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Role of the EU Unions in Forming the Labor Market of the EEC: Inequality Management and Economic Convergence in the Neoliberal Epoch

Since 1957, when the EEC was established, the EU has introduced liberal policies to bind together traditionally distinct and antagonistic states through trade. Such policies include a common currency to lower transaction costs, turning borders from sites of protectionist tariffs to those of openness and decreasing the capital controls connected with foreign investment. The net result of these and related EU policies is the encouragement of trade, increased competition amongst workers and a tendency for the welfare state to

constrict itself (Beckfield). Workers, once jealously guarded by states that acted as “labor regimes,” now face intensified international competition. Since the beginning of the global economic crisis in 2008, nationalist political parties within Europe have had to increasingly respond to these “old” economic and political conditions to a greater degree.

While Germany, Austria, Netherlands, Denmark currently have youth unemployment rates around 7 to 10%, the rest of Europe hovers around 20% and is as high as 30% in Spain. The dynamic is now such that while an increasing number of people seek welfare state benefits to shelter themselves from the downward turn of the labor market and their gradual evaporation of personal savings, there is an increasing push for austerity programs. Radical right and left parties have sought to electorally exploit these circumstances and the generally poor growth performance over the past two decades to highlight concerns over rising income inequality and the social exclusion and marginalization concomitant with such developments (Burgoon). However these outlier parties, as well as the centrist social democrats, are increasingly limited in their capacity to enact policies to counterbalance re-regulation of wages and labor conditions. This is because social welfare and austerity programs, a competence of individual member states, take place within the framework of a larger economic nexus of European Economic Community (EEC). The EEC’s supra-national composition has numerous spillover effects into the national political realm. The removal and erosion of trade restrictions and barriers means that primarily domestic industries, once protected through various nationalist-oriented regulatory policies, now face

increased competition from better-capitalized multinational companies (MNC). MNC not only promote member state policies that lead to decreased taxation for social spending, widely referred to as austerity cuts, but are also able to exert pressure to alter the very nature of spending and create regulatory changes that redefine pre-agreed upon optimal business practices.

Supra-national political actors and capitalist elites have not been the sole determiners of the structural adjustments enacted within the EEC. Unions have, to varying degrees based upon national location, sector, size, previous level of organizational capacity, adaptive ability to the new international pressures, and availability of political opportunity, sought to limit downward wage pressures and re-regulation that increases work precariousness and the intensification of economic disparity. One significant shift brought about by these dynamics is the adoption in some EU countries of the Ghent system, wherein unions take on a limited role of administering unemployment benefits that were once administered by individual member states. This paper seeks to interrogate some of the causes for differences between regions and sectors where inequality has intensified, where it has decreased and the role, if any, that unions have had in economic convergence within the EEC.

There are many factors that play a role in income inequality. One of them that I expect to find across the EEC is that regions associated with higher levels of unionization will have decreased levels of inequality. The obverse of this presupposition should also hold true, i.e. that those regions

characterized by low levels of unionization are likely to be those regions that have increased levels of inequality. It is likely that there should be no direct relationship between the form of labor within a region and its relationship to inequality. Additionally, regions containing industries with discernibly higher levels of capital investment, be it manufacturing, extraction or services, should not necessarily have decreased income inequality. Compiling data from the United Nations International Labor Organization (ILO), National Statistical Yearbooks, and the OECD will provide a net set that illustrates the level of density. Thankfully, some of this research on the composition of labor relations in the EU has already been done and I can state that there has been a net decline in union membership across all EU member states since 2000, with the possible exception of Belgium (Bryson). As projected, with this downward trend to union density, increased economic disparity within countries is evident (Afonso).

Whether or not the particular labor regime of a member country is inclusive, dual or market will also have a marked affect not just on the percentage of union density but also its composition (Schnabel). Factoring this into the net set of data is important as in an atmosphere where MNC have an increased role in determining employment agreements, union density qua itself is unlikely to translate into lowered income inequality. Phrased another way, not all unions are created equal. Each individual union will either orient their administrative capabilities and capacity to mobilize the rank and file for massive demonstrations of political preference based upon what they perceive to best suit their particular

rather than the needs of the national workforce or do see via political party influence due to their importance in the national economy (Lindvall). As union identities shift away from nationalist conceptions to individualist or “European” ones, national solidarity strike actions are likely to decrease. Instead, attempts at sectoral co-ordination amongst unions of similarly skilled workers in various regions should increase. Regardless of this, however, given the legal framework of the EEC it is likely that either attempt at imposing labor conditions will be difficult. This is because unions have to face a motley assortment of contradictory national labor laws. Indeed, “at the intersectoral and sectoral levels: only three and six agreements respectively, in more than 20 years” have transitioned from bargaining table to functioning legal agreement (Ales 96). Thus while my projections are clearly felicitous to EU reality, to better map the capacity of unions to decrease income inequality I would combine the categorization of form of the particular labor regime to surveys of the labor force and union leadership as well as datasets from the ILO database to determine respective strengths. This would allow a relative determination of which states are generally supportive to unions and further determine which sectors are prioritized by their respective legal systems and thus most able to inform the prerogatives of MNC.

