpose), particularly in desperate times.

Third, uncovering the implicit metaphor of the verb construction “capitalism failed *us*” takes a little more work. One approach is to find real human purposiveness to which we might attribute blame. The other is to understand the persistence of teleology even in sophisticated social science; the result of which “capitalism failed us” becomes a metaphor for the machine and its operators who failed to do their respective jobs.

Finally, asking the question “did capitalism fail?” provides an opportunity to reflect on the metaphors it evokes, and to discard the ones that are not constructive.

A. METAPHOR THEORY APPLIED TO CAUSATION

The claim that metaphors have semantic content (i.e., real meaning) is not without controversy. Pinker’s assessment of metaphor is sensible. He rejects both of the polar positions.⁵⁴ Donald Davidson and Richard Rorty famously asserted that metaphors carry no meaning beyond the literal statement.⁵⁵ On this account, language divides into semantics, which is meaning, and pragmatics, which are the flourishes and filigrees by which speakers draw attention to their literal utterances. Thus,

54. PINKER, *supra* note 3, at 235–78.

55. See generally RICHARD RORTY, CONTINGENCY, IRONY, AND SOLIDARITY (1989); Donald Davidson, *What Metaphors Mean*, 5 CRITICAL INQUIRY 31 (1978).

Romeo's statement "Juliet is the sun" does not really convey meaning about Juliet, but "is like using italics, or illustrations, or odd punctuation or formats."⁵⁶ At the other extreme, George Lakoff and Mark Johnson assert that all thought derives from metaphors that our brains developed from the fact of their being embodied in human beings.⁵⁷ On this account, there are no transcendent or universal concepts, nor is there any truly abstract reasoning; instead, minds, reason, and thought are "shaped crucially by the peculiarities of our human bodies, by the remarkable details of the neural structure of our brains, and by the specifics of our everyday functioning in the world."⁵⁸

Pinker calls the Davidson-Rorty position the "killjoy theory" of metaphor, and I agree.⁵⁹ It is true that some metaphors are dead, in the sense that we use them with absolutely no recognition of the fact that they are metaphors. (Pinker's example is the phrase "coming to a head" which alludes to the accumulation of pus in a pimple.)⁶⁰ But all metaphors were once new and fresh, and some continue to be. Moreover, metaphors are a fundamental source of learning and understanding: they are "tools of *inference* that can be carried over from the physical to the nonphysical realms, where they can do real work."⁶¹ Metaphor in science is a "way of adapting language to reality, not the other way around, and . . . it can capture genuine laws in the world, not just project comfortable images onto it."⁶²

56. RORTY, *supra* note 55, at 18; *see also* Davidson, *supra* note 55, at 31–32. For a summary of the deflationary accounts of metaphor and a response, *see* Mark Johnson, *Philosophy's Debt to Metaphor*, in THE CAMBRIDGE HANDBOOK OF METAPHOR AND THOUGHT, *supra* note 53, at 39, 39–52.

57. GEORGE LAKOFF & MARK JOHNSON, PHILOSOPHY IN THE FLESH: THE EMBODIED MIND AND ITS CHALLENGE TO WESTERN THOUGHT 4 (1999).

58. *Id.* For a summary of Lakoff's updated neural theory of language, which postdates his work with Johnson, *see* George Lakoff, *The Neural Theory of Metaphor*, in THE CAMBRIDGE HANDBOOK OF METAPHOR AND THOUGHT, *supra* note 53, at 17, 17–38.

59. PINKER, *supra* note 3, at 238–41.

60. *Id.* at 238; *see also* Susan Haack, *The Growth of Meaning and the Limits of Formalism: In Science, In Law*, 29 ANÁLISIS FILISÓFICO 5, 6 (2009) (discussing the life cycle of metaphors as part of the process by which "organic, living" languages "shift, change, and adapt").

61. PINKER, *supra* note 3, at 252.

62. *Id.* at 259; *see also* Haack, *supra* note 60, at 11–18. I do not suggest that Professor Haack supports any variation of the metaphor theory. She simply rejects the twentieth-century commonplace view that "what makes science rational must be explicable exclusively in narrowly logical, i.e., formal, syntactically characterizable, terms." *Id.* at 12. Instead, science progresses by way of hypotheses whose vocabulary links the syntax of the hypothetical language to the reality it seeks to describe:

Metaphors may not be the end-all of human thought, but they are indeed powerful in shaping how we approach new issues (like financial catastrophes). Says Pinker:

The human mind comes equipped with an ability to penetrate the cladding of sensory appearance and discern the abstract construction underneath—not always on demand, and not infallibly, but often enough and insightfully enough to shape the human condition. Our powers of analogy allow us to apply ancient neural structures to new-found subject matter, to discover hidden laws and systems in nature, and not least, to amplify the expressive power of language itself.⁶³

How might those powers of analogy actually work in the attribution of cause and effect? The metaphor theorists have something to add to the discussion, even if we, like Pinker, do not accept all of their conclusions.⁶⁴

The Lakoff-Johnson version of metaphor theory challenges the traditional view of causation as unduly literal, objective, and limited in time. Western philosophers alleged that causes were either “literal entities or forces in the world” and had something to do with the relationship of physical events, or metaphysical forces that had something to do with the ability of agents freely to initiate events in the physical world.⁶⁵ Lakoff and Johnson contend otherwise.⁶⁶ Causation is *not* a literal force in the world. Rather, causal terms are the result of com-

This vocabulary-dependence is one reason why science cannot be understood in exclusively formal-logical terms—not that logic has no role, but it is at most part of the story. It also suggests why scientists constantly shift and adjust the language of their field, introducing new terminology and/or subtly adapting the meaning of older terms: they are working towards a vocabulary that better aligns with the real kinds of thing or stuff.

Id. at 13 (footnotes omitted).

