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The Age of Aquarius Or, How I (Almost) Learned to Stop Worrying and Love Free Markets

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Review Essay

The Age of Aquarius or, How I (Almost) Learned to Stop Worrying and Love Free Markets

Saving Capitalism from the Capitalists: Unleashing the Power of Financial Markets to Create Wealth and Spread Opportunity. By Raghuram G. Rajan & Luigi Zingales, Crown Business, 2003.

Reviewed by Lawrence E. Mitchell[†]

Raghuram Rajan and Luigi Zingales tell a beautiful story beautifully told.[1] It is a story of harmony and understanding, peace and prosperity. It is a story that shows the way for citizens of the world to join hands across their borders and usher in a new age of universal happiness. It is also a story of redemption, in which the despised financier, immortalized by the fictional Sherman McCoy and Gordon Gecko and the very real Michael Milken, are shown to be the true prophets of this new age. It is a story that implores us to abandon our fears and prejudices, our knee-jerk reactions to the superficial coldness of free-market capitalism, accept its intrinsic beauty, and work together to bring about this Age of Aquarius.

The story casts Rajan and Zingales as latter-day Adam Smiths, condemning the conspiratorial haves of the capitalist order as nefariously preventing the dawning of this new era in order to protect their positions of power and wealth, and fore-

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1. RAGHURAM G. RAJAN & LUIGI ZINGALES, SAVING CAPITALISM FROM THE CAPITALISTS: UNLEASHING THE POWER OF FINANCIAL MARKETS TO CREATE WEALTH AND SPREAD OPPORTUNITY (2003).

closing the opportunities that free markets can create for all, in fear that truly free markets will, as they have to some significant extent, shake up the old order and make these dukes of the dollar actually work for their money, and operate in a way that enhances efficiency rather than constrains it. It is the capitalists themselves—here cast as entrenched industrialists and wealthy heirs—who prevent the full flowering of capitalism. It is McCoy, Gecko, Milken, and the other members of the merry band who inhabit that Sherwood Forest known as Wall Street who will liberate us and the markets we need from this tyranny.

Enough of mixed metaphors. There is much truth to this story. Rajan and Zingales, following the insights not only of economists but, at least implicitly, of sociological giants like C. Wright Mills[2] and William Whyte,[3] tell a tale of an earlier age of hierarchy—an era in which the mid-century industrialists stifled the capital markets that were beginning to flourish before the Depression, and created vertically integrated industrial monoliths that funneled wealth and power into and to the top of hierarchical structures, constraining managers and skilled workers by drying up sources of capital which might have allowed them to become entrepreneurs, and even limiting their career mobility by channeling their skills into highly specialized and company-specific roles.[4] Rajan and Zingales, with unusual psychological sensitivity for practitioners of a discipline that, until recently, eschewed anything resembling a psychological insight,[5] understand the fear that motivated the industrialists, the fear that the kind of competition characteristic of free markets might well dethrone them, and the economic, political, and institutional steps they took to preserve their power.[6] Rajan and Zingales accurately, and without losing so-

2. C. WRIGHT MILLS, THE POWER ELITE (1956); C. WRIGHT MILLS, WHITE COLLAR: THE AMERICAN MIDDLE CLASSES (1951).

3. WILLIAM H. WHYTE, JR., THE ORGANIZATION MAN (1956).

4. For the leading accounts of industrial development that gave rise to this period, see ALFRED D. CHANDLER, JR., SCALE AND SCOPE: THE DYNAMICS OF INDUSTRIAL CAPITALISM (1990); ALFRED D. CHANDLER, JR., THE VISIBLE HAND: THE MANAGERIAL REVOLUTION IN AMERICAN BUSINESS (1977).

5. The insights have been around for decades. See the collection of articles in CHOICES, VALUES, AND FRAMES (Daniel Kahneman & Amos Tversky eds., 2000); ADVANCES IN BEHAVIORAL FINANCE (Richard H. Thaler ed., 1993). Only recently have they made significant inroads into neoclassical analysis. ANDREI SHLEIFER, INEFFICIENT MARKETS: AN INTRODUCTION TO BEHAVIORAL FINANCE (2000).

6. For an economical historical account arguing that American public

phistication in a book that is artfully written for a general audience, detail what they see as the heroic history of modern finance, from Harry Markowitz's development of portfolio theory[7] to the rise of financial intermediaries that dramatically increased the ability of citizens of developed countries to participate in capital markets and not only enhanced the efficiency of those markets but, in so doing, began to force apart the hierarchical structures built to constrain them.[8]

The power of the market is undeniable. It has caused the collapse of what I refer to as "the age of hierarchy," created entrepreneurial opportunity, opened avenues of participation for those who were repressed during the age of hierarchy (like women and minorities), and led to wonderful new technologies that have the potential, some of which already has been realized, to create a world of economic opportunity for all.[9] What I term, and Rajan and Zingales celebrate, as "the age of markets," in contrast to the age of hierarchy, is no respecter of position and place. The age of markets respects ideas, energy, and enterprise. Implicit in this story is the deep and abiding belief that the age of markets is the ultimate realization of democracy throughout much of the world.[10]

Rajan and Zingales are refreshing. This is neoclassical economic theory with soul. It is clear throughout the book, as it is from their prior work, that these two care deeply about the economic injustices of the world and want to change it. They

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policy through much of the twentieth century opposed big finance, see MARK J. ROE, STRONG MANAGERS, WEAK OWNERS: THE POLITICAL ROOTS OF AMERICAN CORPORATE FINANCE (1994).

7. Harry Markowitz, *Portfolio Selection*, 7 J. FIN. 77 (1952).

8. *See* LAWRENCE E. MITCHELL, CORPORATE IRRESPONSIBILITY: AMERICA'S NEWEST EXPORT 165–66 (2001). The recently repealed Glass-Steagall Act and the securities legislation of 1933 and 1934 were early attempts to break up financial institutional power. Roe is particularly instructive on this point. ROE, *supra* note 6.

9. I explore the transformation from the age of hierarchy to the age of markets and the accompanying benefits and social dislocations more deeply in an untitled book-in-progress.

10. Rajan and Zingales imply not only that the markets are democratic, but that they tend to help sustain democratic institutions. *Cf.* RAJAN & ZINGALES, *supra* note 1, at 16, 132, 164. While it is hard to quibble with the assertion that markets, in their ideal form, are democratic, I will later explore the anti-democratic effects of the market in several iterations. *See infra* pp. 928–33. It is also the case that free market capitalism does not necessarily go hand in hand with democracy, as the case of Singapore demonstrates, and as is also demonstrated by the increasingly capitalistic People's Republic of China.

downplay the parsimonious description so prized by their colleagues—the narrow search for wealth of *homo economicus*—and show us, with real normative insight, how the dismal science can ennoble human life, even if that life ultimately proceeds from motives of self-interest. Their project brings to mind Richard Posner's failed attempt to show how the wealth maximization principle is reducible to a form of Kantian morality.[11] But unlike Posner, and more successfully I think, Rajan and Zingales believe that they do not need a deontological apology for neoclassical economics. They see no need to twist theory to link it with the great moral traditions of the West, for the moral justification of their project is clear on every page: liberate finance and the world will be a happier place.

Their argument is so lovely, and so well-motivated, that even a curmudgeonly lifelong critic of free markets like myself can hardly help but feel uplifted. That is, as long as one takes their argument on their own terms. And, to be fair, this is the kind of book in which they are entitled to make the argument on their own terms. Sophisticated as it is, this is a book written for a popular audience, not an academic one, and Rajan and Zingales take full advantage of their liberation from academic conventions to make the case they want to make.[12] They see relatively little need to address the critics, no reason to probe every argument in the literature, and in this they are justified. But they embrace their liberation with a vengeance. Rajan and Zingales tell a good story. The problem is that, rather quickly, their story begins to resemble a fairy tale. It is *Othello* without Iago,[13] a Mozart sonata without the fleeting shift to minor in the recapitulation,[14] *The Sun Also Rises* without Jake's debilitating injury.[15] And so, swept along as I was by their enthusiasm and intelligence, I finished the book recalling Jake's final line to Brett, in which he responds to her speculation as to how

11. Richard A. Posner, *The Ethical and Political Basis of the Efficiency Norm in Common Law Adjudication*, 8 HOFSTRA L. REV. 487 (1980).

12. This is not to say that the book is not grounded in serious scholarship. Many of the arguments they make appear in a series of articles they have written separately and together, some of which are cited throughout this essay.

13. WILLIAM SHAKESPEARE, OTHELLO (Philip Brockbank ed., Cambridge Univ. Press 1984).

14. *See, e.g.*, W.A. Mozart, Sonata for Piano in F Major, KV 332 (300k), *Allegro*, measures 216–218.

15. ERNEST HEMINGWAY, THE SUN ALSO RISES (Collier Books 1986) (1926).

wonderful their relationship might have been: "Isn't it pretty to think so?"[16] Despite their denials of ideology (and their very real attempts to avoid it), Rajan and Zingales are so committed to the free market ideal that they fail to see the full effect of the deformities, even while acknowledging those deformities exist and suggesting ways of remedying them.

For the balance of this essay I will tell the stories Rajan and Zingales don't tell, the stories that make their own so deeply flawed. In doing so, I will of course draw on their text, taking aspects of their story and showing their alternatives. And in doing so, I will debunk their argument. But I do so sadly, for the world they envision is indeed a world that could be realized. To realize it with the beauty they envision, though, requires grappling with many other stories, stories that are parallel to or intertwined with the stories they tell. It requires probing the famously dark underside, in the way that sophisticated readers approach the superficially joyous poems of Robert Frost. And it requires exposing one blind spot in particular, for Rajan and Zingales write with an unconscious class bias, the exposure of which throws all of their optimism in doubt. They are winners in the market in which they operate. It is often hard for winners fully to appreciate their advantaged position, and to have a meaningful understanding of the problems of the losers.[17]

THE BASIC ARGUMENT

The essential argument Rajan and Zingales make is one that is both simple and compelling—compelling not only because of their clear and comprehensible use of economic theory but also because of their often fascinating historical and contemporary examples, their artful deployment of economic history, their unblinking understanding of the policy implications of their argument, and their occasional use of philosophy.[18] The argument is, concisely, this: free markets create opportunities

16. *Id.* at 247.

17. For an argument exploring the inability of American society's winners even to begin to develop the imaginative tools necessary to understand the plight of the losers, see LAWRENCE E. MITCHELL, STACKED DECK: A STORY OF SELFISHNESS IN AMERICA (1998).

18. They suggest at one point that it is best for a system of relief for those who fail to succeed in their capitalistic utopia to be selected behind a veil of ignorance, drawing on the philosophical thought-device made famous by John Rawls. RAJAN & ZINGALES, *supra* note 1, at 301–02; *see* JOHN RAWLS, A THEORY OF JUSTICE (1971).

for talented individuals to obtain capital to finance their projects. The market is, in a real sense, a liberator from the oppression of vested interests who use their political clout to restrain product competition and, more significantly, this access to capital.[19] Restraint of competition is not only deleterious to economic democracy, but it is also often inefficient, as the vested interests (the "incumbents" in Rajan and Zingales's terminology) are not always the most talented and best users of resources. It is only when these incumbents are made to give up their stranglehold on capital, which requires state intervention, that it can freely move to those who are best able to use it, resulting in an economic climate resembling a true meritocracy in which all can compete, and a more innovative and beneficial economy for all.

This is true political economy in the style of Smith, Ricardo, Marx, Veblen, and Schumpeter—a style practiced before Rajan and Zingales's colleagues at the University of Chicago turned micro-economics into an almost exclusively quantitative and arid discipline, devoid of history, context, and humanity. And, indeed, politics is very much at the heart of Rajan and Zingales's argument. Contrary to libertarian arguments that free markets will spontaneously arise and flourish in the absence of governmental intervention, Rajan and Zingales see quite the opposite. Free markets are, as they describe them, a "delicate plant" that requires nurturing,[20] by which they mean protection from the political forces that will inevitably seek to destroy them. In order to maintain free markets, governmental regulation is, to a point at least, necessary. Governmental infrastructure creates the environment in which markets can flourish—governmental regulation creates an even playing field, sets the ground rules for competition, and breaks apart monopolies.

The reason that free markets are so fragile is, as I noted earlier, partly a result of the power wielded by the incumbents. Rajan and Zingales see another source of threat. Following Schumpeter, they focus both on the creative and destructive aspects of free market capitalism.[21] The creative aspects are, to

19. In this, of course, they follow Adam Smith. ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS 135–59 (R.H. Campbell et al. eds., Oxford Univ. Press 1976) (1776).