Another factor to include in the determination of the EEC’s affects on income inequality and determining if unions assist in greater wage parity is the domestic capacity of various states to ameliorate inequality through welfare programs. Across Europe typical welfare state disbursements have

diminished due to the reorganization of capitalist production that was part and parcel of the original EEC agreement and was accelerated following its eastward expansion into the former Soviet bloc. Based upon the framing of regional development directives and the European Commission's promotion of flexicurity, a portmanteau combination of flexibility and security that refers to the weakened reformulation of the national rights of workers amidst the conditions created by the EEC, it is to be presumed that while at the national level spending on traditional welfare and work assistance programs are cut or externalized onto others, a la the Ghent system, on the supra-national level similarly styled spending will be directed towards projects that facilitate the expansion of economic regionalism and increasing of the rationality of state services disbursement. This particular dynamic is important for understanding how the EEC affects wage inequality, for in addition to the goal of decreasing variation in quality of European governance by raising state capacities, it should also show investment preferences to projects and sectors endogenous to specific areas that have production or transportation advantages.

Indeed, the EU Cohesion Fund distinguishes three different categories for its investments: investments to improve the productive environment, investments in human resources and investments in infrastructure. This three part classification is misleading, however, as "investments in human resources are assumed to lead to an improvement in labor productivity in all the activities" (Bayar 31). With this in mind, it becomes clear that such investments are primarily concerned with underwriting projects that maximize the

sectorial and regional needs of European capitalists. Thus while the European Commission's Regional Development policies seek to positively contribute to economic growth, social welfare and quality of life they serve primarily to reinforce the capitalist system driving regional wage inequality in the EU. By analyzing at the European Research and Development Fund (ERDF) and Cohesion Fund projects it will be possible to categorize the form and intent of investment. As it relates to the composition of project spending, the Center for Industrial Studies (CIS) has already done much of this work in preparing evaluations for the European Commission. General data that shows a decline of social welfare spending can be obtained from the OECD. These unto themselves, however, would not be sufficient in determining unions' effect on wages and labor conditions. A country-by-country analysis of disbursement regulations would be necessary to further understand the end point of such spending. Comparing the relative national/sectoral strength of unions determined from the previous research combined with the content of Cohesion Fund spending will determine whether Cohesion Funds are directed to regions with low or high union capacity in the sectors related to the investment. In this environment of diminishing union power and increasing atomization and fragmentation of unions, it's likely that such spending is to go to those regions with the lowest union density.

In summary, downward wage pressures are not net but are uneven across countries and sectors (Botwinick, Ezcurra). While not quite a speedy race to the bottom, with the exception of Greece, Hungary and Italy, the national Gini rate

has increased in every EU country from 1995 to 2008 while union membership has decreased (Fredriksen). As trade barriers and national subsidies can no longer protect non-optimal industries once solely associated with a particular country, it is easier for corporations to seek cheaper, non-local labor, to impose new forms of industrial relations, to move production elsewhere, or simply to divest from non-competitive industries. MNC capacity in this regard is limited. While able to influence and promote Science, Technology, Engineering and Math (STEM) education policies in individual counties that transform populations once categorized as not having enough skilled workers into places for potential relocation, such policies are long-term in orientation. This means that existent, embedded industries are likely to remain in place, at least in the short term, as such in order to avoid costs associated with fragmentation and potential loss in quality. While analysis of the composition and percentage of public expenditure on educational spending in order to determine its influence on the common market wage and labor conditions, considering the numerous other secular factors that could condition these this is not likely to be a viable route of operationalization. Instead, it would be preferable to look towards management practices and technology transfers as well as recapitalization of non-optimal production sites, which are likely to be located in Eastern Europe. To address the former a qualitative research survey would likely be the best mean of determining changes while for the latter it would consist of UNCTAD and IMF data on Foreign and Direct Investment.

Another important area for discovery on the common

markets effects on wages is found is in the growing “flexible” labor market. Summarizing multivariate analyses on patterns of employment and union recruitment in the EEC, Claus Schnabel summarizes that:

“the employment share of standard full-time jobs has fallen in the last decades while *atypical employment* (such as part-time jobs, fixed-term contracts or temporary agency jobs) has been on the rise. This poses recruitment problems for unions since atypically employed workers usually have weaker ties to their current workplace and are more difficult to recruit and keep as union members” (Schnabel 7).

This increased level of part-time employment translates into higher organization costs for unions and decreased capacity to press for increased wages. The effects of this on national tax bases should be significant, and will be illustrated in national tax revenues. The general effect of the EEC on national tax schedules is also likely to shift in such a manner as to increasingly benefit their capitalist class. Indeed, we find this to be true and “Many OECD countries have seen a decline in the progressivity of the tax schedule at the upper tail of the income distribution over the past decade due both to a decline in top marginal tax rates and an increased income threshold from which rates apply” (Fredriksen 8). The upper deciles within the EEC have increased their relative share of wages and savings, most often at the cost of the lowest ones. Given the increased need for finance to seek and capture new investments in an international context, this is required for otherwise non-national capitalists could purchased shares or controls of domestic companies and transfer profits abroad.

This greater cost burden for workers ironically occurs at a time when the state is offering them less. Contrasting the changing national level of tax schedules with the percentage of flexible workers would give insight into the percentage of the most precarious workers while the with the previously determined levels of union strength by sector would give insight into the percentage of the reserve army of labor that is quickly able to be transitioned into the workforce and thus placing downward pressure on wages.