63. PINKER, *supra* note 3, at 276.

64. Pinker rejects what he calls Lakoff’s messiah theory of metaphor. *Id.* at 245–51. Pinker remains open to the possibility that there are transcendent or universal truths that arise other than by metaphors of embodied physical experience, and that ideas are something more than merely rival metaphoric frames. *Id.* at 259. This is because “[c]onceptual metaphors can be learned and used only if they are analyzed into more abstract elements like ‘cause,’ ‘goal,’ and ‘change,’ which make up the real currency of thought.” *Id.* This is consistent with Pinker’s view that there are indeed Kantian categories that precede experience and that are “the mind’s supports for negotiating reality.” *Id.* at 158. I am wholly sympathetic with this latter view (i.e., my intuition is that there are some universal and nonembodied concepts), but for purposes of this Article, I only need to establish that metaphors, blending (the creation of new meaning out of the integration of two apparently unrelated concepts), and rival frames matter, i.e., rejecting the killjoy position.

65. Johnson, *supra* note 56, at 40.

66. *Id.* at 39–52.

plex mapping taking place within the human mind, applying the experience of physical space or motion metaphorically to create abstract connections between events. Moreover, there are many schemata employed in such mappings, and thus many metaphors for causation in science (or in ordinary experience).⁶⁷ These schemata include fundamental physical events like the change of the state of an object or movement down a path.⁶⁸

Thus, the very complexity and elusiveness of causation as either physical fact or conceptual mapping, as well as the persistence of teleological purposiveness, even in physical science (as discussed below), persuade me that metaphor theory helps explain our minds' ability to be at once scientifically dispassionate and morally blame seeking.⁶⁹ It may simply depend on which metaphor we are using to frame the particular physical- or social-science causation issue under review. The behavior psychology pioneers Amos Tversky and Daniel Kahneman characterized a decision frame as "the decision-maker's conception of the acts, outcomes, and contingencies associated with a particular choice,"⁷⁰ and proposed that decision frames are "controlled partly by the formulation of the problem and partly by the norms, habits, and personal characteristics of the decision-maker."⁷¹ I see no reason why this phenomenon should not affect metaphoric or analogical thinking on causation, even in science.

Here are examples of metaphoric framing in scientific inquiry and policy debates. One of my pastimes is to watch lectures on physics for nonscientists while I am exercising on the elliptical machine. In one, Professor Steven Pollock of the University of Colorado, explaining particle physics, observed: "We

67. *Id.*

68. *Id.* Lakoff and Johnson claim to have mapped nearly twenty different metaphors, and posit that several of them are used within different sciences. Interestingly, the closest Johnson comes to a concession to Pinker's Kantian critique is the statement, "[t]here appears to be what we called a 'literal skeleton' shared by all causation concepts [NB: metaphors], namely that a cause is a determining factor in a situation." *Id.* at 43; see *supra* note 64 and accompanying text (describing Pinker's Kantian critique).

69. Johnson, *supra* note 56, at 44–46.

70. Amos Tversky & Daniel Kahneman, *The Framing of Decisions and the Psychology of Choice*, 211 *SCIENCE* 453, 453 (1981).

71. SCOTT PLOUS, *THE PSYCHOLOGY OF JUDGMENT AND DECISION MAKING* 69–70 (1993) (citing Tversky & Kahneman, *supra* note 70); see also Malloy, *supra* note 3, at 20–25 (discussing how framing devices affect the exchange process).

can think of the universe as being made up of little teeny objects, almost like little billiard balls. . . . [S]ometimes it's ok to think of electrons as little billiard balls and sometimes it's just inappropriate."⁷² Thinking about electrons as billiard balls gives them a meaning by analogy to other things, and we base our view of the coherence of the explanation (not its rightness or wrongness) on how it compares to other explanations we already view as coherent.

Another example of framing comes from a scene in one of my favorite books, Isaac Asimov's *Fantastic Voyage*.⁷³ A ship and its crew are miniaturized so they can travel through a man's bloodstream and destroy a life-threatening blood clot from the inside. One peril leads to another and they are traveling through a lymph node where they witness antibodies destroying a bacterium. Cora and Michaels are both scientists witnessing the antibodies and have the following exchange:

Cora said excitedly, "You can see them cluster. How . . . how horrible."

"Are you sorry for the bacteria, Cora?" said Michaels, smiling.

"No, but the antibodies seem so vicious, the way they pounce."

Michaels said, "Don't give them human emotions. They are only molecules moving blindly. Inter-atomic forces pull them against those portions of the wall which they fit and hold them there. It's analogous to the clank of a magnet against an iron bar. Would you say the magnet attacks the iron viciously?"⁷⁴

Finally, the recent contretemps over the involvement of Goldman Sachs in structuring synthetic collateralized debt obligations (CDOs)⁷⁵ is, in my view, a debate that hinged entirely on the metaphoric frame. If you see Goldman as an adviser (as it would be were this a merger or acquisition), you see its statements and omissions in a wholly different light than if you see Goldman as a bookie.⁷⁶ In the Senate hearings, it was clear

72. Steven Pollock, *Lecture Two, The Standard Model of Particle Physics*, in DVD: PARTICLE PHYSICS FOR NON-PHYSICISTS: A TOUR OF THE MICROCOSMOS (The Teaching Company 2003).

73. ISAAC ASIMOV, *FANTASTIC VOYAGE* (1966).

74. *Id.* at 177.

75. See Nelson D. Schwartz & Eric Dash, *Unbundling the Bets*, N.Y. TIMES, Apr. 21, 2010, at B1, available at 2010 WLNR 10736903 (describing Goldman Sachs's role in creating CDOs).