20. RAJAN & ZINGALES, *supra* note 1, at 277.

21. JOSEPH A. SCHUMPETER, CAPITALISM, SOCIALISM, AND DEMOCRACY (2d ed. 1947). They do, however, seem to disregard Schumpeter's conclusion

them, fairly obvious. It is the destructive aspects that require more attention. For not only do businesses fail in a rough and tumble free market competition, but people get hurt. While ordinarily the people most hurt by the free market, the losers in the competition, lack the political organization and clout to restrain or remediate the destructive effects of the market in times of crisis, which inevitably occur in free market environments—stock market crashes, depressions, bank failures, currency crises, bankruptcies, massive layoffs, and the like[22]—the very scope of the crisis brings it to broad public attention. At times like these, the losers can coordinate on the publicity surrounding the particular failure and overcome the ordinary collective action problem which precludes their quotidian inability to take political action. Crises provide a mechanism that allows them to unite to compel governmental intervention to alleviate their suffering, intervention which generally results in constraints on the market. This is exactly the time that the power of the incumbents is most powerfully deployed as well, because they can use the protests as cover to lobby for "reforms," ostensibly in the public interest but that will invariably restrict competition in both product and capital markets in their favor. Rajan and Zingales's example of the effect of the 1933 and 1934 United States securities acts as protective legislation for the investment banking industry[23] is a fascinating revisionist take on this well-worn subject.

For all of this, the book is essentially, although rather subtly, a tract in favor of globalization. While Rajan and Zingales conclude with a number of solutions to the problems they pose, two cures are central to their argument: open borders with respect to trade and, more importantly, open borders with respect to capital.[24] It is only when a critical mass of nations keeps their borders open that domestic governments remain unable, except to their obvious economic detriment, to cave in to the demands of the incumbents and the losers to restrict competition.[25] Thus, the true savior of the free market is a world economy, unimpeded by currency restrictions, barriers to cross-

that capitalism ultimately will destroy itself. *Id.* at 162.

22. For the leading historical account of these phenomena, see CHARLES P. KINDLEBERGER, MANIAS, PANICS, AND CRASHES: A HISTORY OF FINANCIAL CRISES (4th ed. 2000).

23. RAJAN & ZINGALES, *supra* note 1, at 222.

24. *Id.* at 182–91.

25. *Id.*

border lending and securities trading, restrictive tariffs, and the like.[26]

There is a charmingly Jeffersonian adjunct to the global solution they seek: firms should be kept relatively small, at least small enough to sterilize their inchoate political power. To this end they are vigorous advocates of enforcement of the antitrust laws.[27] The world that will result from all of this is, as they see it, a world of yeoman industrialists and entrepreneurs, with far more equitable global economic distribution than currently exists, and a world made safe for capitalism (and, implicit in their argument, for democracy).

This, in a nutshell, is their story. It is a story I want to believe. But despite their sensitivity to the need to protect the losers (as much to keep them from rising up against the market as for any philosophical reasons), it remains a story that is incomplete. When alternative tales are told, the story becomes far less compelling.

THE ANTI-DEMOCRATIC DANGERS OF FINANCE THEORY

Finance theory itself is a significant hero in Rajan and Zingales's story. Since this is, after all, a book about finance, the topic provides a nice point of departure. From Harry Markowitz's development of portfolio theory to efficient market theory and the capital asset pricing model, Rajan and Zingales see modern finance theory as the principal instrument of market liberation.[28] There can be little question that modern finance theory has catalyzed investment strategies that encourage portfolio diversification. The concomitant spread of finance throughout the capitalist world has enabled dramatically higher numbers of people to participate in the capital markets as investors, reaping the rewards in their individual portfolios and pension funds through the media of institutional investors like mutual funds and pension funds.[29]

26. *Id.*

27. *Id.* at 296.

28. *Id.* at 45–48.

29. In 2001, banks, insurance companies, private and public pension funds, and mutual funds owned approximately 48% of all U.S. equities. BUREAU OF THE CENSUS, DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES: 2002 tbl.1173 (2002) [hereinafter STATISTICAL ABSTRACT 2002]. Despite the celebration of widespread stock ownership in the United States (about half of all families own equity of some kind, *see id.* at tbl.1186),

There is, however, a dark side to finance theory, for it has produced collateral consequences, almost certainly unintended, that threaten democracy on two fronts. The first is the enormous concentration of capital in the hands of institutional investors.[30] The second is the detachment of the entire concept of investing from the ultimate investment vehicle—the corporation itself—and the creation of "the market" as the object of interest, thus increasing the power of corporate managers to act with little restraint except in the pursuit of higher profits by whatever means necessary.[31]

The story of capital concentration is a simple one. When Markowitz developed portfolio theory, approximately seven percent of the American population held stock in any form and the mutual fund was a virtually unknown quantity.[32] But the logic of that theory led, in the late 1960s and gaining steam through the 1970s until the present, to the creation of investment vehicles through which individuals with relatively modest wealth available for investment could achieve the diversification that theory told them was desirable. This, of course, was the mutual fund and, as defined contribution pension plans began to outpace defined benefit plans, pension funds developed through which workers can direct their own investments to mutual funds.[33] As a consequence, and with the rising popularity of the stock market through the takeover decade of the 1980s and the tech bubble of the 1990s, institutional investors owned slightly more than half of all American equities in 2002.

The bare numbers may not be frightening. Where the story becomes darker is the realization that the number of institutions which operate these funds are relatively few. In 2001, there were 8307 mutual funds in the United States managed by only 266 mutual fund companies and 10,105 portfolio manage-

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the fact remains that stock ownership is heavily concentrated in the hands of the rich. In 1995, the top 1% of all American households (in net worth) had 30.3% of their wealth invested in securities, in contrast to the next 19%, with 18% so invested, and the bottom 80%, with only 4.1% so invested. Edward N. Wolff, *Recent Trends in the Size Distribution of Household Wealth*, 12 J. ECON. PERSP. 131, 139 tbl.5 (1998).

30. RAJAN & ZINGALES, *supra* note 1, at 74.

31. MITCHELL, *supra* note 8, at 99.

32. BUREAU OF THE CENSUS, DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES: 1960 tbl.2, tbl.600.

33. For example, there were 8307 mutual funds in 2001, up from 3079 as recently as 1990. STATISTICAL ABSTRACT 2002, *supra* note 29, at tbl.1190.

ment firms.[34] While these funds have duties to their investors to maximize profits, what should be striking is their concentration of wealth in relatively few hands.

Concentrations of wealth, translated into concentrations of power, are precisely the concern of Rajan and Zingales. It is these concentrations, they argue, that allow incumbents to group together and restrict free access to finance by others.[35] Clearly the market power of these mutual and pension funds, taken together, determines where much of the finance goes, raising something like the very problem they are trying to redress. Even individual institutions influence the market. So it is worth asking whether the rise of these institutions creates serious concerns, along with the benefits of providing cheap diversification.

There are other effects as well. Institutional investors often own large amounts of the equity of any given public company.[36] While many institutional investors have not fully wielded their muscle in directing corporate governance, others have. And those who have, have almost exclusively done so for the purpose of pushing managers to maximize stock prices.[37] The incentives for this behavior should be obvious. First, a fund's performance, and thus its ability to attract investors, is dependent largely on its past performance. That performance will be reflected in the price of fund shares, which in turn is dependent upon the prices of the corporate shares held in the funds' portfolios. Consequently, for the funds to perform well, their portfolio companies must regularly produce increasing share prices.

The other principal incentive for fund managers to push corporate managers to focus on share prices is the way in which they are compensated. Fund managers are compensated for the most part on the basis of their performance each quarter.[38] And how is that performance measured? By the increase in portfolio value. So every incentive created by modern finance theory is for portfolio corporations to concentrate on maximizing stock price.[39] This is a problem because increasing stock price is not

34. *Id.* at tbl.1190; BUREAU OF THE CENSUS, DEP'T OF COMMERCE, STATISTICS OF U.S. BUSINESSES: 2001, http://www.census.gov/epcd/susb/2001/us/US52.HTM (last visited Mar. 7, 2004).

35. RAJAN & ZINGALES, *supra* note 1, at 1–2.

36. MITCHELL, *supra* note 8, at 165.

37. *Id.* at 175–81.

38. *Id.* at 170.

39. Believers in efficient markets will not have a problem with this. But

the same thing as creating real corporate wealth through the production of goods and services. One can readily see this in the recent collapses of corporations like Enron and Worldcom that lost virtually all of their market value and still have substantial fundamental value based upon their assets. It is true that the run-up in stock prices of many corporations in the late 1990s and 2000 meant that those who sold high had more money. But these are really wealth transfers, not wealth creation, and hardly appear to satisfy the capitalist dream presented by Rajan and Zingales.

There is, after all, only so much that a corporation can do to increase its fundamental value quickly enough to support ever-increasing stock prices. Innovation, increased productivity, expanded markets, and the like all take time. For many successful corporations, the road to increased fundamentals is not linear; there are ups and downs. But a market composed of investors who have incentives to punish corporations that do not keep their prices rising is a market composed of corporate managers who have incentives to fudge. Certainly, as we have seen, there are incentives to fudge on the numbers, incentives that one hopes the recently enacted Sarbanes-Oxley Act of 2002[40] will diminish if not eliminate.[41] At the same time, there are also incentives to improve numbers in other ways, such as substantial layoffs (guaranteed to get those quarterly results up), cutting research and development, skirting environmental laws, cutting product quality, and the like.[42] It is not at all clear that modern finance theory has served us especially well in terms of the kinds of benefits Rajan and Zingales imagine. Rather, the concentration of capital it has encouraged creates perverse managerial incentives and is itself an inchoate political force that has the potential to be highly destabilizing.

There is a second reason, beyond capital concentration, that the consequences of modern finance theory are dangerous. That is the way in which finance theory separates the stock from the corporation, the market from the productive entities.

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the evidence that markets are efficient has been shaken, not only by events, but also by theory. For a good overview of challenges to the efficiency of markets, see SHLEIFER, *supra* note 5.

40. Pub. L. No. 107-204, 116 Stat. 745.

41. Lawrence E. Mitchell, *The Sarbanes-Oxley Act and the Reinvention of Corporate Governance?*, 48 VILL. L. REV. 1189 (2003).

42. A more thorough explanation of this argument is provided in MITCHELL, *supra* note 8, at ch. 5.

Take the capital asset pricing model. By reducing a corporation to its beta, it allows an investor to assemble a diversified portfolio with the desired level of risk simply by selecting stocks according to their betas and purchasing them in appropriate amounts. Note that here the focus is the beta, whereas to a different class of investors, including day traders, market makers, and specialists, the stock price is the significant factor.[43] Either way, the method of investing recommended by modern finance theory gives the investor no reason to pay attention to the behavior of the corporation itself. While the concept of the rationally passive investor has long dominated discussions of American corporate governance, modern finance theory essentially takes the corporation out of the mix. What is the result? Enormous multinational power centers with no accountability to anyone (except to the aforementioned markets with the results I previously described). Market discipline, which is favored by some, is not enough when the focus of the discipline is to maximize stock prices.

This separation of markets from production presents a potential for real danger. We know that corporations are already powerful actors in the political and regulatory process and, campaign finance reform notwithstanding, are likely to remain so. Without meaningful accountability for their behavior, except to markets, corporate influence over the governance process becomes an essentially unregulated and unmonitored political power center. In the case of the largest corporations, this power actually overshadows the economies of many world governments.

It is true that other control mechanisms exist. The product market can, in extreme cases, discipline misbehaving corporations.[44] But consumer boycotts are rare and often ineffective, and only relate to serious corporate misbehavior when it is sufficiently public, which is a rarity not only at home but abroad. Thus the product markets will discipline corporations effectively for substandard production, but rarely for social misbehavior. In addition, corporate political influence has, in the past, led to administrations which underenforced antitrust laws, thus further stemming the power of government to exert

43. *Id.* at 142–45.

44. For example, the predominance of "dolphin-safe" tuna illustrates product market discipline. "Dolphin-Safe" Tuna, *at* http://www.greenpeaceusa.org/oceans/tuna_dolphintext.htm (last visited Jan. 17, 2004).

control over corporate governments.

The courts can occasionally discipline corporations for unacceptable behavior, but this depends upon a government that is willing to pass laws that regulate corporate behavior; strong, well-funded, and capable plaintiffs; and corporate behavior sufficiently extreme as to violate the law.[45] Moreover, the influence of corporations in the processes of government has led to the appointment of probusiness judges.[46] This further compromises the possibility of reining in corporate power centers.

There are a number of other reasons why the fact that shareholders are detached from their corporations by modern finance theory and investment strategies creates dangerously unconstrained power centers, not the least of which is the abdication by state corporate law of any meaningful regulatory responsibility.[47] I think that what I have outlined so far is sufficient to suggest that the modern finance theory so praised by Rajan and Zingales may well be at odds with their idealized capitalism of smaller businesses and more widespread capital.