As EU labor markets become increasingly specialized and regionalized to suit the needs of European capitalists, austerity cuts matched with increasing emphasis to flexicurity, and supra-national expenditure going to bolstering sectors deemed most competitive, those not in the primary industries will continue to face increasingly powerful downward wage pressures and layoffs. This combined with the long-term trends toward increasing education and skilling of under-developed regions and increasing cross-national productive organization will exacerbate this situation and the capacity of unions to respond. Analysis of these myriad national and supra-national effects of the common market rules helps explain why there has been a general increase in wealth disparity at the same time as there is a right turn in the direction of European political parties.

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Venezuela's Political Economy Since the Collapse of the Partyarchy and The Transition to "21st Century Socialism"

Following the election of Hugo Chávez Frias in 1999 Venezuela re-entered the consciousness of the U.S. public after a long period of relative obscurity. In rhetoric reminiscent of the Cold War, mainstream U.S. news commentators quickly adopted a sensationalist narrative of “capitalism and democracy under attack,” categorizing the newly elected president as anything but a rational or stable political actor. Fox News commentator Bill O’Reilly has called Chávez both a “brutal tyrant” and “Jabba the Hut”, a reference to the corpulent Star Wars villain. Such personal attacks and paternalistic protestations from a perspective that views any contestation of American capitalist interest as bad clearly illustrates how such accounts of the regime focus on institutional operations while ignoring the history of the Venezuelan state, obscuring the causes of institutional degeneration and deemphasizing the large margin of Chávez’s first and subsequent electoral victories.

While it is easy to dismiss such a perspective as vulgar, jingoist demagoguery, this was not the only criticism leveled against the new regime. Indeed, scholars focusing on Latin American and issues of democracy have raised their voices into a chorus that delve deeper into concerns over the Venezuelan state and its economy. Jorge Casteñada, Javier Corrales, Manuel Hidalgo, Anthony Spanakos, Scott Mainwaring, Michael Penfold-Becerra, Rafael Utcategui and Miriam Kornblith are some of the main researchers that have been critical of the actions of the newly formed “Bolivarian” state and the statesman that acted as the figurehead of its foundation until his death in 2012. Their writings represent a critical stance grounded in the historical, empirical realities

of Venezuela and see the form of changes as, depending on the author, being a variety of neo- or military populism, participatory competitive authoritarianism, or bureaucratic opportunism lacking a rational economic foundation for sustainability that will cause the country to collapse into a crisis akin to the one that created the conditions which brought Chávez to power.

These assessments on Hugo Chávez and the Bolivarian state are, however, not without contestation. Because the policies Chávez enacted sought to replace liberal democracy with a participatory model, undermined neo-liberal economic policy proscriptions domestically and in other parts of Latin America, and increased social spending in an atmosphere of austerity all while Chávez openly courted the international socialist left, his message and actions have fallen on receptive ears willing to refute or recontextualize the aforementioned critics. Some of the scholars that have expounded on the beneficial nature of Chávez's policies include Steve Ellner, Gregory Wilpert, Thomas Muhr, Roger Burbach, Camila Piniero, Cristobal Ramirez, Roland Denis, Sujatha Fernandes, Richard Gott and Iain Bruce. They see the state's actions largely as an imperfect attempt to reinscribe the economically marginal into civil society and the state as well as widen the democratic process by countering the previous hegemony of economic elite interests in the policy making and implementation process.

This polarization of perspectives on Bolivarian Venezuela and Hugo Chávez is a reflection of the political polarization that exists in the country itself, a fact to which both pro- and

anti-Chávez partisans admit, as much as it is an expression on the contested composition of global capitalism. This essay will illustrate Venezuela's political development leading to the institutional crisis which brought Chávez into power, and then outline of these two antagonistic perspectives, giving a cursory review to some of the divisions within these camps, then provide an explanation as to how it was that 21st Century Socialism came to be a Chavista slogan. This paper will also, in close, provide a short outline of the current rule by Chavez's chosen successor, Nicolas Maduro.

II. Venezuelan State Formation

The modern Venezuelan states emerged with Juan Vincente Gomez. Following his overthrow of Jose Cirpiano Castro Ruiz, Gomez began consolidating the cattle industry through coercion and incorporating state presidents into a national profiteering network populated by military officers that had assisted him in the coup. By allocating spoils to the presidents of distant regions, and by extension their subordinates, he assured their allegiance to him. While Gomez's attention was primarily directed upon the cattle industry, it extended to "all such ventures depended on political power to function through the distribution of profits up and down the political hierarchy, binding men to each other and to Gomez for their mutual benefit and thus strengthening the state" (Yarrington 20). While the death of Gomez in 1935 eliminated this specific sector of grievance following his successor, General Lopez Contreras, breaking apart this and several other monopolies, this dynamic of state corruption and the populations ritualized submission

continued and expanded with the discovery of oil.

At the time of the discovery of oil in Maracaibo, Venezuela did not have a diverse, industrialized economy, democratic state institutions, or a professional bureaucracy. New property laws were written to deal with oil companies in such a way that the state was considered the negotiator/owner for corporations seeking to purchase or rent land (Karl 73). As outlined in the Petroleum Law of 1922, this had the effect of centralizing power in the executive, increasing the state's jurisdiction and making it unduly dependent on a percentage of oil revenues for its operation funding. The money used by these taxes was used to co-opt groups in opposition to its choice of distribution, and had the effect of limiting the choices made available to politicians, especially as the diversification of the tax burden was fought both by popular and capitalist classes as burdensome. Lacking a professional intelligence apparatus, the oil companies provided the government with information on "subversives", a code for revolutionaries, and subsidized the police forces (Salas 123). Unsurprisingly, Venezuelans resented such a situation wherein they were excluded from the intertwined political and economic process, and organized into several groups such as Accion Democratica (AD), Comité de Organización Política Electoral Independiente (COPEI), the Venezuelan Communist Party (PCV), Union Republicana Democratica (URD). Together they successfully applied pressure and were increasingly presented with progressive policies.