76. Goldman helped establish ABACUS, which created a "reference portfolio" that mimicked, but did not hold, real subprime debt obligation. Jeffrey M. Lipshaw, *Goldman as Bookie: Inspector Renault Assesses Synthetic CDOs*, LEGAL PROF. BLOG (Apr. 17, 2010), http://lawprofessors.typepad.com/legal_profession/2010/04/goldman-as-bookie-shocked-shocked.html. My reaction was that this was analogous to the activities of a bookie facilitating action for bettors with different assessments of the outcome, assuming that, like in Las Ve-

that Senator Levin employed the former frame; Goldman's executives and defenders took the latter frame.⁷⁷ As one who also saw Goldman's activity as the metaphoric equivalent of operating a sports book, I noted at the time that the epigram on the Securities and Exchange Commission's complaint should have been: "I'm shocked, shocked to find gambling is going on in here!"⁷⁸

If our concepts of causation can be metaphoric, with many different sources for the explanatory mapping, there is no clear cut-off between attributing purpose and intention where the action is related to human volition (structuring CDOs or regulating the money supply), on one side, and attributing purpose to forces of nature (electrons and antibodies), on the other. If Cora, a scientist, could react to the antibodies by inferring purpose and viciousness, no wonder that people can find the same in complex Wall Street gambling, whether or not the underlying metaphors and meanings are really warranted.

With that brief background in metaphoric framing as applied to causation, let us proceed to deal with the metaphors possibly embedded in the question "did capitalism fail?"

B. THE ATELIC METAPHOR: THE FINANCIAL CRISIS WAS TO CAPITALISM AS THE COMET IN *DEEP IMPACT* WAS TO EARTH

It is not remarkable for modern social scientists to ask the question "did capitalism fail?" with an atelic meaning implicit in the verb construction. As noted, we *want* to remove teleology from scientific language, even if the teleology seems to persist. Yet our veneer of dispassionate and atelic scientism crumbles in the face of catastrophe.

Did capitalism fail? If not, it certainly quaked, but that was not the real issue. We would naturally expect that deepwater oil wells might break, but it would surprise us if the operators of those wells seemed to have no clue how to fix the problem. Similarly, we are used to even large businesses falling victim to the creative destruction of capitalism,⁷⁹ but this crisis was sys-

gas, bookmaking is legal. *Id.*; see also Andrew Ross Sorkin, *When Deals on Wall Street Resemble a Casino Wager*, N.Y. TIMES, Apr. 20, 2010, at B1, available at 2010 WLNR 8128042. Not everyone agrees with the metaphor.

77. Shahien Nasiripour, *Goldman Sachs Hearings: Live Updates, Video*, HUFFINGTON POST (Apr. 27, 2010, 1:17 PM), http://www.huffingtonpost.com/2010/04/27/goldman-sachs-hearings-li_n_553318.html.

78. Lipshaw, *supra* note 76.

79. See POSNER, CRISIS, *supra* note 2, at 132–33 (arguing that while the bankruptcies of General Motors and Chrysler might have been a short-term

temic. What surprised us was not just that the subprime crisis brought down Bear, Lehman, and AIG, but that it seemed to have surprised the professionals to whom we, as a modern society, came to cede matters of scientific complexity, those requiring specialized expertise beyond mere common sense. If otherwise thoughtful people believed that models and algorithms gave us the ability not only to *understand* complex financial markets but to *control and even eliminate* the risk of economic disaster, then they were as mistaken as Enlightenment intellectuals who thought, after Newton, that understanding physics meant that we could control and even eliminate the risk of physical disaster like earthquakes. In other words, this kind of crisis of knowledge has happened before, and in a world that, to our present-day eyes, was far less complex than our own.

What made the financial crisis of 2008–2009 so shocking was *not* just the tumbling of the markets and the freezing up of credit. Instead, the crisis for many thoughtful people was as much one of coming to terms with the limits of, or overconfidence about, how well financial market participants and regulators knew their business.⁸⁰ Over the last hundred years or so, we have put more and more of our lives and fortunes into the hands of professionals, and relied on their specialized knowledge to keep us healthy (doctors), productive (information technologists), safe (government regulators), and financially secure (brokers, investment advisers, insurance agents, etc). In a nutshell, the epistemological crisis (rather than the financial crisis) was a crisis in confidence when it turned out that an entire cadre of professionals—mortgage brokers, credit rating agencies, investment bankers, fund managers, and financial regulators—did not seem to know what they were supposed to know about cause and effect in financial markets. Indeed, the financial crisis was as much a “crisis of knowledge,” in which most of us went from being blissfully ignorant (not knowing what *we* did not know) about things like collateral debt obligations and credit default swaps to wondering about how we could avoid this kind of bubble expansion and bursting in the future (now knowing enough to worry but not enough to be able to solve the problems).

shocker and there would have been significant dislocations, the failure would not have had a significant long-term macroeconomic effect).

80. See Lipshaw, *supra* note 1, at 2–9.

The professionals did not know what to do. In this context, the atelic meaning of the question “did capitalism fail?” evokes powerlessness and fear, in the sense that there are forces without purpose, merely random, like earthquakes and tsunamis, which are indeed beyond our control. A piece of popular culture, Mimi Leder’s film *Deep Impact*,⁸¹ explored precisely that powerlessness and fear by way of not-so-fanciful science fiction: a comet is going to hit Earth, causing an extinction-level event, and preventing the disaster is likely beyond the limits of human intervention. What I thought was particularly effective in the film was that *nothing worked*, and we sink deeper and deeper into hopelessness with each successive failure. First, it turns out that the government has been aware of the problem, and has outfitted a ship (the *Messiah*) and highly trained crew to destroy the comet. Despite all the planning and training, a drill bit gets stuck and cannot place the explosives at the correct depth. As a result, the blast simply breaks the comet into two pieces, one of which is still big enough to wipe out all life. The ensuing plan to save a core of humanity in deep caves turns out to be a social disaster. Nevertheless, there is *still* hope in a last attempt, as the comet closes in on Earth, to deflect it with a barrage of missiles. That too fails. Finally, President Morgan Freeman, now in a sweater rather than a suit, announces that all life on Earth is to be wiped out with this coda: “So that’s it. Good luck to us all.” My reaction to the film was that it likely understated the extent to which such an event would strip away the veneer of modernity, and provoke panic, desperation, violence, and insanity.