WITH A LITTLE BIT OF LUCK

Will talent be rewarded in this market utopia? Will capital truly be available to those with drive and ability if only they shall seek it? The sorry answer to these questions is probably not. Probably not in the United States, and probably even less in the rest of the world. Since the United States is as close to a poster child for free markets available to Rajan and Zingales,[48] and since traditionally the United States has had the reputation of being the land of opportunity, one can reasonably expect that if free markets performed a liberating function anywhere,

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45. The recently vacated Ninth Circuit opinion in the continuing dispute over Unocal's use of slave labor in Myanmar provides a good example. Doe v. Unocal Corp., Nos. 00-56603, 00-57197, 00-56628, 00-57195, 2002 WL 31063976 (9th Cir. Sept. 18, 2002), *vacated,* Nos. 00-56603, 00-56628, 2003 WL 359787 (9th Cir. Feb. 14, 2003).

46. *Cf.* William L. Cary, *Federalism and Corporate Law: Reflections Upon Delaware*, 83 YALE L.J. 663, 670–84 (1974) (detailing the judicial development of Delaware's probusiness state law).

47. MITCHELL, *supra* note 8, at 126–28.

48. This is a fairly recent development. They date the beginning of the modern rise of finance in the United States to the 1980s. RAJAN & ZINGALES, *supra* note 1, at 192–93; RAGHURAM G. RAJAN & LUIGI ZINGALES, THE GREAT REVERSALS: THE POLITICS OF FINANCIAL DEVELOPMENT IN THE 20TH CENTURY (Ctr. for Research in Sec. Prices, Working Paper No. 526, 2001), http://papers.ssrn.com/paper.taf?abstract_id=236100 (June 2001).

it would be here. While free markets have made capital available based on merit to some extent (and that extent is the subject of the next section), that extent is rather limited and, for several important reasons, is likely to remain so.

The battle over equality of opportunity versus equality of circumstance is a classic fight among egalitarians.[49] The Age of Aquarius is a world of equal opportunity. So the question must be asked whether free markets will really equalize opportunity among Americans. The statistical data suggest that, however free the American capital markets, something is amiss. The United States has the highest Gini coefficient in the developed world[50] and the gap between rich and poor has continued to grow in terms of wealth.[51] The same reality pertains to income. While the data show that some American families have moved up a notch on the economic scale, they are relatively few.[52] While it is also true that poverty rates have stayed about the same over the past thirty years,[53] there is significant contro-

49. *See, e.g.*, Ronald A. Dworkin, *What Is Equality?*, 10 PHIL. & PUB. AFF. 185 (1981); Michel Rosenfeld, *Substantive Equality and Equal Opportunity: A Jurisprudential Appraisal*, 74 CAL. L. REV. 1687 (1986); David A. Strauss, *The Illusory Distinction Between Equality of Opportunity and Equality of Result*, 34 WM. & MARY L. REV. 171 (1992).

50. In 2002, the World Bank estimated the United States' Gini coefficient to be 0.394. Thus, income inequality in the United States is higher than in France (0.326), Belgium (0.246), Italy (0.306), Portugal (0.348), Greece (0.320), the Netherlands (0.311), Norway (0.247), Canada (0.310), Switzerland (0.324), the U.K. (0.354), and Australia (0.345), to name a few. Branko Milanovick & Shlomo Yitzhaki, *Decomposing World Income Distribution: Does the World Have a Middle Class?*, 48 REV. INCOME & WEALTH 155, 170 tbl.12 (2002).

51. According to U.S. Census data, the Gini coefficient in the United States has risen steadily since 1975, with only brief improvements in inequality of wealth between 1993 and 1995. BUREAU OF THE CENSUS, DEP'T OF COMMERCE, MEASURES OF HOUSEHOLD INCOME INEQUALITY: 1967 TO 2001, http://www.census.gov/hhes/income/histinc/ie6.html (Sept. 2002).

52. The U.S. Census Bureau estimates that between 1969 and 1996, the median income of households made of married couples with children increased 25%, which is significantly more than the increase in income for other types of households. BUREAU OF THE CENSUS, DEP'T OF COMMERCE, CHANGES IN MEDIAN HOUSEHOLD INCOME: 1969 TO 1996, http://www.census.gov/prod/3/98pubs/p23-196.pdf (July 1998). However, when the earnings of wives are excluded from those statistics, the increase in income is only about 2%. *Id.* This suggests that the incomes of families of married couples with children are rising faster only because of the increasing participation by wives in the workforce.

53. According to the U.S. Census Bureau, the poverty level has fluctuated no more than a total of 4% in the last thirty years. BUREAU OF THE CENSUS, DEP'T OF COMMERCE, POVERTY IN THE UNITED STATES: 2001, http://www.census.gov/prod/2002pubs/p60-219.pdf (Sept. 2002). The poverty level did

versy regarding the federal government's definition of poverty.[54] Nonetheless, the most important fact is that earnings for those in the true middle class—that is, at or around the 2000 median household income of $42,151—have stagnated.[55] Although there have been slight increases in median income,[56] the evidence suggests that much of this is attributable either to smaller family size (which might cheer environmentalists but poses significant problems for the future of social security) or to the greater incidence of two working partners.[57] It is also worth noting that, since 1980, the share of aggregate income received by families in the top 5% has increased from 15.8% to 22.4%, while the share of the bottom 5% has decreased from 4.3% to 3.5%.[58] All this took place before tax cuts at the turn of the century, which demonstrably benefited the wealthy. In fact, the bottom 80% of American families have seen their proportion of aggregate income decline; only the top 20% has seen increases since 1980.[59] Nineteen eighty is, by the way, an important date in this story, for while some significant deregulation occurred during the 1970s, the free market ideology that currently dominates American thinking came into its own in the modern age with the election of Ronald Reagan.

Turning back to the subject of wealth for a moment, as of 1998, the top 1% of Americans held 38.5% of our national wealth, and the top 20% held 83.9% of our national wealth,

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increase in 2002 according to the U.S. Census Bureau. Lynette Clemetson, *More Americans in Poverty in 2002, Census Study Says*, N.Y. TIMES, Sept. 27, 2003, at A1.

54. The U.S. Census Bureau continues to use a definition of poverty adopted in 1969 that demarcates poverty at incomes less than three times the cost of food (determined by a stylized conception of an adequate diet). There is tremendous controversy over the continuing use of this measure, especially since the cost of food has not increased at anywhere near the rate of other important factors in well-being, such as housing. *See* BUREAU OF THE CENSUS, DEP'T OF COMMERCE, AN OPEN LETTER ON REVISING THE OFFICIAL MEASURE OF POVERTY, http://www.ssc.wisc.edu/irp/povmeas/povlet.htm (Aug. 2000).

55. In real terms, earnings for the middle class is only $7,000 more than it was in 1980, an increase of 17%. STATISTICAL ABSTRACT 2002, *supra* note 29, at tbl.653. There are also significant variations by race and ethnic origin.

56. *Id.*

57. DAVID M. GORDON, FAT AND MEAN: THE CORPORATE SQUEEZE OF WORKING AMERICANS AND THE MYTH OF MANAGERIAL "DOWNSIZING" 102–10 (1996).

58. BUREAU OF THE CENSUS, DEP'T OF COMMERCE, HOUSEHOLD SHARES OF AGGREGATE INCOME BY FIFTHS OF THE INCOME DISTRIBUTION: 1967 TO 2001, http://www.census.gov/hhes/income/histinc/ie3.html (Sept. 2002).

59. STATISTICAL ABSTRACT 2002, *supra* note 29, at tbl.659.

leaving the remaining 80% of American families to split up the balance (the bottom 60% of Americans hold virtually no wealth to speak of).[60] The trend has clearly been towards greater inequality both in income and in wealth.

The irony is that this extraordinary disparity between rich and poor (and the sheer inequality of a rich minority and relatively poor majority) has accelerated during the modern period most accepting of a free-market economy—the 1980s to the present. By contrast, from the 1940s through the 1970s, an era that Rajan and Zingales describe as one in which finance was at a low point in the United States (the era I describe as the age of hierarchy),[61] both income and wealth disparities were far more modest. Leaving aside for a moment the question of whether a prosperous but more egalitarian society is better than a wealthy but highly fractured society, these facts alone beg the question of whether the free market is quite the opportunity equalizer claimed by Rajan and Zingales. In theory it certainly seems so. But the data raise questions.

There are a number of alternative answers to the questions. Shaw's Alfie Doolitle unashamedly identifies himself as among the undeserving poor, and happy to remain that way.[62] Or perhaps the 80% of Americans or so who top off at about $80,000 a year and then plunge precipitously below that simply are not willing to put in the work. But the facts belie this. Recall that much of the increase in "middle class" wealth is due to the increase in two-earner families. Moreover, Americans clearly are working more hours than they did twenty years ago.[63] And, as I noted above, the poverty rate (however flawed the calculation) has remained relatively constant. So sloth does not appear to be the answer—we cannot blame the undeserving poor.

Maybe capital is too expensive. As a matter of economic theory, this should not be the case. After all, it is a basic tenet of economics that risk and return adjust to set a rate of return appropriate to the risk of the project.[64] To the extent that tal-

60. Wolff, *supra* note 29, at 136 tbl.2.

61. RAJAN & ZINGALES, *supra* note 1, at 194, 212. And I agree with the observation regarding finance during this period.

62. GEORGE BERNARD SHAW, PYGMALION 58 (Dan H. Laurence ed., Penguin Books Ltd., 1957) (1916).

63. *Chasing the Dream*, THE ECONOMIST, Aug. 9, 2003, at 62; Juliet Schor, *Why Americans Should Rest*, N.Y. TIMES, Sept. 2, 2002, at A15.

64. WILLIAM A. KLEIN & JOHN C. COFFEE, JR., BUSINESS ORGANIZATION

ented people who lack a track record seek financing for their ideas, there are surely sources of funding appropriate to the risks they present and the potential rewards they are expected to generate. That does not dispense with the cost issue; risky projects—either because they are intrinsically risky or because the putative entrepreneur lacks a track record—cost more to finance. But, as financial theory also tells us, the rewards generated by the project should be commensurate with the risk and thus borrowers should be willing to pay the cost. Of course there is some risk that they will not succeed (which is inherent in the notion of risk), but, if financial theory were correct, talented people would be willing to take these risks in order to reap the rewards. Finally, we have just come through a period of historically low interest rates.[65] Even adjusting for risk, financing has never been cheaper. Yet it appears to be the case that those who would be most liberated by the free market—the skilled, blue-collar laborer or the middle-level manager—are content to remain in place, with wages stagnating.[66]

What explains this apparent passivity in the face of abundant, available, and cheap capital? Perhaps it is gutlessness—sheer cowardice on the part of the potentially financed entrepreneurs. And there may be something to this. After all, most of these workers have families to support and, at least for those earning less than about $50,000, no meaningful wealth to speak of.[67] So there is a sense in which branching off on their own means betting the farm, even if they have talent and ideas that might well be successful.

Or maybe the answer is stupidity—they simply do not have the talent or ideas or, more likely given the increase in working hours, the time to think about them. Surely there are the plodders among us at every level who are not inspired or even very thoughtful. If this is the case, then it seems perfectly consistent with free market ideals to leave them where they are. They have the opportunities provided by the market but, like the slothful or fearful, they simply choose security over the risk-taking necessary to avail themselves of the opportunities. The

AND FINANCE: LEGAL AND ECONOMIC PRINCIPLES 44 (7th ed. 2000).

65. David Leonhardt, *Federal Reserve Lowers Key Rate to 1%, Lowest Rate Since 1958*, N.Y. TIMES, June 26, 2003, at A1.

66. This, in fact, is the group with the greatest stagnation in wages. A compelling account of this phenomenon during the middle 1990s is provided in GORDON, *supra* note 57.

67. STATISTICAL ABSTRACT 2002, *supra* note 29, at tbl.677.

rewards of the free market go to those who are bold enough to take the risks that ultimately contribute to all of our well-being; that, after all, is one of the principal moral justifications of the free-market economy, that it makes everybody better off. If they are not willing to help, then they reap the rewards of the passive.

It is not terribly likely, however, that we are dealing with the failures of the stupid. Free market patron saint Adam Smith, for example, trenchantly observed: "By nature a philosopher is not in genius and disposition half so different from a street porter, as a mastiff is from a greyhound, or a greyhound from a spaniel, or this last from a shepherd's dog."[68] Train a man to be a philosopher, and he will be a philosopher. Train him to be a porter and he will be a porter. Train the porter to be a philosopher and you have—well—Adam Smith!