URD, COPEI, and AD, but not the PCV, claimed that reform measures were insufficient in scale and speed, circulated the

allegation that the government was directed by foreign interests and initiated a coup that would begin the *trienio* experience (Ellner 40). COPEI, AD and the Confederation of Workers of Venezuela (CTV), which had been infiltrated and domesticated by the latter, initiated a period of radical reform that was unmatched in the region (Maher 185-186). The burst of radicalism was suppressed for nine years by another military dictator, Perez Jimenez, and was continued in the form of political expulsions following his overthrow and ascendancy of A.D.'s Juan Betancourt from key politician in the new ruling junta to the office of the presidency (Maher 187).

The pact of *Punto Fijo* and the minimum program are considered by all commentators on Venezuela as watershed moments for subsequent political development. The rationale for AD, COPEI and URD was to have all agreeing parties respect the elections, thus allowing for the continuity of governance, and the radical nationalist, socialist and communist groups be excluded. While this 35-year period of "democratic" rule is noted for its stability, as well as its increasing presidentialism, it's not generally attributed to its institutions or policies but to the global price of oil, the incorporation of dissent into the matrix of corruption, and the lack of viable or visible political alternatives (Karl, 288; Ellner, 82). During this time period was not the consolidation of substantive democracy but a formal one. The recurring phrase in the literature is of a state within a state, and this was most evident in the state's deference to FEDECAMARAS, large land-holders, bankers and commodity importers rather than the electorate. Such a balance of political power lead to

policies promoting clientism rather than professionalism, deleterious urbanization, and rampant corruption that had made the country a target for the Washington Consensus and radical domestic reform (Gott 81).

In staggering contradiction to the numerous American politicians that have fanned fears over Chávez, almost none of the literature on Venezuela attests to this period ever being a robust democracy. Indeed, even those that frame Venezuela's history since Chávez as one of democratic deterioration either don't delve deeply into the history of the state or agree that prior to his ascent the institutions of the state significantly lacked democratic qualities in several areas and was best defined as being a partyarchy (Coppege). Greatly restricting the capacity of political actors not associated with AD, and COPEI, the Pact of Punto Fijo had carved out sectors of political influence and made the PCV illegal. The various factions once associated or identified with the PCV soon began a Che Guevara-inspired domestic insurgency that led to massive repression (Maher). The groups were not as large or relatively successful as in other Latin American countries in part because the oil-funded state spent heavily on its secret service (DISIP) and subsidization of a variety of goods, thus allowing the top-down nature of decision-making within these increasingly clientelistic, corporatist structure to continue. Mainwaring still considers the regime to have been "competitive". His basis for stating this is that while from 1959 to 1993 there was certainly no possibility of political representation outside of those two parties by 1993 Movement to Socialism (MAS) and La Causa R (LCR), both composed of former leaders of the leftist guerilla insurgency, were viable

left-wing political alternatives. Convergencia, the organization in charge of the electoral campaign for former president and COPEI leader Caldera, was also widely supported, even winning and thus to Mainwaring, the electoral turnout for these three non-AD/COPEI parties illustrate that there was a vibrant political alternative.

Steve Ellner and Richard Gott protest such a characterization, instead claiming that while there was limited conflict amongst the party elites of AD/COPEI, neither they nor MAS, LCR or Convergencia contested the IMF structural readjustment policies that were imposed upon Venezuela. These policies had led to a massive withering away of the state's social spending, was contributing to the atmosphere wherein the PDVSA was opening up to the possibility of privatizing the state's oil holdings and the populace not in the upper economic echelon faced foreign-structured immiseration, packaged as *el Gran Viaje*. A sustained decline had been occurring since the 1980s due to political ineptitude and the maintenance of political influence networks, and the experience of the urban masses was such that it no longer desired either the acceptance of such policies or the parties that would promote them. Thus Hugo Chávez emerged as an anti-systemic candidate to change the rules of the game. He repudiated the forces that directed economic development towards neoliberal ends, halted capacity for upward social mobility, and decreased popular political representation – some of the classic qualities of a populist. Because of these characteristics he was widely, even before his election, called a populist.

III. 1998 Elections & the Dissolution of Adeco/Copeyano Hegemony

In the past forty years only two U.S. presidents have won by a popular majority, Ronald Reagan and Richard Nixon. In his first electoral campaign in 1998, Chávez took 56.2% of the national votes. In every subsequent election, barring the 2007 constitutional reform referendum where his proposals were defeated by a 1.4% margin, he obtained a greater than 50% victories and also increased his electoral base in absolute terms (Lopez-Maya 145). The composition of his opposition was largely the now marginalized from party-power former bureaucratic elites, the capitalist class that had its prestige and influence diminished and the United States. While the domestic opposition still had the financial ability to support candidates they now lacked any modicum of popular support except in the CTV or the capacity to mobilize the state, the traditional bulwark against major political changes. This made their desire to supplant Chávez a largely uphill battle that quickly escalated into unabashed class conflict.