Have I overstated this? Probably. But the Dow sinking to something close to 6000 was about as close as I have ever come to thinking about my own personal extinction-level events. Few readers of this Article, I suspect, would welcome the rejection of economic, sociological, or other social scientific analysis of the financial crisis in favor of the explanation historically invoked to find purpose in what otherwise seems purposeless: “It was God’s will.” We are rational enough not to blame the comet. But when the experts who were supposed to have been able to predict things like comets hurtling toward us are at sea themselves, it does not take long for the telos to return in the form of the purposiveness of gods and demons, whether human or divine.⁸²

81. DEEP IMPACT (Paramount Pictures 1998).

82. CBS Moneywatch interviewed Peter L. Bernstein, one of the gurus of

C. THE TELIC METAPHOR: CAPITALISM WAS TO PROSPERITY AS THE ASSEMBLY LINE WAS TO PRODUCTIVITY

Did capitalism fail *us*? The transitive construction (and telic implication) is a little odd. It is hard to talk even about abstract social systems without invoking the language of purpose: even to someone as ardently anti-metaphysical as Judge Posner, mixed capitalism (i.e., private incentives along with laws, regulations, and institutions for enforcing them) has “the goal of achieving widespread prosperity.”⁸³ There are two ways to approach the possibilities of telic meaning in the transitive verb construction. The first is to find real human purpose. Even if we are not prepared to ascribe the workings of the invisible hand to the purposes of actual gods and demons, it is no great leap to contend that those in charge of regulating financial products and making markets in the modern form of capitalism failed us.⁸⁴ Judge Posner notes, “[I]f the regulatory framework is defective, it must be changed, because competition will not permit businessmen to subordinate profit maximization to concern for the welfare of society as a whole, and ethics can’t take the place of regulation.”⁸⁵

Who are “they” and what did they do wrong? When one is participating in and regulating financial markets, professional judgments are more like scientific judgments than legal judgments. They involve understanding social systems, being able to propose predictive and testable hypotheses about how the systems work, and the effects regulatory intervention would cause. It is one thing to observe a physical system as an outsider; it is another to be a participant in the system and to say, for example, as the Chairman of the Federal Reserve, that this inflation in asset values is now a bubble and it is time to admin-

financial risk and uncertainty, in March 2009 and posed the question, “So many experts steered us wrong. Who can we trust?” He answered:

I sure as hell don’t know. This is an experience that has no precedent, so nobody is very smart on this occasion. I’m old enough to have lived through the Depression. The Depression was caused by and magnified by things entirely different. The Depression has very little to teach us. We’re really flying blind.

Jeffrey Nash, *Peter Bernstein: “Always Ask Yourself: What if I’m Wrong?”* MONEYWATCH, Mar. 9, 2009, <http://moneywatch.bnet.com/investing/article/peter-bernstein--always-ask-what-if-im-wrong/277141/>.

83. POSNER, CRISIS, *supra* note 2, at 2.

84. Miller, *supra* note 1, at 113 (“[Parceling out] moral blame to regulators, Wall Street financiers, loan originators and securitizers, auditors, rating agencies, and consumers” is a pious-sounding story bearing little relation to reality).

85. POSNER, CRISIS, *supra* note 2, at 2.

ister some corrective medicine. Once a catastrophe has occurred, the natural lawyerly impulse is to assign blame, because the retroactive assignment of blame, in the ordinary conception, is what lawyers do. I find that impulse unhelpful, believing as I do that the crisis has been as much epistemological as financial. My answer to the epistemological aspect of the crisis is to separate out the blame game of hindsight bias, confront what we know and do not know, decide what our goals are (for example, if you hedge against busts, you give up a lot of the fun on the ride up the bubble), and not fall victim to the faith that algorithms rather than continuing application of good (not perfect) judgment solve any of our problems.⁸⁶

The other approach to the telic meaning of the question is to understand the persistence of teleology in science. Even when our scientific minds tell us there is no purpose, and the universe is no more than a system operating deterministically or probabilistically under the laws of classical and/or quantum physics, the idea of a wholly atelic universe does not come easily. Shakespeare captured the ultimate animation of nature when he wrote, “[A]s flies to wanton boys, are we to the gods. They kill us for their sport.”⁸⁷ It reflects the human unwillingness to accept that nature is truly either random or deterministic, but the insistence instead on the intentionality of the gods. Even randomness in nature, the bad fortune that seems to befall us for no reason, has a reason, even if it is nothing more than the gods deciding they have the purpose of playing games of chance for their own entertainment.

Thus, the intellectual history of science has been in large part the replacement of telic cause with atelic cause (the traditional view that Johnson criticized).⁸⁸ Aristotle’s “final cause” was the concept that change occurs, even in nature, “for the sake of something.”⁸⁹ When we perceive systems in nature, we presume an order beyond mere chance, such that it does not matter whether there really was a “designer,” because when something works, it seems intuitive to be to an end or purpose, like a house to shelter us, or our incisors and molars appropriate to tear and grind our food:

[W]hen an event takes place always or for the most part, it is not incidental or by chance It is absurd to suppose that purpose is not

86. See Lipshaw, *supra* note 1, at 312–34.

87. WILLIAM SHAKESPEARE, KING LEAR act 4, sc. 1.

88. Johnson, *supra* note 56, at 40.

89. See Aristotle on Causality, *supra* note 5.

present because we do not observe the agent deliberating. . . . It is plain then that nature is a cause, a cause that operates for a purpose.⁹⁰