It simply does not seem plausible that stupidity is the answer. Nor does sloth, given how hard most Americans on the lower end of the scale are working to make ends meet. The unwillingness to take risk is a more plausible explanation, but the reason it is more plausible has nothing to do with cowardice. Something else is at play, and that something is luck.

It is not enough to be smart. It is not enough to take risks. It is not enough to work hard. It helps enormously if you are also lucky. Unlike risk and hard work, luck is unpredictable, but there are factors which can help make the likelihood of luck more assessable, and it is to these factors that I now turn in an effort to explain why the Age of Aquarius is not likely to dawn any time soon.

The problem that the free market ideal ignores is the fact that it starts from a status quo of wealth distribution. Before I go on, one might quickly object by noting that this is precisely the problem that the free market is proposed to solve. Give a person with initiative, intelligence, and resolve access to capital, and he will at least have as good an opportunity as anyone else to make himself wealthy. That, as a practical matter, is the best that we are likely to achieve.[69] So the free market, seen clearly for what it can be, is the great equalizer that Americans have been searching for since at least Tocqueville's presentation of the tension between equality and liberty. Why shouldn't

68. SMITH, *supra* note 19, at 30.

69. I will not pretend to argue here for equality of circumstance, for I believe that in contemporary American society that argument is a nonstarter, and you will see the argument merely as a pointless utopian objection.

this be enough?

The reason is that initial distribution matters precisely because it sets up the circumstances in which initiative, intelligence, and resolve can flourish. From a neoclassical perspective, these (at least initiative and resolve, if not intelligence) are taken as preferences. Those who want to work hard and take risks can; those who do not, get what they choose—and therefore, in economic terms, deserve. Intelligence is a bit more of a problem, but much of the kind of success that free access to capital can bring does not depend on genius. You do not have to be Henry Ford or Thomas Edison or Bill Gates to succeed more than passably well, and theirs is not the level of wealth necessary to make people better off in a free-market economy. You can open your own store, your own plumbing contracting business, even your own janitorial services company (and, in an age of corporate outsourcing, obtain a fair amount of business) and be considerably better off than you are working in a dead-end job. So even intelligence falls by the wayside as a limiting factor for, given an average level of intelligence, the free market still provides you with opportunities to improve your position.

The problem is that your ability to perceive and take advantage of these opportunities or even to have the confidence to do so depends quite considerably on the position from which you start. Sociological evidence is rather clear that the single greatest determinant of your ultimate socioeconomic status in our society is the socioeconomic position of your parents.[70] Despite the American mythology of rags to riches, most Americans grow up to occupy the same relative position as did their parents.[71] The second biggest determinant of your success, it turns out, is the quality of your education.[72] Although educational levels have been improving consistently in the United States, it remains the case that there are significant disparities in the quality of education available to disparately placed Americans.[73] Nobody can quibble with the observation that the education my son obtains in a wealthy suburban Maryland high

70. CLAUDE S. FISCHER ET AL., INEQUALITY BY DESIGN: CRACKING THE BELL CURVE MYTH 79–88 (1996).

71. *Id.*

72. *Id.*

73. According to the Office of Educational Accountability for the D.C. Public School District, the city-wide average standardized testing scores have hovered below the national average for the last five years. For example, the average verbal and mathematics SAT scores of seniors in D.C. public schools in 2003 were 103 and 123 points below the national average, respectively.

school is considerably better—really by leaps and bounds—than the quality of education his counterpart in Northeast Washington has available to him. Along with parental socioeconomic status and educational quality go other things: who your peers are, their own expectations and their role in shaping yours, the opportunity set you see available to you and those around you, the time, training, and ability of your parents to help you improve on your lot, and the like.[74] All of these factors determine the set of choices you believe you have, whether in theory you actually have better choices (and poor education, even with the successes of affirmative action, really does limit choices). What determines where you start on the socioeconomic ladder, the quality of parenting you get, and the quality of education you receive? Luck. Nothing more than luck. So even if one could argue that the free market provides equal opportunity as a matter of theory, cold reality intrudes to tell us that it requires some substantial amount of luck in your initial circumstances in order to avail yourself of these opportunities. It is not innate sloth, passivity, or stupidity. It is not the choice to join Alfie Doolitle's undeserving poor. In fact, desert has very little to do with it. In the end, the ability of the free market system to lift your particular boat comes, in a very real and tangible way, down to a matter of luck, and no amount of access to capital can change this essential fact.

To be fair to Rajan and Zingales, they intuitively recognize this. In a short penultimate chapter, they suggest some of the preconditions necessary for a free market society to work in the manner they predict (much in the way that John Rawls set out the requirement of a minimum level of basic goods in order for his principles of justice to be operative).[75] Their sole prescription that goes to this issue, most of which is designed to alleviate opposition to free markets by creating incentives for incumbents to support them, taxing inefficient uses of property, and providing social safety nets for those who fail in the market economy, is a lifelong educational system that permits people to return to school at any point in their careers where they feel they need retraining.[76] Leaving aside the fact that in order to return to school one has to have adequate schooling to begin with, they do not address the crying need for economic redistri-

74. MITCHELL, *supra* note 17, at 17–28.
75. RAJAN & ZINGALES, *supra* note 1, at ch. 13.
76. *Id.* at 302–05.

bution (except in passing and by comparison to some more enlightened developing countries) in order to provide adequate nutrition, health care, and education for all of America's children and in order to help parents on the wrong side of the tracks learn how to help their children succeed.

They are not insensitive to the need for social safety nets. They do see the need for intergenerational accountability for social security, for meaningful pension and health care reform, and for the public provision of worker retraining.[77] To this extent they are liberals after my own heart. But in glossing over the dramatic inequities in socioeconomic status that currently exist, they fail to make a case that the free market will really open up the kinds of opportunities at all levels of society that they claim it will. Instead, the picture they present is one in which, as always, the rich will continue to get richer, some in the middle will improve, and the vast bottom is likely to remain where it is. The free market is not an answer until we create a social system in which all members of society have a realistic opportunity to avail themselves of it—when success becomes more than a matter of mere luck.

THE MORALS OF THE MARKETPLACE— THE ETHIC OF FEAR

Of course it is not enough to indict the free market simply on the basis of initial distributional advantages or disadvantages or by observing the role of luck. After all, these factors can be minimized given the political will, and significant redistribution, particularly of educational resources, as a price for free market efficiency and opportunity may not be too much to ask. So nothing that I have said so far should, in theory at least, defeat the argument for the economic and equitable supremacy of the free market system.

Markets are scary. Markets create fear. Competition, risk, and uncertainty are the stuff of which markets are made. While risk can be assessed, uncertainty breeds anxiety and competition breeds ruthlessness. While markets also require some level of cooperation with, say, the basic ground rules of the market in order to sustain them, market theory substitutes the self-interest of competition that mimics cooperation for true cooperation.[78] Markets by themselves cannot sustain social capital.

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77. *Id.* at 300–06.

78. Lawrence E. Mitchell, *Understanding Norms*, 49 U. TORONTO L.J.

They can create the economic infrastructure of a society, but they cannot themselves sustain a society and at some level can be destructive of social networks and social well-being.

American society has lived through stages where the market was a dominant force in social life, most recently in the 1920s. Even then, the kind of free market environment envisioned by Rajan and Zingales occupied only a very small segment, the most financially elite segment, of the population.[79] The market environment in which we currently live proceeds on a number of different fronts, and absorbs pretty much the entire American population. One front is of course financial. The rise of institutional intermediaries that moderate the risk of investing in individual stocks, defined-contribution pension plans, and the allure of the 1980s takeover market and the 1990s tech bubble have, among other phenomena, raised the proportion of American families who own stock directly or indirectly to 48.2% in 1999.[80] This by itself makes us more conscious of the market than ever (aided by the collapse of the bubble and the corporate scandals of 2002). But it affects our lives more deeply than that. Technology has made the financial markets part of almost every American's daily life. Several cable television channels are exclusively or almost exclusively devoted to financial news, and others, including network television, have developed a raft of financial programs. It is not just Louis Rukeyser anymore. And since so many Americans now participate in the stock market, this news becomes part of the discourse of daily life.

Of course the Internet has also advanced the pervasiveness of market society. New private securities-trading platforms as well as online brokerages have put the capital markets at every computer owner's fingertips.[81] Various Web sites report stock price movements virtually instantaneously, and in case you have missed something, Web sites like TheStreet.com deliver daily market reports in your evening e-mail. Corporate information is available through links to most of these sites, as are analysts' reports, up-to-the-minute news releases, and investor

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177, 194 (1999).

79. *But cf.* RAJAN & ZINGALES, *supra* note 1, at 220 ("[T]he 1920s in the United States had been a period of unfettered entry and competition . . . .").

80. STATISTICAL ABSTRACT 2002, *supra* note 29, at tbl.1186.

81. Lawrence E. Mitchell, *The Structural Determinants of Stock Market Failures*, 72 GEO. WASH. L. REV. (forthcoming Mar. 2004).

chat groups that have proliferated.[82] We live and breathe financial markets.

But the financial market is more pervasive than that. The dominance of finance over management that characterizes the last twenty years has led to deal making on a grand scale, the kind of behavior that can favorably be described as moving assets to their highest-value use and can more darkly be seen as moving assets from hand to hand in order to make investment bankers and management/stockholders rich.[83] While it is hard to dispute that the market for corporate control has salutary effects in disciplining inefficient management, it is equally clear even those transactions that are economically sound create some of the destructive effects of capitalism: plant closings, layoffs, disadvantaged bondholders, and preferred stockholders. So everyone who works for at least a public corporation lives under the rule of the financial markets and their mass movements. Workers ignore the markets at their peril.

But markets in the American system are far more pervasive than that. Of course we have long been subjected to the importunings of the product markets, but the market has now permeated aspects of American life where either it never was present or where its existence was subordinated to other important institutional functions. Markets are like kudzu—they tend to overtake everywhere they grow. From the booming market for higher education, which is rapidly adopting the practices of business,[84] to the market environment that has pervaded the family,[85] the market truly has become the essence of our na-

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82. As of January, 2004, there were 2749 chat groups on Yahoo! which focused on investment-related topics. Yahoo! Groups, *at* http://dir.groups.yahoo.com/dir/Business_Finance/Investments (last visited Jan. 22, 2004).

83. Rajan and Zingales suggest that finance really did not become important in modern times until about the 1970s and 1980s. *See* RAJAN & ZINGALES, *supra* note 1, at 68–76; *see also* RAJAN & ZINGALES, *supra* note 48, at 33–37 (describing liberalization of capital flows). They are at pains to point out that the early twentieth century was the last time that finance really mattered and that the leaders then (e.g., France, the U.K., Belgium, Germany, and Sweden) are not necessarily the leaders now (e.g., the United States). *Id.* at 14–16.

84. *See, e.g.*, CHRISTOPHER AVERY ET AL., THE EARLY ADMISSIONS GAME: JOINING THE ELITE (2003) (describing the gaming of admissions into elite colleges by high school seniors by manipulation on both sides of this market of the early decision process); Risa L. Lieberwitz, *The Corporatization of the University: Distance Learning at the Cost of Academic Freedom?*, 12 B.U. PUB. INT. L.J. 73 (2002).

85. *See, e.g.*, ARLIE RUSSELL HOCHSCHILD, THE MANAGED HEART: COMMERCIALIZATION OF HUMAN FEELING (20th anniversary ed. 2003); ARLIE

tional culture.

How did we get here and what does it mean for American society beyond our economic life? In little more than a generation, the structure of American society has changed, as an age of hierarchy has given way to an age of markets. Social institutions, from business to the family, have transformed in ways that have kicked out from under us the old rules, norms, and roles that supported our social order and an optimistic and generous way of thinking about the future. While the age of markets has brought new opportunities to those who were marginalized or excluded during the age of hierarchy, it has also brought with it the destabilization and uncertainty I described above.[86] The more pervasive that markets are, the more uncertainty, destabilization, and fear that exists. The rise of market society has led American social thought to be governed by an ethic of fear.[87]

The ethic of fear is an ethic of self-interest, self-regard, resentment, and a lack of concern for others. And the ethic of fear is, ironically, most pronounced in those who have benefited most from the new age of markets, the winners in society.[88] The ethic of fear has led to new norms, rules, and laws that privilege these winners at the expense of those who have yet to benefit—norms, rules, and laws that are cruel in their effects. Because of this, the ethic of fear contains within itself the potential to destroy the very considerable benefits of the age of markets for all of us. The ethic of fear is not a necessary byproduct of the age of markets. It does require self-knowledge to

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RUSSELL HOCHSCHILD, THE TIME BIND: WHEN WORK BECOMES HOME AND HOME BECOMES WORK (1997).