International opposition funding through the American Center for International Labor Solidarity (ACILS), the National Democratic Institute (NDI) and the International Republican Institute (IRI) also increased, soaring especially high immediately prior to the 2002 recall election. According to the figures found in the IRI's report, spending on programs to supplement "democracy" increased by a factor of seven from 2000 to 2001 (Clement 69-70). In election propaganda the opposition was labeled as a fifth column for U.S. interests. Coralles and Penfold-Becerra describe this time wherein Chávez proclaimed his commitment to participatory

democracy rather than liberal democracy as one of authoritarian consolidation and says it is “an example of how leaders can exploit both state resources and the public’s widespread desire for change to crowd out the opposition, and, by extension, democracy” (Corrales 100). The extension to him by the legislature – of which Chávez now controlled through 93% of the seats – of enabling powers and the rewriting of the constitution gave him wide powers justified by the new constitution, which they claim concentrated the power of the presidency to a degree unmatched in the region. Commenting on the changes which occurred not just in the constitution but in the Consejo Nacional Electoral (CNE) Manuel Hidalgo describe the inconsistencies and irregularities of the elections as a turn towards “electoral authoritarianism. These authors, with Miriam Kornblith, Freedom House and the Inter-American Commission on Human Rights (IACHR) in concurrence, claim that the balloting procedure “improvements” were not equitable, nor free and fair for the opposition candidates. Threats and incentives were made by high-level government employees regarding their voting choice, candidates were invalidated due to various reasons and Chávez used the state as means of assisting his campaign both through the new capacity for the military to be involved in politics, previously illegal due to the long history of military dictatorships, and via state support to missions such as *Plan Bolivar 2000* designed to register more voters in poor districts (Trinkunas).

Gregory Wilpert is one those that has defended these actions by the state. To first counter the claim that the writing and passing of the new constitution was anomalous or

unprecedented in Venezuelan history, Wilpert points out that “between 1811 and 1961 Venezuela had 26 constitutions, the largest number of constitutions in Latin America” (Wilpert 30). Gott and Ellner further hold that instead of the increase of numbers on the CNE’s rolls signifying a degeneration of electoral quality, they show the Chávez government’s attempt to reinvigorate the failed linkages between politicians and people that had led to the collapse of the partyarchy in the first place. They further state that to fail to do so would mean to avoid addressing the institutional imbalance of political power that had existed since the Pact of Punto Fijo. While barring people from running for office that had acted against the public interest does evoke suspicion as to how they were categorized as such so far there has been no systematic treatment of those barred. This topic thus remains ambiguous and a potential for future researcher, with those in support of the Bolivarian regime generally passing over this in the belief that those actors on the ground were acting not just for political gain. As for the further unleashing of the political and social power within the military which had up until then been viewed as a bastion of incompetence and corruption in the upper ranks, is seen by Gott as imperative. The military had always been an important class actor and it’s role in supporting the state, as subsequent events would show, were imperative. While generally supportive of the state as long as it is supporting the people, on this point Maher is wary and diverges from Wilpert, Gott and Ellner. Looking at its hierarchical orientation and its the long history of combatting the political and economic demands of endogenously formed barrio communities, he is more ambivalent. Wilpert further deems the downward pressures by

numerous state functionaries to vote in a specific pattern were not significantly different from before, and on this point many within this “left” orientation take issue. While admitting that Chávez’s decision-making practices were indeed often militaristic rather than consultative, Gott defends this by stating his orientation in choosing public policy was to the benefit of “el pueblo” rather than the propertariat or the former politicians that composed the state within the state. Sujatha Fernandes, however, holds that this was the beginning of the consolidation of a new bureaucracy that was not necessarily linked to the grass-roots and that the state thus was in process to transforming into a hybrid orientation in that it makes choices on which economic sectors to support and social services to spend on without wide public consultation and with modicum of paternalism (Denis 260). Not addressing this criticism directly, Wilpert delineates how the new composition of political power created by the new constitution, such as the transition of the National Assembly from a bicameral system to a unicameral one, the enshrinement of indigenous, environmental and women’s rights, the creation of an electoral and citizens branch of government – in addition to the already existent legislative, executive and judicial, and new transparency guidelines diffused more power amongst the people.

IV. 2002 Coup Attempt

The aforementioned shift were clearly sea changes for Venezuelan civil society that imbued passionately held positions by those holding to either view of the newly formed Bolivarian state. Believing the capacity to effect political

change was vanishing, those who perceived themselves as ostracized organized an anti-democratic solution to their purportedly anti-democratic problem. Curiously, those who criticize Chávez all deal with the same timeline of events and who happily comment on the recall referendum of 2004 have little to say on this coup attempt. A lone comment is made on how Carmona was too much the product of FEDECAMARAS and didn't include enough of the opposition groups in his new, briefly formed cabinet but on the whole it is not touched. For those who claim interest in researching democracy in Venezuela this lacuna on their part is somewhat puzzling as it was a pivotal moment in the new Chávez administration. That said, it is perhaps easiest to say that interpretations of the 2002 attempt coup is shibboleth between government supporters and the opposition. What is clear, however, is that credence was given to claims of the coup being foreign-backed based upon the U.S. government's immediate recognition of legitimacy on Carmona. Evidence was based on this and the language within the NDI and IRI funding proposals, which contradicted any notion of neutrality and concern over "democratic institutions" as in these proposals, Chávez was framed as an enemy to U.S. interests while the opposition was framed as *vendepatrias* (Clement 72). In the minds of the former group democracy was thus equivalent with whatever benefitted U.S. and domestic capitalist interests, or *la oligarquía* to the latter, rather than pursuit of its own domestic and international agenda (Trikunas 142). This was illustrated both in the opposition's rhetorical choice of character assassination over substantive debate and in the voter against Chávez in the 2004 recall referendum, which was highest in metropolitan areas

identified by their comparative wealth (Trikunas 147).