The ultimate in atelic causation was Hume's concept of causation as the mere perception of constant conjunction,⁹¹ the antithesis of the purposiveness called out by Shakespeare and his character Gloucester.⁹² Even after the Enlightenment, as secular philosophers and scientists came to view the processes of nature as something wholly apart from moral desert, teleology persisted, particularly in the social sciences.⁹³ It is simply silly to think that the toilet ballcock system has human-like ends or purposes to stop water flow, even if the function or purpose of the system is to do exactly that. As Professor Stephen Turner observed, even in the context of social systems, unless we are willing to accept a group mind or collective intelligence, "end-seeking is a property that adds no explanatory content—everything that happens does so because of the arrangement of causal mechanisms such as the feedback mechanisms that do the work of directing the system toward the end state."⁹⁴

But teleology still persists. Professor Turner asks, "To what extent are [social institutions] 'real,' or, put differently, do they possess any explanatory force beyond the elements of human action and physical causality that compose them?"⁹⁵ His speculations on the reasons for the persistence of teleology return, in a way, to Pinker's (or the Lakoff and Johnson) thesis: even attempts to state teleological terms in nonteleological language seem to fail. He cites Ernest Nagel's attempt to restate teleological statement <1> into purportedly nonteleological statement <2>:

<1> "The function of the leucocytes in human blood is to defend the body against foreign micro-organisms."⁹⁶

90. Aristotle, *Physics, Book II*, § 8, in THE PORTABLE GREEK READER 406, 428–29 (W.H. Auden ed., 1948).

91. Turner & Roth, *supra* note 33, at 12.

92. See SHAKESPEARE, *supra* note 87.

93. See Stephen P. Turner, *Cause, the Persistence of Teleology, and the Origins of the Philosophy of Social Science*, in THE BLACKWELL GUIDE TO THE PHILOSOPHY OF THE SOCIAL SCIENCES, *supra* note 33, at 21, 30.

94. *Id.* at 35.

95. *Id.* at 34.

96. *Id.* at 36 (quoting ERNEST NAGEL, THE STRUCTURE OF SCIENCE: PROBLEMS IN THE LOGIC OF SCIENTIFIC EXPLANATION 405 (1961)).

<2> “Unless human blood contains a sufficient number of leucocytes, certain normal activities of the body are impaired.”⁹⁷

Victor Gourevitch’s response was that statement <2>, in its use of *sufficient*, *normal*, and *impaired*, presupposed the function or purpose of a healthy blood system. Indeed, “the only real difference between [the] two statements is that the so-called nonteleological statement takes for granted what the teleological statement renders explicit.”⁹⁸

Thus, the question “did capitalism fail?,” at least in the transitive verb usage, implies that it has a purpose. One way to deal with teleology is to be more specific about identifying mechanisms, as in neoclassical economics, by understanding that there is not really an “invisible hand,” but that the reference is a shorthand way of (or a useful metaphor in) aggregating individual actions into a systemic tendency to reach (or, even more teleologically, seek) equilibrium.⁹⁹ It is one thing to ask if capitalism died or is dying (intransitively), and if so, figure out how to correct it. The danger of the persistence of teleology is when “other collective concepts used as explanations seem to be wholly analogical and incapable of being broken down into plausible mechanisms.”¹⁰⁰

The problem lies in the framing metaphor that serves as the persistent teleology: “Capitalism is a machine that serves to make us prosperous.” If we liken capitalism to a human body that had a stroke, and some of its metaphorical limbs were left paralyzed, maybe there are some medicines we could prescribe to restore the limbs to good use and some therapies we could adopt to avoid future strokes. Sometimes that works and sometimes it does not. But if we liken capitalism to a machine designed (or whose function is) to produce prosperity, then it must have broken for a reason we should be able to under-

97. *Id.*

98. *Id.* (quoting Victor Gourevitch, *Philosophy and Politics, II*, 22 REV. METAPHYSICS 281, 293 n.107 (1968)). Robert Miller has suggested to me that there is more of a principled difference between the “purposes” of an agent and the “functions” of a thing or system than I have credited here. *See, e.g.*, Francis Slade, *Ends and Purposes*, in FINAL CAUSALITY IN NATURE AND HUMAN AFFAIRS 83, 83–85 (Richard F. Hassing ed., 1997). To a large extent, the very debate supports my point. Turner addresses this explicitly in the referenced discussion: “Whether *functional* arguments avoid the traditional difficulties of teleology is controversial.” Turner, *supra* note 93, at 35 (emphasis added).

99. Turner, *supra* note 93, at 38.

100. *Id.*

stand, we should be able to fix it, and we should feel confident that future breakages will not occur.

James Champy's description of the business manager's ordeal is a profound assessment of the operative metaphor of the machine, and is equally applicable to the ordeal of the regulatory manager.¹⁰¹ Alfred Sloan envisioned and created "a *management machine*, a way to build not just cars, but an entire company."¹⁰² The metaphor had great appeal: the company was a cruise ship that, correctly managed, "should operate with perfect reliability and rationality."¹⁰³ The problem was that the metaphor, a product of the 1920s, lost its explanatory power in the competitive seas of the 1980s and 1990s. Champy proposed a different metaphor (while acknowledging the danger of using *any* metaphor): managing a company was more like sailing a boat "because there are so many factors—the wind, the tide, the weather—sailors have no control or command over."¹⁰⁴

The metaphor of the machine feeds the persistence of what we would have thought was benign teleology—that there is an order in the physical and social worlds and so we are capable of reducing explanation to a set of laws. The hubris of the financial engineers at AIG and elsewhere now blamed for the mess and Judge Posner's criticism of them, and the economists who were supposed to understand their activities and the regulators who were to limit them, are merely opposite sides of the same coin.¹⁰⁵ It turns out that there is no algorithm for an incessantly upward financial return (and if you see such a return over a long period there must be something fishy going on). To be sure, the great merit in identifying causal mechanisms for the purpose of avoiding similar mistakes in the future is beyond argument (though the pessimist in me believes that we will, like the generals, be fighting the last war when the new crisis, whatever it is, arrives). The problem is that any teleology of the financial crisis seems to slip quickly from helpful explanatory metaphor to the very real ascription of purposes to gods or demons.