86. For a wonderful essay on the effects of market society on social character, see RICHARD SENNETT, THE CORROSION OF CHARACTER (1998). For a more polemical argument along somewhat similar lines, see CHRISTOPHER LASCH, THE CULTURE OF NARCISSISM: AMERICAN LIFE IN AN AGE OF DIMINISHING EXPECTATIONS (1979). And for a classic and thorough examination of these problems, see DANIEL BELL, THE CULTURAL CONTRADICTIONS OF CAPITALISM (1976).

87. I have been developing the ideas in this section in more detail in an untitled book-in-progress. See also REINHOLD NIEBUHR, MORAL MAN AND IMMORAL SOCIETY (1932), for a polemic against the transformation of human behavior in the context of capitalist institutions (among which, of course, are the financial markets).

88. In the age of markets, middle managers with high-paying jobs are the most vulnerable to being laid off and the least likely to find new jobs, making them the most anxious about their future prospects for employment and financial success. *See* Bill Montague, *Feeling the Squeeze of Downsizing*, USA TODAY, Feb. 19, 1996, at 1A.

defeat it. Rajan and Zingales suggest public awareness of market benefits as perhaps the greatest barrier to the kind of market opposition that can arise from the fear both of incumbents and losers.[89] Their solution fails, however, to appreciate that the logic of markets carries this fear almost as an automatic corollary. More than simple public education is needed.

The development of the conditions that destroyed the age of hierarchy and gave rise to this ethic of fear is easily understood. Throughout the nineteenth century, and despite the oppression of African-Americans and the repression of women and immigrants, Americans lived in a land where natural abundance and growing industrialization created real opportunities that were the basis for American optimism. Despite the problems created by industrialization and its accompanying urbanization, continuing economic growth and the reality of open land gave some credence to the ideal of what my ancestors called *di goldene Medina*, "the golden land."

Equally well known is the shift from industrialism to corporate capitalism and the creation of the huge American middle class, a process that began before the turn of the last century, and the conditions of which were largely in place by the time of the Great Depression.[90] It remained only for us to recover from that debacle to solidify, by the early 1940s, the age of hierarchy. This was a time of relative stability in our giant corporations.[91] It was a time when the upwardly mobile moved from shops and small businesses into the offices of the great corporations.[92] Self-employment had shifted to corporate employment, and work life took place within hierarchical structures, hierarchical structures that were mimicked not only in the new regulatory state engendered by the New Deal, but also in the broader society outside the workplace. The stabilizing force of that hierarchy was the middle class.[93]

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89. *See* RAJAN & ZINGALES, *supra* note 1, at 309.

90. One of the best accounts is MILLS, WHITE COLLAR, *supra* note 2. Different accounts of the same history are told in DAVID RIESMAN, THE LONELY CROWD (1950), and WHYTE, *supra* note 3.

91. CHANDLER, THE VISIBLE HAND, *supra* note 4, at 287–476.

92. *Id.*; MILLS, WHITE COLLAR, *supra* note 2.

93. The term "middle class" has been defined in multiple ways, and is a constant source of debate amongst scholars. As a result, it is nearly impossible to define this concept in a meaningful and concrete way. *See, e.g.*, Thomas J. Gorman, *Cross-Class Perceptions of Social Class*, 20 SOC. SPECTRUM 93 (2000); Mary R. Jackman, *The Subjective Meaning of Social Class Identification in the United States*, 43 PUB. OPINION Q. 443 (1979); Rebecca Piirto Heath, *The New*

The age of hierarchy lasted for only two generations. Beginning in the late 1970s and gaining considerable steam in the 1980s, America saw a dramatic shift from the age of hierarchy to the age of markets.[94] The shift was, in part, fueled by the liberation—thanks to the Civil Rights movement and the Warren Court—of women and minorities who had been excluded in the age of hierarchy. These new entrants into the market brought with them talent that, when given the chance, they used to demand their place in the business and social order. But the guardians of the hierarchy could not resist this increased supply of talent pressing against its structures. The hierarchy fell apart under the pressure, and the age of markets was born.

The age of markets has brought significant benefits. Opportunities for those on the outside during the age of hierarchy—especially women, African-Americans, and other minorities—have exploded. Antidiscrimination laws and affirmative action tapped huge pools of unrealized talent and allowed it to compete in the market. It has liberated those who had relatively high places in the age of hierarchy from often oppressive and dispiriting roles and created an atmosphere of excitement and enterprise—both within and outside of big business organizations—for the skilled and talented.[95]

But hierarchies, whatever their defects, are orderly. Markets, whatever their advantages, are chaotic. While hierarchies demand norms of cooperation—even as competition for wealth, prestige, and status takes place within them—markets are driven by self-interest and competition—even as some level of cooperation is necessary for markets to function.[96] The destabilizing effects of the transformation from hierarchy to market litter the human landscape of twenty-first-century America.

The age of markets was first manifest in the business

Working Class, AM. DEMOGRAPHICS, Jan. 1998, at 51; Steven Manning, *End of an Era?*, SCHOLASTIC UPDATE, Mar. 6, 1992, at 2.

94. Rajan and Zingales date the postdepression recovery of economically significant modern financial markets to the 1970s. *See supra* note 83.

95. Rajan and Zingales are well aware of this positive effect of the transformation of markets. RAJAN & ZINGALES, *supra* note 1, at 79–80.

96. The degree of necessary cooperation in the form of social capital seems to vary inversely with the development of a functioning and efficient legal system, although Zingales et al. conclude that finance is more predominant in regions of high social capital. LUIGI GUISO, PAOLA SAPIENZA & LUIGI ZINGALES, THE ROLE OF SOCIAL CAPITAL IN FINANCIAL DEVELOPMENT 15–26, 28–31 (Ctr. for Research in Sec. Prices, Working Paper No. 511, 2001), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=209610. As to this latter point, they are appropriately reticent in making causal claims. *Id.* at 30–31.

world, not only because of the newly liberated talent that needed to be accommodated, but also because ideas about business had changed. The transformation became apparent and accelerated in the 1980s. It was a period in which the older stability of employment and career-long allegiance to particular institutions began to crumble. Ronald Reagan broke the back of labor by firing all air controllers who went on strike.[97] The takeover boom of the 1980s broke apart the giant, multilayered institutions of commerce that sustained the hierarchy and its layers upon layers of well-compensated managers. As the takeover decade gained steam, it dismantled the conglomerate structures that grew in the 1960s.[98] Moreover, in order to finance the process, the takeover artists destroyed a large number of institutional employers as their assets were broken up and rearranged. This gave us the first demonstration of massive layoffs that were not offset, at least in part, by mutual institutional loyalties or strong labor unions.

By the early to mid-1990s, although the middle class remained heavily managerial, we began to witness, for the first time, massive white-collar layoffs, largely of middle-level and older managers.[99] The reemployment prospects of these workers in the new market economy were diminished by the entrance of large numbers of young people with more up-to-date technological skills, greater emotional flexibility, and lower pay re-

97. *See* Mark Levinson, *Turning Point for Labor?*, N.Y. TIMES, Aug. 17, 1997, at E15.

98. *See* Richard E. Caves et al., *Fat: The Displacement of Nonproduction Workers from U.S. Manufacturing Industries*, 1993 BROOKINGS PAPERS ON ECON. ACTIVITY: MICROECONOMICS 227, 243–44; Sarah J. Freeman & Kim S. Cameron, *Organizational Downsizing: A Convergence and Reorientation Framework*, 4 ORG. SCI. 10, 10–11 (1993).

99. *See, e.g.*, Ann C. Crouter & Beth Manke, *The Changing American Workplace: Implications for Individuals and Families*, 43 FAM. REL. 117, 118 (1994); Henry S. Farber, *The Changing Face of Job Loss in the United States, 1981-1995*, 1997 BROOKINGS PAPERS ON ECON. ACTIVITY: MICROECONOMICS 55, 59, 75–77 (noting, however, that the increase in layoffs of managers in the early 1990s may have been a one-time adjustment); Lori G. Kletzer, *Job Displacement*, 12 J. ECON. PERSP. 115, 115 (1998); Stefanie R. Schmidt, *Long-Run Trends in Workers' Beliefs About Their Own Job Security: Evidence from the General Social Survey*, 17 J. LAB. ECON. S127, S136, S139–40 (1999); Robert G. Valletta, *Declining Job Security*, 17 J. LAB. ECON. S170, S171 (1999); Perri Capell, *Endangered Middle Managers*, AM. DEMOGRAPHICS, Jan. 1992, at 44; Paula Mergenhagen, *Job Benefits Get Personal*, AM. DEMOGRAPHICS, Sept. 1994, at 30; Bill Stoneman, *Merge-and-Purge Cuts*, AM. DEMOGRAPHICS, Apr. 1999, at 24; *White-Collar Blues*, AM. DEMOGRAPHICS, Dec. 1996, at 29.

quirements.[100] This was amplified by the burgeoning practice of outsourcing to new, small, and highly specialized firms functions (including middle-managerial functions like payroll and back-office operations) that traditionally had been performed within the firm.[101] Fear of losing your job—a fear that was rare among white-collar workers in the age of hierarchy—now became a factor of everyday life. The ethic of fear had made its climb upward.

By the beginning of the twenty-first century, the collapse of the stock market as well as the deep and continuing recession in the American economy, combined with the absence of traditional institutional structures, have left us with a free-for-all market environment in which the survival imperative dominates. The ethic of fear is the dominant social psychological result. The technology boom of the 1990s in its turn demanded new and ever-changing skills, helping to destroy the job security provided by the hierarchy, at least for middle-level white-collar managers.[102] Technology and service industries have replaced manufacturing, overtaking the education, training, and skills of those whom the hierarchy supported.[103]

The race for profits led corporations to massive layoffs to undo the burdens of the age of hierarchy, first of the traditionally vulnerable blue-collar worker whose vulnerability had been enhanced by his loss of union power, and then of the newly vulnerable white-collar worker.[104] The new market for talent destabilized the hold of middle-class white males on the core of the hierarchy. Technological advances made their skills and ways of working obsolete. Now, workers whose knowledge was their personal capital could move from job to job, from opportunity to opportunity, as the flattening hierarchies of manage-

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100. *See* SENNETT, *supra* note 86, at 89, 94–97.

101. These days, even doctors are beginning to be outsourced. For example, there are about five companies in the United States that do remote analysis of radiology examination results. Heidi Brown, *Dr. Temp*, FORBES.COM, July 23, 2003, http://www.forbes.com/2003/07/23/cz_hb_0723medicare.html. These so-called "nighthawks" receive the results of radiological exams electronically at remote locations. *Id.* They provide quick diagnoses during the late-night and early-morning hours, when many regular radiologists are reluctant to make a trip to the hospital. *Id.*

102. SENNETT, *supra* note 86, at 89, 94–97; *see also* PETER F. DRUCKER, POST-CAPITALIST SOCIETY 6–96 (1993) (describing a broader trend toward knowledge-based work and its implications).

103. DRUCKER, *supra* note 102, at 6–96.

104. *See* Farber, *supra* note 99, at 59, 75–77; Valletta, *supra* note 99, at S170–71.

ment structures and the rise of thousands of new businesses and new business specialties accelerated.[105] Wealth, or at least comfort, was the reward of those who flourished during this period of creative destruction. The rewards to the far greater number of workers who served this new knowledge elite were more limited. They, as well as workers who remained in traditional industries, saw their share of the pie diminish.[106] The rewards of the market move to the most skilled.

Society in the age of hierarchy mimicked the workplace structure. The new age of markets has brought down the social structures outside the workplace to create civic and social opportunities for those previously denied them. Market-valued talent supplants hierarchically supported place in all aspects of society.

The critical problem in the age of markets is that we have yet to develop appropriate norms, rules, and social structures to accompany it, social structures that are necessary to bring some stability and order, some measure of confidence and safety, some assurance of fair play, some reason for optimism and hope, to the volatile and chaotic market environment in which we now live. We have yet to develop norms, rules, and social structures to attend to those who fail in our market society, for while markets value productivity, people value people. We have yet to develop those structures in the workplace, and outside it as well. The result is anxiety, resentment, fear, self-interest, and competition without regard to others. The result is the ethic of fear. And the ethic of fear threatens cooperation, compassion, and fairness within our society.