Considering the alliance of international and domestic capital classes against Chávez, it's worth considering the policies that were so popular that it allowed Chávez to win with such wide margins. Simply put, while still maintaining an economic course that recognized the realities of a capitalist global system, he halted many of the neoliberal policies – such as the privatization of social security, health care programs the underfunding of programs aimed at intervention for easily treatable, endemic diseases – that disproportionately affected the poor, has tried to stop the decentralization that would allow richer neighborhoods to avoid increased tax burdens and spent more money on social programs. While there have been marginal increases in the collection of business taxes, a necessary change if the Venezuela state is to make itself less vulnerable to fluctuations in the international oil market, the major shift during Chávez's presidency was that in real, inflation adjusted term, terms, social spending per person has nearly tripled, increasing by 191 percent over the period of 1998–2008” and the concomitant decrease in poverty rates over the same period by 22% (Weistbrot 203). Considering that such increases in social spending occurred at a time of heightened oil prices, it is possible to see a connection between Chávez's policies and that of the first term of Carlos Andres Perez and his Gran Venezuela project. However the form differed in that spending was primarily on blanket subsidies and welfare programs, light infrastructure repair and expansion projects as well as community and housing development for agricultural areas targeted as in need of repopulation rather

than the grand construction projects of Perez.

V. Presidential and Economic Stabilization

What additionally distinguished Chávez from his political predecessors and opponents was, increasingly over time, that the policies he pursued to marginalize the opposition from power was by expanding democratic representation in government. In his analysis of Chávez's 14-year presidency, Steve Ellner identified four distinct stages within it. The first three stages deal with contestation and regime consolidation while the last follows his victory in the recall election and the overcoming of PDVSA's strike. At this point he defined himself as an anti-imperialist and adopted "21st Century Socialism" as a slogan. This can perhaps best be understood as his having won consistent and increasing electoral support despite increasing polarization within the country, in 2006 he won with 63 percent of the vote, and his intent to intensify the demonstration effect of his presidency in the international arena (Ellner 128). This is not, however, the only indicator of domestic content with the widespread assent to the expanded representational system and the marginalization of previous parties by chavistas. According to the Latinobarometro survey of the following year, "Venezuelans say they like their democracy as it is now or, at least, much more than the citizens of other countries like their democracies which, by contrast, are not criticized by the outside world for lack of freedom and harassment of institutions" (Latinobarometro 10). From the same survey, they rate their democracy a 7 out of ten, and 72% of Venezuelans, the highest in the region, support the states

that “Democracy allows the solving of the problems we have” which, compared to the regional average of 52% is quite significant.

Following adoption of this slogan, the Bolivarian revolution, or *el proceso*, was deepened with the expansion of reforms and mission programs. It is worth noting that in contradistinction to the major media news outlet narratives depicting Chávez supporters as guided by evangelical adoration of him, in the academic literature his supporters valued *el proceso* primarily and Chávez only insofar as he continued the process of radicalization that democratized political institutions (Ellner, Ramirez, Maher). This emphasis on the leftist elements of Chávez should not overshadow his middle class support, “the least recognized source of support for Chávez” (Ramirez 82). Perhaps most significantly given the history of military intervention in politics was Chávez’s continued support from numerous sections of the armed services. He had previously incorporated members of the military establishment into various government bodies, economic organizations and natural energy bureaucracies while also encouraging the public sector to organize around specific social programs, such an organization stuck and in each of these arenas he maintained regime consolidation (Gott 177).

While Gott viewed the military-government corporatist alliance as essential for maintaining the regime and allowing for executive oversight of potentially oppositional actors during this period of political transition, Maher, Denis, and Fenandes continue to be suspicious that the “institutional”

chavistas or PSUV will transform into an insulated, elitist party much as the Adecos did and thus sees the source of future democratic power in the dual power system created by community and informal worker organizations. Though Ellner does not speak specifically to Maher's emphasis on the informal workers, which considering they composed "31.6% of the workforce" in 2000 must be included in discussions on regime stability and economic redevelopment, he complicates Maher's concerns of the institutional powers by pointing to the large number of chavista rank and file in the unions and some government ministries, such as the Ministry of the Community Economy, that reject personalism, the submission of the cooperatives to capitalist logic and advocate, like the barrios organizations, horizontalism (Portes 52, 65).