101. JAMES CHAMPY, REENGINEERING MANAGEMENT (1995).

102. Sloan was a founder of General Motors. *Id.* at 13.

103. *Id.* at 14.

104. *Id.* at 32.

105. See POSNER, CRISIS, *supra* note 2, at 339–52.

D. TÖNNIES AND THE PERSISTENCE OF METAPHORIC
AMBIVALENCE

The question then is: Why such slippage? My thesis is that questions like “did capitalism fail?” belong to a tradition of positing grand theories of the movement of history, and there is not that much difference between the construction of explanatory metaphors as between science, on one hand, and gods or demons, on the other.

One example of such a grand theory was Ferdinand Tönnies’s attempt to reconcile traditional communities of belief with the impersonal structures of modern life in his seminal *Gemeinschaft und Gesellschaft* (Community and Civil Society), originally published in 1887 and updated through 1935.¹⁰⁶ *Gemeinschaft* is the model of rural or village life, “based essentially on concord, on the fundamental harmony of wills, and is developed and cultivated by religion and custom.”¹⁰⁷ *Gesellschaft* is the model of modern urbanized institutions, “based on convention, on a convergence or pooling of rational desires; it is guaranteed and protected by political legislation, while its policies and their ratification are derived from public opinion.”¹⁰⁸ In Tönnies’s time, the equivalent question to “did capitalism fail?” was “have modern social organizations of like capitalism [*Gesellschaft*] left community [*Gemeinschaft*] in the dust?”¹⁰⁹

Two things are significant about a look back at Tönnies. First, it illustrates the influence of metaphoric frames, for better or worse, on grand sociological questions. If, as the metaphor theorists assert, the essence of thought is developing meanings out of “mental constructions involving many spaces and many mappings in elaborate integration networks,”¹¹⁰ it comes as no surprise Tönnies can construct, and readers can interpret, a conceptualization of social organization that is at once static and dynamic. For example, Fauconnier and Turner demonstrate the complex meanings that can arise by way of

106. FERDINAND TÖNNIES, COMMUNITY AND CIVIL SOCIETY app. at 247–61 (Jose Harris ed., Jose Harris & Margaret Hollis trans., 2001) (1887). Its English editor described it variously as “precocious immaturity,” “immensely ambitious,” and “steeped in erudition,” but “nevertheless frequently tortuous and obscure in the exposition and knitting together of its central arguments.” Jose Harris, *General Introduction* to COMMUNITY AND CIVIL SOCIETY, *supra*, at ix, xv.

107. TÖNNIES, *supra* note 106, app. at 247.

108. Harris, *supra* note 106, at ix, xv.

109. TÖNNIES, *supra* note 106, app. at 247.

110. Gilles Fauconnier & Mark Turner, *Rethinking Metaphor*, in THE CAMBRIDGE HANDBOOK OF METAPHOR AND THOUGHT, *supra* note 53, at 53, 53.

conceptual integration from the fundamental metaphor “time is space:”¹¹¹

<3> Three hours went by and then he had dinner.

<4> Minutes are quick but hours are slow.

<5> Those three hours went by slowly for me, but the same three hours went by quickly for him.

This is not pure metaphor or analogy, but conceptual integration to create meaning. Statement <3> involves not only projecting the order of space by units to time, but also making those units into moving objects. But in space, units of measurement do not move. Moreover, if “time” as an object moves, then its units ought to move at the same speed, but the allusion in statement <4> suggests they do not. Statement <5> adds the projection of a subjective perception of the moving objects such that we are able to imagine “fast” hours and “slow” hours; that is, even the individual units that move at the same speed may appear not to do so.¹¹²

Tönnies’s dichotomies are steeped in metaphors and integrations far more complex than “time is space” or even “minutes flowed like hours.” While both presume peaceful communities, Tönnies’s metaphor for *Gemeinschaft* is “a living organism in its own right”; *Gesellschaft* is a “mechanical aggregate and artefact.”¹¹³ Moreover, there is a metaphor of movement: the “entire development [of *Gemeinschaft*] involves progression toward market [*Gesellschaft*].”¹¹⁴ The essential debate about the work has been the following: does it mean to say, as a historical progression, urban society left village communities in the dust, or is it an assessment of sociological archetypes that have always coexisted, albeit more or less at any given time? “Tönnies was consistently to maintain that the dichotomies he had identified were not time-specific or mutually exclusive, and that contrasting types of institution—and contrasting attributes within a single institution—would always co-exist in any historical setting.”¹¹⁵

Nevertheless, it appears (legitimately, and readers have so interpreted it) to be an assertion of the historical reality of un-

111. *Id.*

112. *See id.* at 54–55.

113. TÖNNIES, *supra* note 106, at 19.

114. *Id.* app. at 258.

115. Harris, *supra* note 106, at xxviii.

ambiguous movement from one end to the other of the conceptual polarity.¹¹⁶ The traditional culture of community, or *Gemeinschaft*, “despite many outward trappings of continuity,” was being “swept away by the rise of mass marketing, limited liability, and large-scale business corporations,” or *Gesellschaft*.¹¹⁷ The lesson from this reading is that framing metaphors projecting from “time is space,” such as “history is a journey through time,” are so powerful that authors themselves may either intend them or be unable to keep readers from inferring them. I simply do not know (nor, I suspect, do the organizers of the symposium) whether the underlying metaphor in “did capitalism fail?” is atelic, as capitalism failing in the natural evolution of things, or telic, as in either the machine, the gods, or the demons failed us.