Fear and the ethic that goes with it is an increasingly universal characteristic of the American character. Those who are left behind, as they always have, live in fear. In the age of mar-

105. *See* RAGHURAM G. RAJAN & JULIE WULF, THE FLATTENING FIRM: EVIDENCE FROM PANEL DATA ON THE CHANGING NATURE OF CORPORATE HIERARCHIES (March 2003), http://papers.ssrn.com/sol3/papers.cfm?abstract_id393684 (documenting flattened hierarchies in American business). For an examination of the broad changes in American business methods, see generally DRUCKER, *supra* note 102. Flattened hierarchies may well provide greater income and advancement opportunities to the winners even as they result in the elimination of jobs for others. *See* Ronald S. Burt, *The Contingent Value of Social Capital*, 42 ADMIN. SCI. Q. 339 (1997) (applying network theory, specifically structural hole theory, to evaluate the role of social capital in contrast to that of human capital in promotion and advancement in larger organizations).

106. *See* DRUCKER, *supra* note 102, at 83–85.

kets, fear has become even more characteristic of those who are doing well—those who, in an always precarious market, know that tomorrow their fates could change, that they could tumble into the pit of the struggling.

The symptoms of the ethic of fear can be seen in all aspects of American life. From the frantic competition of high school seniors for admission to a small handful of elite colleges they believe will ensure their success,[107] to the dominance of business as the subject of higher education and the inculcation of market attitudes on campus,[108] from continuing (if well-concealed) male resentment of female colleagues, to opposition of whites to affirmative action, from a business culture in which anything goes, to the "fear factor" reflected in reality television, to our social manners, and even to the market for the family, the ethic of fear drives us apart as we compete to succeed in our new market world. Solidarity—and the comfort and stability that went with it—is an artifact of the age of hierarchy.

The age of markets may serve us well. Wealth has in fact increased.[109] Few of us would want to return to the restrictions and repressions of the age of hierarchy despite the charm of Doris Day movies and *Leave It to Beaver*. In order for the market way of life to sustain a confident, stable, content, prosperous, and optimistic society—for it to sustain a generous society—we must develop institutions and norms of behavior that accommodate the new age of markets while facilitating fair and healthy competition and providing order and opportunity for those who struggle. Preserving the market by erecting a political fence of consensus around it, as Rajan and Zingales prescribe, is hardly enough.

Before leaving the subject, let me briefly summarize the ethic of fear and its damaging effects. Rajan and Zingales appear to believe that the benefits of free markets alone, once they are widely enough recognized and appreciated, will bring public accord.[110] What I have thus far said suggests that if they are right, the public accord will be in the nature of false consciousness, for the free market by itself knows no social harmony (although of course I recognize the need for social order to

107. *See, e.g.*, AVERY, *supra* note 84.

108. *See, e.g.*, Lieberwitz, *supra* note 84.

109. The gross domestic product of the United States increased from $527.4 billion in 1960 to $10,208.1 billion in 2001 (adjusted for changes in the dollar's value). STATISTICAL ABSTRACT 2002, *supra* note 29, at tbl.631.

110. *See supra* note 89 and accompanying text.

sustain it, hence the false consciousness of the social accord). The very nature of markets is such that much more than simple public education will be needed to maintain a truly decent society.

The age of markets, arising with the collapse in old hierarchies, social structures, and stability, has been accompanied by the predominance of the ethic of fear, a way of social thinking and ethical reasoning that certainly has existed in earlier eras but has now become widespread. In order to understand the danger that the ethic of fear poses to the stability and welfare of American society, not to mention our individual happiness, we first need to understand the ways in which we reason about ourselves in relation to others. I am not concerned with specific questions of right and wrong, nor with any particular moral tradition, whether it is based in religious doctrine, philosophical approach, or world view. Rather, ethics at their core concern the way we interact with others, and the ways in which we restrain ourselves from pursuing our self-interest to the detriment of others.

I identify two kinds of ethical reasoning, which I shall briefly explore below, the *ethic of fear* and the *ethic of confidence*. The irony of the ethic of fear is that it is most pronounced at the level of those who have been successful in the age of markets. And although it exists at lower levels of the socioeconomic order as well, it is the successful who have the power to act on the ethic of fear. The fear is a fear born of unstructured, flexible, irregular, uncertain, leaderless, and ultimately ungrounded social relations that characterize postcapitalist American society. The result of the transformation from the age of hierarchy to the age of markets is that we have far more unfettered choice than we have ever had before. The unstructured nature of our choices, in contrast to the more limited choices of the age of hierarchy, breeds anxiety, uncertainty, and the instability of social and institutional relations. In short, it breeds fear.

The ethic of fear is a defensive ethical posture. Those who today are winners, who are dominant in the age of markets, struggle to hold on to their positions in the winner-take-all society. The ethic of fear translates into an ethic of self-protection, in our laws, our rules, our norms, and our institutions. The ethic of self-protection perpetuates the status quo, leading the powerful to use that power to protect their positions. It withdraws social and institutional protection and consideration from the more vulnerable social classes, the majority of Americans who are struggling to stay in place. As the protections fall, these Americans are also swept up in the ethic of fear, seeking to hold on to their own positions by engaging in self-protection and withdrawal from consideration of those below them. Where competition and self-interest are the norm, elements of social capital like trust and community break down. This should be no surprise. The ethic of self-protection is the ethic of the market.

What are the ethic of fear and the ethic of confidence? Each is based upon certain concepts that stand juxtaposed with one another. The ethic of fear is characterized by apathy, rationalization, justification, and exculpation, leading to distrust, detachment, self-protection, and ultimately communal disintegration. The ethic of confidence is an ethic consistent with Enlightenment moral reasoning, the American faith of upward mobility, and even postmodernist approaches such as feminism and communitarianism. It is characterized by empathy, imagination, accountability, and responsibility, leading to generosity and compassion. Each of these terms is explained in turn.

We begin with the core of our concern for others, contrasting, as competing emotional styles, *apathy* and *empathy*. These core terms establish the absence or existence of our concern with others. Each of us is apathetic in some respects and empathetic in others, but we are concerned here with the dominant attitude toward others in our lives and our society, not specific attitudes toward a particular person—friend, lover, child, acquaintance, stranger, or enemy. Each person is different of course, and all of us are more or less finely tuned to the interests of others in relationships which form concentric circles from ourselves to the furthermost stranger. But we can, I believe, identify broad public norms and trends in what we can describe as the emerging American character at the beginning of the twenty-first century.

From apathy and empathy, we then juxtapose the reasoning styles of *rationalization* and *imagination*. While this must be a more nuanced discussion, for immediate purposes we can describe the former as separating ourselves from others and the latter leading us to see ourselves in the others' place, much as Piaget described the latter stages of moral development and Adam Smith described the operation of our moral sense. Rationalization allows us to avoid confronting the concerns of others while imagination—by putting us in their place—makes concern with their interests unavoidable.

From this dichotomy, we move to the contrast between *justification* and *accountability*. Justification follows rationalization and provides conclusions for that process, allowing us to deny responsibility for the effects of our actions on others, while accountability follows imagination and leads us to recognize our own complicity in their harm. This ultimately leads to the distinction between *exculpation* and *responsibility*, the former being the internalization of our justification and the latter the internalization of our accountability. The former prompts us to follow through on actions that harm others or to walk away from them after we have done them, and the latter leads us either to avoid harm or to offer recompense. Exculpation can also lead to *retribution*, where we reverse the causation of harm from our own actions to those of our victim, absolving us from the need to worry about the other, while accountability can lead to *shame, regret,* and ultimately to avoidance of future harm.

It is my contention that the ethic of fear comes with the free market environment. Were we able to restrain markets only to the appropriate sectors of society,[111] the problem might be less acute (although still present in those sectors in which the market dominated). But, as I noted earlier, markets breed markets, or at least that has been the recent history of the United States. In the absence of consciously created social norms and social institutions to counter the destabilizing effects of the market, society itself is at risk of becoming nothing other than an economic arena. Like the citizens of Baghdad who failed spontaneously to arise upon liberation and embrace democracy, the American people (not to mention people in less market-oriented cultures) are unlikely to rise to embrace the markets simply because they have arrived.

THE CULTURAL CONTRADICTIONS OF CAPITALISM

Related to, but distinctly different from, the story of the ethical issues raised in market society, is the question of the nature of capitalism itself and its various permutations across cultures.[112] As an Indian and an Italian who have spent a great

111. *See generally* MICHAEL WALZER, SPHERES OF JUSTICE: A DEFENSE OF PLURALISM AND EQUALITY (1983).

112. Neither they (nor therefore I) address the broader clash of cultures in a globalizing world. *See generally* BENJAMIN R. BARBER, JIHAD VS. MCWORLD: HOW GLOBALISM AND TRIBALISM ARE RESHAPING THE WORLD (1995); SAMUEL P. HUNTINGTON, THE CLASH OF CIVILIZATIONS AND THE REMAKING OF WORLD

deal of time studying comparative market systems, Rajan and Zingales are uniquely equipped to address this issue. And they do. Many of the examples they use are drawn from a variety of developed and developing nations, which they use to show the difficulties in establishing and maintaining free markets and the benefits of doing so (as well as the disadvantages that arise when nations allow their markets to become politically constrained).[113] But for all of their subtlety and sensitivity, they ultimately fail to escape the generally universalist posture of their profession. For Rajan and Zingales, one size fits all, and that size is free product and capital markets.[114]

Before I address the implausibility of this position, let me point out one significant danger of the notion of one-market-for-all. Cheetahs present a useful analogy. For a variety of reasons, the African cheetah population is highly inbred, so much so that each cheetah is more or less the genetic copy of every other cheetah.[115] The result of this has been severe endangerment of the cheetah population.[116] To the extent that they are genetically identical, cheetahs are similarly resistant to certain diseases, and not to others. As a consequence, if a particular disease to which they are not immune infects the cheetah population, there is a pretty good chance that cheetahs will be wiped out.[117] While markets are social and economic institu-

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ORDER (1996).

113. They do, in keeping with the balanced view they present, acknowledge circumstances in which market constraints become for a time necessary and appropriate.

114. They do, however, recognize that different regional and social circumstances may affect the appropriate forms of business. *See* ALLEN N. BERGER ET AL., DOES FUNCTION FOLLOW ORGANIZATIONAL FORM? EVIDENCE FROM THE LENDING PRACTICES OF LARGE AND SMALL BANKS (Harvard Inst. of Econ. Research, Discussion Paper No. 1976, 2002), http://post.economis.harvard.edu/hier/2002papers/HIER1976.pdf; LUIGI GUISO, PAOLA SAPIENZA & LUIGI ZINGALES, DOES LOCAL FINANCIAL DEVELOPMENT MATTER? (Ctr. for Research in Sec. Prices, Working Paper No. 538, 2003), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=308569; GUISO, SAPIENZA & ZINGALES, *supra* note 96; RAJAN & ZINGALES, *supra* note 1. Zingales has also participated in fascinating, if inconclusive, research on the effect of religion (and different religions) on economic growth. *See generally* Luigi Guiso, Paola Sapienza & Luigi Zingales, *People's Opium? Religion and Economic Attitudes*, 50 J. MON. ECON. 225 (2003). The study is not designed to determine, however, the normative claim of the book, that free and open markets are economically and socially desirable.

115. *See* Sharon Begley, *A Question of Breeding*, NAT'L WILDLIFE, Feb./Mar. 1991, at 12.

116. *Id.*

117. *See id.* Note that the inbreeding is also resulting in a greater propor-

tions, not natural beings like cheetahs, the analogy obtains. Take, for example, the collapse of the Russian economy in 1998. Russia's trading and economic partners felt some of the effects of the collapse pretty hard but were able to protect themselves.[118] The same has been true of the Japanese economic crisis which has persisted for more or less a decade.[119] The world economy is sufficiently global already that a bit of butterfly effect obtains, with the sovereignty of states over their own economies as the principal protection. To the extent that we create a world of completely open financial and product borders, it is worth at least speculating how much more severely economic crises in one part of the world will affect others.

One answer might be that such crises would be significantly mitigated by the ability of capital and products to flow freely across borders. This openness would broadly spread the effects of any such crisis throughout the world, mitigating its effect in the country of origin and spreading the burden more equitably on the rest of the world that engages in this economy. While this might be both a plausible and equitable result, it does raise the question of predictable governmental behavior under such circumstances. How willing might a sovereign nation be to absorb the economic problems of another? Rajan and Zingales themselves cite the worldwide depression of the 1930s as a significant cause of restricted trade and capital movement; the closing of free markets was a protective response by individual governments leading to the ultimately failed agreement at Bretton Woods.[120] Could the open markets they envision become infected, like the cheetah population, in a manner that taxes the nations of the world so severely that recovery would be difficult without massive international cooperation on a solution (which would necessarily impinge on the sovereignty of the nation in which the problem originated and entail the kind of cooperation and subjugation of sovereignty rarely seen in

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tion of male cheetahs that are sterile, so even if no disease gets them, they may be doomed just because the population is losing the ability to replenish itself.