In contradistinction to those just others mentioned, Casteñada, does not see Chávez as some Laclauian "empty signifier" around which various forces within the country could unify but instead saw him as a return to the reckless, irresponsible populism of the early 20th century. This is due to the previously mentioned political reasons but more so as a result of Chávez's pursuit of "unsustainable" spending policies. Pointing to other countries in the region who have also seen upward social spending and a decrease of deprivation, he stated that he is part of an irresponsible left unable to successfully unleash the productive powers of capitalism. Casteñada does not delve into how the wealth of oil in the country it creates conditions of trade that make it qualitatively different from its immediate neighbors, and focuses his vituperation on an increasingly centralized state

the disburse limited assistance to supporters. Manuel Hidalgo furthers his position in stating that that the policies of centralization have hurt not only pluralism within the country, but the economy as well. Chávez's success is seen as stemming from bumper oil prices rather than policy and over-dependence on it to fatten the national budget and also forcing the PDVSA to give up some of its profit that would better be spent in extractive infrastructure reinvestment is dangerous.

Whether these are truly unsustainable or a manner of dealing with inflationary trade deficits via long term political and job skills training for an unforeseen future that is determined neither by a command economy modeled in the Soviet style or dependency development in the American manner will certainly be the subject for future researchers. Wilpert continues to publish documentation on venezuelanalysis.com stating that the state has more than sufficient funds while others continue to show that it is on the verge of collapse and that the business atmosphere is declining to such a degree that foreign capital continues to flee the country. To best see what has changes and what has stayed the same, a cursory analysis of the some of the economic developments of the regime are in order.

VI. The Economic Development of 21st Century Socialism

A. Land Reform

Article 305 of the Venezuelan constitution of 1999 states that domestic food production will be promoted by the state

and to accomplish this goal the 2001 Ley de Tierras y Desarrollo Agrario legalized land occupations of fertile but fallow state and private lands could be occupied by campesinos that worked the land. Groups of campesinos organized into communes, were given letters of recognition that prevented their ejection by local police, allowed them to obtain credit from FONDAS, the state agency in charge of socialist production of agriculture, and promised additional assistance by state planners in their effort to obtain caloric self-sufficiency.

Despite this seeming break from the capitalist strictures which had since the discovery of subterranean energy resources suffocated the aspiring yeoman farmers, the policies of the past 14 years were so poorly executed that on September 11th, 2013, President Maduro announced that in order to fix the still persistent problem, they would be partnering with foreign capital, predominantly Chinese, to develop the agricultural lands.

Why the government decided to do this is clear, Venezuela still imports between 15% and 20% of its food, insecurity of the food supply has led to minor instances of stockpiling and speculation as well as recurring shortages of the items found in the typical Venezuelan food basket. Why the Ley de Tierras wasn't successful is also clear. Activists combating the latifundistas did not have the full security backing of the central state, and over 200 activists have been assassinated. The number of those convicted of these crimes? Zero. Resistance to this reactionary show of force, most brazen as the majority of the lands occupied were in fact deeded to the

government rather than private hands, has led campesinos to form para-military organizations such as the Bolivarian Liberation Forces to maintain their safety. During this period the Ezequial Zamora National Agrarian Coordinating Committee, the chavista institution tasked with assisting farmers, has kept to researching titles while the grass-roots National Campesino Front (FNCEZ) has taken on the task of organizing safety groups. This despite Ali Ramos', head of the FNCEZ, stating that not even 30% of the possible lands for occupation have been attempted (Bruce).

Naked violence against campesinos and the state's failure to protect them or convict perpetrators is not the only cause for the failure of the policies. Lack of infrastructure investment, distribution outlets for agricultural products and general apathy towards those that haven't had to deal with violence has caused much of the work of the occupying farmers to be wasted (Uzcategui). One of the cases which received considerable attention in the international media was the possible nationalization of British firm The Vestey Group's El Charcote farm in Barrera. Farmers occupying unused acres named themselves the Bella Vista cooperative and immediately began the procedural appeals to the government. It was not, however, until several months after they had submitted them that the government papers justifying their occupation were received and processed. Additionally, the government financing credits that they were able to obtain for it was so limited that those that have not abandoned the site still live without access to water or electricity. Despite these problems a number of those following the protagonisto model of political agency promoted by Chávez stayed on and

were able to plant crops which were later wasted due to the unwillingness of low-cost food supplier Mercal to take their produce and its high price compared to other producers in the region. The farmers of this and other regions, faced with such a slow and tenuous pace of agricultural reform, have not abandoned their desires, but instead their faith in the government. Lacking such support, they are in many ways untouched by anything other than the words of the Bolivarian revolution.

Following the projected pattern of petro-state policy making outlined by Terry Karl in *The Paradox of Plenty*, the government still refuses to commit to difficult political choices, instead preferring the path of least resistance due to the electoral conditions of a formal democracy rather than confronting the land-owning class that prevents it from fulfilling its constitutionally mandated goal of food sufficiency.

B. Housing Reform

The depopulation of Venezuela's agricultural zones following the discovery of oil occurred at a pace unmatched by any other Latin American country. The result of this was the growth of barrio settlements lacking infrastructure. As of 2008, the UN human settlement program calculated that the housing deficit was as high as three million, which in a country with a population of 13 million is quite significant.