There is, however, a second, more positive, point to take from Tönnies. If we take him at his word, he is telling us we were capable then, individually and as a society, of being simultaneously premodern and modern. I see no reason to think that has changed in a mere hundred years. The metaphor of gods and demons making history, on one hand, and the metaphor of capitalism as a fixable machine, on the other, each stem from the same cognitive source and each is, in its own way, a caricature. Fauconnier and Turner tell us that what might seem to be a naïve projection of an invisible hand is, cognitively speaking, a highly elaborate cognitive integration. “One standard conceptual technique is to project agency into the occurrence of events,” and the agents can be abstractions like time as in “[t]ime marches on” or “[t]ime waits for no man.”¹¹⁸ And in his criticism of the traditional philosophical view that causation is an objective fact of the physical universe rather than a set of metaphoric mappings from the human experience of physical relationships, Johnson observes that “there is *no way* to avoid the use of one or another basic causal metaphor in science,” as much as we might think good scientific explanations should not employ metaphor at all.¹¹⁹

The teleological metaphor is alternatively machines, gods, or demons, and the latter two can be human or divine. The met-

116. Indeed, Emile Durkheim himself read the text not as an analytic framework for understanding social organization, but as the description of a “historical shift from a ‘solidarist’ past to a ‘mechanistic’ future.” *Id.* at xxix.

117. *Id.* at xiv.

118. Fauconnier & Turner, *supra* note 110, at 61–62.

119. Johnson, *supra* note 56, at 42.

aphor of the machine is that capitalism is a system *designed* to make us prosperous, and one that we can tinker with and perfect. The alternative metaphor is that we can lay the blame for booms, bubbles, and busts at gods, demons, Wall Street bankers, or the Federal Reserve. Each seems to me as much a caricature of reality as the other. As much as we try to control uncertainty, some residual amount is, by the nature of things, going to remain a mystery beyond our understanding. As Peter Bernstein observed in his seminal book on risk, we try “to comprehend nature’s tendency to repeat itself, but only imperfectly.”¹²⁰ He too links gods and machines, and their succession in time as though *Gemeinschaft* yielding to *Gesellschaft*: “Those who live only by the numbers may find that the computer has simply replaced the oracles to whom people resorted in ancient times for guidance in risk management and decision-making.”¹²¹ Even the most sophisticated decisionmaking models rely on a leap of faith: that in the relevant respect, the future will resemble the past. Bernstein turns to the novelist G.K. Chesterton for the proposition that life “looks just a little more mathematical and regular than it is; its exactitude is obvious, but its inexactitude is hidden; its wildness lies in wait.”¹²² And hindsight is always twenty-twenty: “After the fact . . . the source of the wildness appears to be so obvious to us that we have a hard time understanding how people on the scene were oblivious to what lay in wait for them.”¹²³

This is no appeal to quietism or inaction. Moreover, in the course of taking action, there is great value in asking a question like “did capitalism fail?” If we cannot avoid metaphor in the complex conceptual integrations that constitute our perceptions of causation, then we can at least be reflective about the metaphors themselves. The great value of teleology in thinking about the financial crisis is Bernstein’s more moderate view:

120. PETER L. BERNSTEIN, *AGAINST THE GODS: THE REMARKABLE STORY OF RISK* 329 (1998). Note that in 1998, Bernstein identified counterparty solvency on financial derivatives as the key systemic risk and, in a poignant example of uncertainty, cautioned against overregulating, noting that “there is only a fine line between guaranteeing absolute safety and stifling the development of financial innovations that, properly handled, could reduce the volatility of corporate cash flows.” *Id.* at 325–28. For an interview with Bernstein after the onset of the current crisis (and shortly before Bernstein passed away), see Nash, *supra* note 82.

121. BERNSTEIN, *supra* note 120, at 336.

122. *Id.* at 331 (quoting GILBERT KEITH CHESTERTON, *ORTHODOXY* 148–50 (1909)).

123. *Id.* at 334.

even if cause and effect itself remains elusive, there is sufficient order and predictability in human affairs that abstract social sciences like economics and concrete disciplines like insurance and risk management *work*. If we have a systemic disease, then we need to do the diagnostics and prescribe the appropriate regulatory medicine.¹²⁴ I am no expert, but at least some prescriptions about the kinds of systemic risk that provoke these questions come to mind: (a) either sweeping the high-risk shadow banking system into banking regulation (which seems unduly conservative because there ought to be a place for such activity) or limiting the amount of leverage that commercial banks may undertake by separating that activity from more speculative banking (the point of Glass-Steagall);¹²⁵ and (b) addressing the fact that systemic risk is not merely a banking problem by providing for a liquidity lender of last resort as proposed by Steven Schwarcz.¹²⁶

Nevertheless, walking the line between the metaphors of machines and demons is not easy, and commentators as astute as Judge Posner can get a mediocre grade. Even though he correctly observes with Bernstein that risk is simply that aspect of uncertainty we have come to systematize in a reliable way,¹²⁷ nevertheless he seems unwilling to accept, with Bernstein, that some part of the wildness will always wait. The metaphor of the machine dies hard. Uncertainty by definition constitutes the universe of those predictions for which there is no algorithm. Yet Judge Posner clings to the tautology that an algorithm or a function can somehow model (and therefore control) the effect of uncertainty, expressing uncertainty aversion instead as a function of the time and cost it takes to gain infor-

124. Steven L. Schwarcz, perhaps the leading legal commentator on systemic risk, identifies the kind of event that induces questions like “did capitalism fail?”—widespread panic that induces systemic collapse. Steven L. Schwarcz, *Systemic Risk*, 97 GEO. L.J. 193, 193 (2008). The ultimate goal of law and regulation is to reduce the likelihood of such panic. This is, of course, easier said than done. As Professor Schwarcz observes, “[a]ny regulation aimed at preventing panics that trigger systemic risk, however, could fail to anticipate all the causes of these panics.” *Id.* at 214–16.