118. Some places, like Britain, were hit harder than others. *See Russian to the Exits*, WALL ST. J., Aug. 28, 1998, at A1. *But see Fed Panel Considered Reversal of Earlier Rate Cut in February*, N.Y. TIMES, Apr. 2, 1999, at C4 (noting that the Federal Reserve's protection of the United States was enough).

119. *See* Mark Landler, *U.S. Gyrations of Little Effect on Many Asian Stock Markets*, N.Y. TIMES, Mar. 22, 2001, at C8; David E. Sanger, *Case No. 3: Asian Illness Threatening Vital Organs*, N.Y. TIMES, Nov. 22, 1997, at D1.

120. RAJAN & ZINGALES, *supra* note 1, at 241–43.

world history)? Some evidence suggests that it could, and that the solution would be hard to attain. The European Union has notably had trouble compelling its member states to comply with their agreed-upon regulations. Great Britain still has failed to adopt the Euro and Sweden has regretted it, signaling that sovereignty and control over their own money supplies is a more important value than pan-European cooperation.[121] And France has on several occasions directly violated EU restrictions on bailing out domestic corporations.[122]

The benefits of the free market might well be embraced during times of economic prosperity. It is hard to imagine that in a world in which the sovereign state remains the primary political unit that it could weather even moderate shocks, let alone severe ones, without taking protective measures.[123] But another issue presents itself: whether or not it is plausible for the world to accept one capitalism, is it desirable or even possible for it do so? In particular, is it plausible or desirable that the world accept the particular form of capitalism most characteristic of the United States? While they acknowledge in passing that other forms of more restricted capitalism preserve particular values (some degree of worker stability in Italy, for example),[124] Rajan and Zingales give short shrift to the cultural particularism of the form of capitalism they espouse and fail completely to address the effects that the universalization of that form of capitalism might have on other cultures (or indeed whether it will actually take root in different cultures).

Put simply, it simply is not enough to open markets, no

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121. *See* Christopher Rhoads & G. Thomas Sims, *Money Trouble: Rising Deficits in Europe Give Euro Its Toughest Challenge Yet*, WALL ST. J., Sept. 15, 2003, at A1.

122. John Carreyrou, *Saving a Company, Paris Sets a Pattern of Flouting the EU*, WALL ST. J., Aug. 19, 2003, at A1; *see also* John Carreyrou & William Echikson, *EU Antitrust Chief Sues France*, WALL ST. J., Oct. 2, 2003, at A14; John Carreyrou, *French Bailout of Alstom to Get Close EU Scrutiny: State to Take 30% Stake in Ailing Engineer Group Despite Rules Limiting Aid*, WALL ST. J., Aug. 6, 2003, at A11.

123. For more examples of noncompliance and alleged noncompliance by European Union members, see Marc Champion & Christopher Rhoads, *Euro's Appeal Was Damaged by Slow Growth: Sweden's Veto of Currency Highlights the Disparities Within EU Economies*, WALL ST. J., Sept. 16, 2003, at A15; Mark Landler, *European Commission Presses Germany to Curb Deficit*, N.Y. TIMES, Nov. 19, 2003, at W1; Brandon Mitchener et al., *Expanded EU Will Be an Uneven One*, WALL ST. J., Sept. 22, 2003, at A16; *Ryanair Prepares for Negative Ruling from EU*, WALL ST. J., Nov. 13, 2003, at A14.

124. RAJAN & ZINGALES, *supra* note 1, at 244–45.

matter how protected, and say you are finished. For in making this claim, Rajan and Zingales give very short shrift to the different types of institutions (other than banks and corporations) that exist in different nations, and the extent to which those institutions are, even if superficially similar, embedded in different societies and cultures.[125] They pass over the fact that markets—product, financial, or otherwise—are composed of individual actors, and understanding the social networks and cultural assumptions on which those actors behave is critical for evaluating the desirability and possibility of one world market.[126] Even if one accepts their claim—a claim that is hotly contested—that business actors (corporations) are converging on what has become known as the Anglo-American model,[127] there are many other individuals and institutions involved in economic and financial production in each sovereign nation. Culture matters, and society matters.[128] So one can see their story quite differently. In this section I shall give a different and, in my view, more plausible account of the workings of the economic world.

Rajan and Zingales might immediately object to this objection. They might, for example, argue that free product and capital markets will, over time, cause the same kinds of institutional and cultural convergences that they already claim have occurred in corporations. Opening borders in the way they en-

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125. They are not insensitive to these issues but they have explored them more thoroughly elsewhere than in this book, and of course it is in this book that they make the strong free market argument. *See generally* GUISO, SAPIENZA & ZINGALES, DOES LOCAL FINANCIAL DEVELOPMENT MATTER?, *supra* note 114; GUISO, SAPIENZA & ZINGALES, *supra* note 96; RAGHURAM G. RAJAN & LUIGI ZINGALES, BANKS AND MARKETS: THE CHANGING CHARACTER OF EUROPEAN FINANCE (Ctr. for Research in Sec. Prices, Working Paper No. 546, 2003), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=389100; Guiso, Sapienza & Zingales, *People's Opium?*, *supra* note 114.

126. They are not, in general in the work, insensitive to the work of economic sociologists, but for the most part choose to follow a more neoclassical economic approach, giving the sociologists relatively short shrift. For a very different approach focusing on the behavior of actors, see VARIETIES OF CAPITALISM: THE INSTITUTIONAL FOUNDATIONS OF COMPARATIVE ADVANTAGE (Peter A. Hall & David Soskice eds., 2001). For a similar focus from a different perspective, see CONTEMPORARY CAPITALISM: THE EMBEDDEDNESS OF INSTITUTIONS (J. Roger Hollingsworth & Robert Boyer eds., 1997).

127. *See generally* William W. Bratton & Joseph A. McCahery, *Comparative Corporate Governance and the Theory of the Firm: The Case Against Global Cross Reference*, 38 COLUM. J. TRANSNAT'L L. 213 (1999).

128. *See generally* CULTURE MATTERS: HOW VALUES SHAPE HUMAN PROGRESS (Lawrence E. Harrison & Samuel P. Huntington eds., 2000).

vision opens cultures, or so they might say, and as people the world over come to appreciate the benefits of the free market their social and political institutions will achieve a kind of equilibrium that facilitates free trade and finance. Of course, implicit in this response is that the equilibrium point will be something on the order of American republican democracy, for it is indisputable that it is in the United States that the free market ideal has achieved its highest realization. If this were to be their response (and I do not know that it is, but the entire thrust of their argument suggests it), then this is a far more radical book than it would appear on its face. It is an argument not only for globalizing democracy, but for broad globalization of political systems—in other words, democracy—and the norms and institutions that support it.

This argument not only seems unrealistic but downright imperialistic, and since they did not expressly make it, I will not answer it. Instead, I will address the more modest suggestion that in fact free product and financial markets, with the convergence of economic systems, regulatory regimes, and corporate governance systems that they imply, are both plausible and desirable.

The plausibility argument is fairly easy. It begins with the recognition, well-established by economic sociologists although largely ignored by neoclassicists, that the markets are themselves institutions, supported in turn by social networks, political institutions, and local norms.[129] To the neoclassicist, markets are simply the aggregate of bilateral transactions entered into by market actors seeking to maximize their wealth. But markets are more than this—they are more than the sum of their parts. Institutions are, at a minimum, a set of rules followed by actors, whether that institution is professional football (American or the rest of the world's form, take your pick), the Boy Scouts, or the securities markets.[130] Each of these and every other institution establishes rules based not only upon the goal to be achieved by the participants in the institution, but also upon the normative ideals of the rulemakers. That is to say, while the end goal may be winning a game, or making Eagle Scout, or making money, implicit and sometimes explicit in each institution is a set of values, a set of ground rules, that es-

129. *See generally* Mitchell, *supra* note 81.

130. *See generally* Claire Moore Dickerson, *Corporations as Cities: Targeting the Nodes in Overlapping Networks*, 29 J. CORP. L. (forthcoming May 2004).

tablishes how one goes about achieving the ultimate goal. Now it is certainly the case that some of these rules go to making achievement of the goals more efficient, and that of course is the interest of the neoclassicist. Institutional norms provide other goals as well. American football differs from rugby in its normative construct. I do not intend to insult rugby fans, but it is a fairly uncivilized and unregulated game. Football, on the other hand, while it can be quite brutal, takes a set of behaviors off the field that are perfectly appropriate in rugby. And while we are on the subject of blood sport, fencing and boxing are governed by a very strict set of rules. In each case, the norms go not only to questions of maximizing the level of skill (and minimizing the level of the inevitable luck) in the outcome of the contest, but observe certain ideals of fairness and sportsmanship. Rajan and Zingales understand the need for rules in the market contexts in which they are interested. But even as they understand and in fact advocate a level playing field in the economic arena, they disregard the norms that support the institutions that support their economic actors. That is to say, they disregard norms in other arenas.[131]

To join the issue on their own terms, while they claim that corporate governance has converged, there is a large literature suggesting that this is not the case and is not likely to be the case either.[132] There are reasons why what has variously been called the Rhenish or Japanese system or coordinated market economies differs significantly from the Anglo-American or liberal market economies.[133] Those differences are neither all to the economic disadvantage of the former, nor are they grounded on economic considerations alone. Because it is the liberal market economy Rajan and Zingales advocate as the one world economy, it is worth stepping back for a moment to look at the conditions under which those economies exist, again by focusing on the most preeminent model of that economy, the United States.

To play out the normative distinctions, I will step back for

131. Except, that is, for the generalized phenomenon of social capital and, in a paper coauthored by Zingales and others, the effect of religion on economic development. *See generally* Guiso, Sapienza & Zingales, *People's Opium?*, *supra* note 114.

132. *See, e.g.*, Bratton & McCahery, *supra* note 127.

133. MICHEL ALBERT, CAPITALISM VS. CAPITALISM: HOW AMERICA'S OBSESSION WITH INDIVIDUAL ACHIEVEMENT AND SHORT-TERM PROFIT HAS LED IT TO THE BRINK OF COLLAPSE (Paul Haviland trans., rev. ed., Four Walls Eight Windows 1993) (1993).

a moment to one of the great works of twentieth-century philosophy to which Rajan and Zingales make veiled reference in passing: John Rawls's *A Theory of Justice*.[134] Whatever its many flaws, what Rawls attempts to do is to set out the minimal principles necessary to create a just political order in a pluralistic and highly diverse society. What we get, of course, are the two principles of justice, chosen from behind a veil of ignorance (and hence the fairness of the title), the preeminent of which is as much liberty for each individual without impinging on the liberties of the others. The second, more controversial principle, the difference principle, is about economic redistribution, and while it is a vitally important part of Rawls's theory, it is secondary to the first principle, which is analogous to Rajan and Zingales's ideal of free product and financial markets.

So we can see the ideal of free product and financial markets as a theory of economic justice (not to mention efficiency), consistent with the way in which Rajan and Zingales present it. Note that, like Rawls's principle, it reduces the economic world to what can be seen as a lowest common denominator. Just as equal liberty is at the heart of Rawls's theory, so equal opportunity is at the heart of Rajan and Zingales's argument. The reason for equal liberty is that it allows groups and individuals in a highly pluralistic society to adopt a basic principle upon which all can agree, despite the very real existence of different fundamental beliefs and value systems among a population trying to find a way to get along. The reason for Rajan and Zingales's free market principle is that by creating relatively equal access to capital, it maximizes economic efficiency and therefore overall social wealth.

This ends the usefulness of the analogy. Rawls is trying to create a system in which people can believe in different deities and practice worship as they choose; pursue whatever goals in life they find valuable, whether it be the goal of the undeserving poor, the porter, or the philosopher; make whatever life choices suit them best (marriage or not, gay or straight, children or childless); associate with whomever they like (Hadassah, Augusta National, NARAL); make whatever political decisions they choose; and the like. The purpose of the principles of justice as a lowest common denominator is, in other words, to allow a multiplicity of institutions, groups, organizations, normative systems, and life choices to flourish. Whether or not

134. RAWLS, *supra* note 18.

Rawls's principles achieve this is not the issue. It is the goal.

The world of free markets as a lowest common denominator aims to create a world in which one value is protected: the maximization of economic wealth. To be fair, Rajan and Zingales appear to want to see a world in which the poor of both developed and developing nations have the chance to become among the rich, and clearly (and almost certainly correctly) believe that a world of greater economic efficiency is a world enriched by innovation and comfort. What they do not address is the fact that one person's innovation and comfort—and, indeed, one person's free market—is another person's oppression or ruined community.