125. For an overview of this kind of reform, see POSNER, *CRISIS*, *supra* note 2, at 353–60. As to reducing leverage generally, see Schwarcz, *supra* note 124, at 223–24. I note that Judge Posner and I share “disease metaphors” on this point. POSNER, *CRISIS*, *supra* note 2, at 166.

126. Schwarcz, *supra* note 124, at 225–30, 241–43. Claire Hill also summarizes prudent regulatory moves that get at causes rather than the attribution of blame. Hill, *supra* note 4, at 346–49.

127. POSNER, *CRISIS*, *supra* note 2, at 289–90.

mation, and linking uncertainty aversion to liquidity preferences that are the proximate cause of systemic credit freezes.¹²⁸

Alternatively, the metaphor of demons also dies hard, even if Judge Posner's well-taken point is that reform ought to be "serious, neutral, [and] patient."¹²⁹ Judge Posner himself finds no shortage of people and institutions at which we may point fingers (the Federal Reserve Chairman, economists, credit rating agencies, and government-sponsored entities like Fannie Mae). Judge Posner says that a realist view of human rationality "acknowledges the role of irreducible uncertainty in decision making."¹³⁰ If so, even what appear in hindsight to be misjudgments by the regulators need to be opportunities for learning rather than opprobrium. I am afraid that the distinction between political and disinterested blaming (the kind Judge Posner claims to provide) is far too subtle to overcome the demonic metaphor.¹³¹ Given my thesis about the attribution of agency even to events that are not agents, it is not hard to see how disinterested attribution of cause morphs into political blaming. It is only a small move from "you caused this consequence" to "you are to blame for this consequence." The former is likely affected by hindsight bias, and the latter may be motivated by ideology, but both still have to do with finding fault.¹³²

128. *See id.* at 295–96.

129. *Id.* at 362.

130. *Id.* at 31.

131. *Id.* at 250–51.

132. Judge Posner's discussion of causation and hindsight bias highlights the same difficulties of scientific or philosophical causation, on one hand, and legal causation, on the other, that I discussed in Lipshaw, *supra* note 1, at 312–34. Judge Posner's thesis is that experts like Alan Greenspan and Ben Bernanke made errors in professional judgment—namely, in failing to anticipate consequences from extant conditions. POSNER, CRISIS, *supra* note 2, at 5. Such are inductive judgments, common in science, that require the identification of a past regularity, the rule for which can be used as a hypothesis to predict future results.

Judge Posner is correct in stating that hindsight bias is an after-the-fact confusion of actual with perceived probability, the event having actually occurred. *Id.* at 259. As a result of hindsight bias, people so affected "believe that they, and others, should have been able to anticipate the event and they even 'misremember their own predictions so as to exaggerate in hindsight what they knew in foresight.'" Norbert Schwarz & Leigh Ann Vaughn, *The Availability Heuristic Revisited: Ease of Recall and Content of Recall as Distinct Sources of Information*, in HEURISTICS AND BIASES: THE PSYCHOLOGY OF INTUITIVE JUDGMENT 103, 112 (Thomas Gilovich et al. eds., 2002) (quoting B. Fischhoff, *Debiasing*, in JUDGMENT UNDER UNCERTAINTY: HEURISTICS AND BIASES 428 (D. Kahneman et al. eds., 1982)). But the effect of hindsight bias may not just be confusion; as Judge Posner puts it pithily, hindsight bias is "a

CONCLUSION

I am wholly incapable of answering the question of whether capitalism failed. In this Article, I have instead probed the syntax and semantics of the question itself to see if they provide insight into the meaning that modern and intelligent human beings draw from catastrophes like the financial crisis. The question does indeed reflect ambivalence about purposes and ends, the telos, in the physical and social worlds. Using Pinker's insights into language, I conclude that the verb construction of the question is ambiguous (being patently intransitive but latently transitive).

Moreover, each possible verb construction leads us to a different kind of explanatory metaphor about cause and effect in the financial crisis. The intransitive verb construction evokes an atelic metaphor in which capitalism is a machine that failed (in the sense that it got sick) and simply needed to be fixed. The lesson in that case is the fragility of the metaphor that appears when it turned out that the doctors appeared not to know how to cure the patient. The transitive verb construction evokes a telic metaphor in which something or someone failed *us*, and we need to blame an agency, whether it turns out to be human, god, or demon.

Finally, asking questions like "did capitalism fail?" is indeed helpful if they cause us to question the metaphors. The persistence of teleology and the metaphors by which we derive meaning, it seems to me, are aspects of the human condition, and neither good nor bad.¹³³ They morph easily, however, into the finger pointing not only of disinterested blame, but also of

potent source of unjust blame." POSNER, *CRISIS*, *supra* note 2, at 196.

Thus, even disinterested hindsight bias is still bias and therefore suspect. See Kim A. Kamin & Jeffrey J. Rachlinski, *Ex Post ≠ Ex Ante: Determining Liability in Hindsight*, 19 *LAW & HUM. BEHAV.* 89, 90 (1995) ("[T]he possibility that the hindsight bias may make precautions that seem reasonable in foresight look inadequate in hindsight."); Susan J. Labine & Gary Labine, *Determinations of Negligence and the Hindsight Bias*, 20 *LAW & HUM. BEHAV.* 501, 504-05 (1996) ("[T]he outcome . . . would significantly influence the decision about the reasonableness of the . . . actions."). I have no brief to defend Alan Greenspan or Ben Bernanke, but Judge Posner's book did not persuade me that their decisions were blamably misguided or unreasonable as opposed to being merely wrong in retrospect. Yet it is hard not to draw the conclusion that Judge Posner finds their decisions culpable as measured by some standard of care, even if not a legal one.

133. Robert T. Miller notes in precisely this context: "[I]t takes a philosophical temperament to survey the limits of the human condition and nod at them ironically." Miller, *supra* note 1, at 137.

political recrimination. My objective is not some unobtainable dispassion, only a more reflective and measured assessment of cause and effect.