Leaving aside the debate over whether the liberal market system or coordinated market system is more efficient, it is clear that the nations adopting the former have different institutions and norms than the nations adopting the latter. Sociologists show us that social capital and community ties are much more significant and well-developed in the former than the latter,[135] that social welfare programs, the well-being of workers, and varying degrees of community cohesion are more prized in the former than the latter. Indeed, it seems pretty clear that social capital like trust and community cohesion is considerably lower in, say, the United States, than in Germany or Japan. Of course these are not unalloyed goods; undue social cohesion can, as it has in recent memory, lead to fascism, nationalism, and totalitarianism. But leaving the extremes aside, all one needs to ask to reject Rajan and Zingales's thesis is whether it is plausible that the people of a nation might choose values of community over the possibility of increased wealth. Their failure to discuss any of the developing world beyond the emerging European former communist bloc nations (with a nod to British-colonized India and to Mexico, which, under NAFTA, clearly is becoming part of the American market orbit), leaves aside the entire Arab world, Africa, and much of Latin America. Casual reading is enough to make clear that these are areas of the world that might well be served by increased wealth or opportunities to create it. But casual reading also makes clear that there are substantial numbers of people in the world who

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135. J. Rogers Hollingsworth & Robert Boyer, *Coordination of Economic Actors and Social Systems of Production*, *in* CONTEMPORARY CAPITALISM, *supra* note 126, at 11 ("All other things being equal, the more powerful the social bonds among transacting partners, the more economic competition is likely to be restrained.").

have values that transcend economic efficiency. The fact that these values might not always be desirable (Palestinian revenge against Israeli occupation instead of building economic infrastructure, for example) does not change the fact that the idea that opening markets will lead people to abandon their values, lives, and world views, for economic gain, is simply implausible.

It is also implausible to think that even in those nations that have adopted some form of capitalism (and it is here worth noting that Rajan and Zingales seem to accept only one true form of capitalism) that economic institutions are embedded in social contexts and that the strength of these social contexts is unlikely to yield simply because finance capital might become more available. To put it in economic terms, what I have referred to as coordinated market economies resolve their economic issues differently than liberal market economies.[136] The latter coordinate largely on markets, even moderately regulated markets of the type suggested by Rajan and Zingales. This produces high degrees of generalized worker training and worker mobility, little institutional loyalty, and managerial responsiveness to short-term profit incentives, to name a few consequences. Information is widely disseminated, but not deep, and this implies diversification of financial holdings as well. By contrast, coordinated market economies coordinate on relational contracting, not only in the supply and product markets but in financial markets as well, implying more cooperative and coordinated strategies and higher degrees of trust. Among the consequences of this type of capitalism are company- or industry-specific worker training, coordinated among firms; high degrees of employment stability, retraining, and worker loyalty; and managerial freedom from short-term market pressures. It is also the case that liberal market economies generally have significantly higher degrees of income inequality than coordinated market economies,[137] and it is not inconceivable that a nation might choose greater equality over greater wealth (if in fact liberal market economies do produce greater wealth over the long term, a matter which is the subject of serious debate). While some observers believe that liberal market economies are, as a consequence of these and other considerations, more adept at innovation, and coordinated market economies are

136. VARIETIES OF CAPITALISM, *supra* note 126.
137. *Id.* at 21.

better suited to incremental innovation but the efficient and steady production of capital goods,[138] this does not imply that one form of capitalism is superior to another. In fact, if liberal market economies are less likely to engage in technology transfers (given their competitive market coordination in contrast to cooperative coordination) and the efficient production of capital goods, one can immediately see a good reason for preserving different forms of capitalism instead of encouraging convergence. The morphing of coordinated market economies into liberal market economies may well produce a world system that is deficient or inefficient in the production of capital goods. It is unlikely that this would be a desirable state of affairs.

Thus far I have focused largely on the question of whether one form of capitalism is plausible and desirable from an economic standpoint. The evidence suggests that it probably is not, and certainly suggests that the social embeddedness of institutions means that achieving such a goal would involve far more radical political, cultural, and social change in various developed and developing countries than Rajan and Zingales are willing to recognize. But there are other reasons why one economic world might be undesirable as well.[139]

WEALTH: WHAT IS IT GOOD FOR?

Throughout the argument, Rajan and Zingales operate on the implicit assumption that more wealth is better. That is to say, a nation (or a world) that has more wealth is better than a nation (or world) that has less. I and others have refuted this assumption elsewhere[140] and therefore I will not linger on it terribly long, but a few observations are in order.

In the first place is the very real question of the quality of a society and its economic distribution. We have already seen that wealth and income inequalities are far greater in the

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138. *Id.* at 29.

139. Rajan and Zingales do not talk about some of the serious problems of free market capitalism, at least at any length. Although they touch on the issue of public goods, they do not, for example, explore some of the failings of the profit motive such as the problem of orphan drugs. Nor do they examine some of the perverse incentives created by free market capitalism; the recent corporate scandals demonstrate the consequences of an excessive managerial focus on short-term profit maximization. *See* MITCHELL, *supra* note 8. To be fair, one cannot discuss every issue, and their argument is fairly wide ranging. But they tread too lightly on the dark side of the free market for their argument to be completely persuasive.

140. *See id.*

economies that Rajan and Zingales admire than those they would reform. It is true that the free market countries tend to have on average higher per capita wealth than coordinated market economies or developing countries. But as we have already seen, that wealth is highly unequally distributed.

What does this mean for a society? Let us accept the (controverted) argument that a liberal market society makes even those who are less well off better off in wealth terms than they would be in societies employing other forms of capitalism or other economic systems. Wealth is a measurable metric, and over time one might decide this proposition is correct. But how do the less wealthy (which in the United States comprises some eighty percent of the population) feel?

Liberal market societies are consumer societies. One's psychological measure of well-being is dependent on far more than the simple metric of absolute wealth.[141] One important factor is the trade-off between work and consumption. We know that citizens of liberal market nations work harder (that is, more hours) than citizens of nations with other capitalist economies.[142] Statistics also suggest that the increase in the number of families in which both parents work[143] may be a contributing factor to the increase in the overall wealth in the United States. Now this is not all bad. One of the benefits of market society is that it prizes talent and ability instead of class, status, ethnicity, or gender. Consequently, market society does provide greater opportunities than societies in which social institutions and norms are more restrictive. One can see this by looking at nothing more than the opportunities for higher education available in the United States in contrast to secondary school tracking and limited higher education choices even in other capitalist societies. The fact that more women work outside the

141. For example, the *American Demographics*' Index of Well-Being considers factors such as income and employment opportunity, productivity and technology, leisure, consumer attitudes, and social and physical environment. Elia Kacapyr, *Trade Deficits and Well-Being*, AM. DEMOGRAPHICS, May 1998, at 30, 34.

142. In 1995, Americans worked 25.9 hours per week on average, compared to 19.3 hours for Germans and 16.5 hours for Italians. Edward C. Prescott, *Why Do Americans Work So Much More Than Europeans?*, Federal Reserve Bank of Minneapolis Research Department Staff Report 321, Sept. 2003, http://minneapolisfed.org/research/sr/sr321.pdf.

143. According to statistics compiled by the U.S. Department of Commerce, the labor force participation rate of married women increased from 40.5% in 1970 to 61.4% in 2001. STATISTICAL ABSTRACT 2002, *supra* note 29, at tbl.569; *see also id.* at tbls.568, 570, 572.

home in the United States is a function in part of this increased opportunity and freer choices. Women now occupy professional and managerial positions in numbers that would have been unthinkable in the American age of hierarchy and that remain unthinkable in some other societies.

But much of the increase in women working outside the home is not a matter of choice but a matter of necessity.[144] In order to maintain standards of living as consumer culture increases the variety of possessions that make one feel well-off (not to mention as rampaging inflation in certain sectors like higher education and housing make higher incomes a necessity), families need higher incomes and greater wealth.[145] Especially in light of the stagnation of wages in the nonskilled and middle managerial sectors, the answer has been for women who might choose to remain as homemakers to work outside the home.[146]

The evidence that the increased stress that comes with two-earner couples (at least when children are involved) and the toll both the stress and the reduction in family time has on the well-being of American families and the parental attention paid to children is dismaying.[147] Parenting is fit in when work allows; children are often left on their own and even when they're not, their time with their parents is carefully budgeted and often provided for when the parents are exhausted from work. Given the fact that the phenomenon is fairly recent, we

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144. The number of women in the labor force increased at twice the rate of men from 1979 to 1992. Judith Waldrop, *What Do Working Women Want?*, AM. DEMOGRAPHICS, Sept. 1994, at 36, 37; *see also* Peter Francese, *The American Work Force*, AM. DEMOGRAPHICS, Feb. 2002, at 40, 40 (stating that figures published by the Bureau of Labor Statistics in December 2001 show that the work force has become increasingly female); *Watch Her Paycheck*, FORECAST, Oct. 1, 1998, 1998 WL 11241706.

145. In the 1980s, the impetus to women's entry into the labor force was the need to supplement individual earnings to keep pace with inflation. Waldrop, *supra* note 144, at 37. As families have become dependent on a dual income to sustain their standard of living, women have continued to push to remain employed in the 1990s. *Id.*; *see also* Diane Crispell, *Dual-Earner Diversity*, AM. DEMOGRAPHICS, July 1995, at 32; Judith Waldrop, *Myths in Progress*, AM. DEMOGRAPHICS, Aug. 1992, at 40.

146. I emphasize women not out of sexism but for obvious cultural reasons. Very few men report that they are full-time homemakers and, as a cultural matter that I believe needs no citation to anybody living in this country, men do not generally see homemaking as an option except perhaps in limited numbers at the very highest income classes where the wife is employed in a highly paid position.

147. HOCHSCHILD, THE TIME BIND, *supra* note 85.

can't know for sure how the children of such parents will fare. But it is not at all clear that the future of America is bright with children whose upbringing exists in the interstices of their parents' work.

There is another downside to the society engaged in the pursuit of wealth. As I noted, psychological well-being is at least as important a factor as physical well-being. In a consumer society (a society in search of wealth and acquisition), what matters most is not whether you can provide for your basic needs but your sense of your material status in relationship to others. Stuff matters, and members of a consumer society spend much of their time in pursuit of stuff. All one has to do to see this in the United States is to note the proliferation of lifestyle magazines, largely devoted to advertisements and articles on how material possessions can improve your lifestyle. An unscientific observation of the trend of even *The New York Times* and its magazine over the course of the last several decades reveals whole new sections devoted to lifestyles, and in particular the lifestyles of the wealthy. It does not require science to show that we are increasingly obsessed with consumption.

What is the social impact of this? The Greeks called it *pleionexia*—grasping. As free market culture proliferates, the tendency is for people to become ever more grasping in the acquisition of wealth and the things it can buy. This adds another level of competition to market society, and distorts the development of social capital even further. For a society in which the members spend their time trying to outdo one another or sit in envy of others is a society in which trust and cooperation are likely to dissipate. Aristotle referred to the grasping man as unjust, perhaps the worst accusation he was capable of levying, for justice consists in part of accepting one's due.[148] If we all come to feel that everything is our due, our behavior towards others will increasingly resemble Aristotelian injustice. And while his is not necessarily the last word on what is just, it is pretty clear that such attitudes are damaging to society.

Wealth itself as a value is a questionable proposition. As I noted earlier, I am not going to address this in any detail since I have done so previously. But in the context of this essay, the question stands out because different capitalist countries (not to mention developing countries) or, better put, societies, place

148. *See* ARISTOTLE, NICHOMACHEAN ETHICS 159 (Christopher Rowe trans., Oxford Univ. Press 2002).

different values on the trade-off between wealth and other aspects of life, such as leisure time, avocational pursuits, community activism, and economic stability. Thus it is not at all clear that any given society would choose wealth maximization as its organizing value even if persuaded that the free market is the goal to achieving it. Again, Rajan and Zingales at least give a nod to the value of economic stability prized by certain types of capitalism (Italian capitalism is cited as an example), but the question of whether wealth should be the one world value (not to mention whether it even is a value) is nowhere on the table.

WHOSE CAPITALISM?

Read with a slightly jaundiced but hopeful eye, Rajan and Zingales's story presents an unduly optimistic, American-centered, and slightly class-biased account of the beauties of the free market. What I have tried to suggest is that the flaws in the capitalism they idealize are serious and real, and are unlikely to be redressed by their brief policy recommendations. More important is the understanding that capitalism is a many-splendored thing, varying with cultures and societies, and serving not only economic goals but other social goals as a particular nation chooses to balance them. As long as we live in a multicultured world, we will have multicultured capitalisms. The fact that some might not produce as much wealth as others, might not be as financially open as others, or might not be as innovative as others, ought not to condemn them to the dustbin of economic history. A realistic appraisal of potential capitalism requires an equally realistic appraisal of what we mean by capitalism, and what values we reserve to the markets and what values we do not. The story, in other words, is far more complex than even the most sensitive free market presentation suggests.