Housing reforms initiated in September, 2004 by government decree yet outside official government institutions sought to address the lack of affordable, quality housing that has led to

the exponential proliferation of barrios that enlarge the cities proper. Mission Habitat was to administer and overlook the building of the 110,000 units needed annually by Venezuelans and to assist in the renovation or reconstruction of the 2.8 million households deemed unfit due to their being shanties or their being located in high-risk areas. Numbers from the Housing Ministry indicate that between 1999 and 2008 the Chávez administration were able to construct slightly over 240,000 dwellings. This averages to about 26,000 a year. The Mission, which was preferred to the government agency, was considered preferable so as to halt corrupt practices were not able to fulfill this mission either. The Comptroller General, Clodosvaldo Russian, said in a speech to the National Assembly that the issue of corruption that previous administrations faced has continued (Uzcategui). The only thing that has changed is the pace of production. A prime example of this is Ciudad Caribia, once promoted as a model city for the Bolivarian Revolution. Since its beginning in 2006, of the 20,000 planned apartments only 1,600 have been made and the cost overruns are now over a billion dollars.

Faced with increased pressures from various barrio organizations Chávez had handbooks on how to build a better house distributed, held back the police from occupations of abandoned buildings by people and passed a series of laws to normalize landholdings by giving titles to people living in technically illegal settlements. Those within the barrios feel comforted by the legal regularization of their holdings, but have been rebuffed in their push towards greater rationalization of housing construction. Such rationalization includes increased access to clear water – for though many

barrios now have long overdue access to water, its characterized by high levels of bacterial contaminants – as well as services such as fixing roads.

C. Economic Reform

One of purportedly most progressive aspects of the Bolivarian Revolution was to be its assistance in the development of workers councils and cooperatives. According to all on the “left” spectrum, this was to be the one of the pillars of 21st century socialism. In contradistinction to expectations these two forms of state-sponsored economic organization have had the effect, according to Venezuelan labor activist Orlando Chirino, of encouraging precarious working conditions and rolling back the work standards won by those in the formal sector.

The rationale for the new councils and unions was to first wrest control from the established labor unions previous associated with the Punto Fijo system that still presented one of the few organized, non-oligarchic sections of political power and to “fix” the economy of the petro-state through the creation of Endogenous Development Center’s, or NUDES. The latter were widely propounded by the Chávez administration to be a form of production that would start to develop the native capacity of the informal sector. Facilities such as the Fabricio Ojeda nucleus were stated by Chávez to be outside the logic of the capitalist economy and were going to supplant it. In a way the developmental project of the NUDES and its creation of a “people’s economy” are a variation of classic Import Substitution, but largely without the

substitution part. Lacking the capacity to limit imports, manufactured goods and clothing still flows through the ports and roads from other countries making the NUDEs a type of skills training for positions in domestic industries that the government isn't committed to supporting. So far the primary goods made have been t-shirts and other campaign associated materials for use by the PSUV and work clothes for the PDVSA, the latter of which has protested their being forced to purchase them due to their inferior quality.

VII. Assessing Reforms

These admittedly brief analyses of three of many reform projects stems from the lack of widely accepted data on from the Chávez government but hints nevertheless that despite the revolutionary rhetoric surrounding the programs they replicated many of the same deficiencies as previous paternalistic government policies which saw them as necessary to ensure the smooth functioning of Venezuelan society for lacking them, the capacity for regular exportation of oil would be jeopardized by widespread social unrest.

However, in order to fully assess these programs it is important to contextualize them what came before and to see how the post-Chávez administration has either continued their mistakes in new forms or broken with them to obtain meaningful, sustainable social gains. Doing so we see that not only does the Bolivarian Government emulate previous forms of social spending of administrations flush with petrodollars, but they do a bad imitation! The ad-hoc nature of the anti-poverty, education, and health care programs are characterized by a lack of professionalism or accountability, a

quick turnover of personnel, systemic shortages of important goods and products, opportunistic behavior on the part of administrators and general individualism (Daguerre). Looking at what came before makes it apparent that an institutional orientation rather than a para-governmental one makes a large difference in the disbursement of goods and services.

FONDUR, the National Fund for Urban Development was created in 1975 and even into the early 1990's, the government still provided low-cost housing to the people, though at a pace more than double that of the Chávez administration, 64,000 homes a year, and in an economic environment not as favorable to such spending. While the cooperatives, NUDEs and attempts at co-management have elicited conversations about the nature of the Venezuelan economy – it has done little to nothing to address the informal workers that still compose between 45-50% of the populace. It is not just the informal sector, however, that is little affected by the regime. The NUDEs, while called into being by the Bolivarian government could at any moment be nullified. In a situation reminiscent of 1989, El Universal discovered in August of 2013 that the reserves of the Venezuela Central Bank has fallen to 1.6 Billion, or two weeks worth of imports. While the government's solution to any needs could certainly be backed by several other state foundations whose balance sheets are unpublished and can be used discretionarily by the president it's worth noting that in October it was discovered by the Venezuelan media that the Maduro administration was putting out feelers to the IMF. Without being too speculative, it's likely that many of the

NUDEs not associated with food production would fall by the wayside due to their lack of productivity should the government need to restructure its balance sheets.

To pre-emptively address the long-term failure of these para-institutional missions, the government has shifted some of its focus to educational programs organized through the Che Guevara Foundation. In the face of increasingly trenchant criticism from the left and the right, the chavista regime has sought to develop “new people” that value solidarity over individual self-interest rather than directly addressing the institutional issues. The driving idea behind this is that the more people are sympathetic to their aims, the less contradictions there will be to lead to the above-mentioned problems. Those emerging from this system of education as well as those that will graduate from the *Institute of Higher Studies of the Thought of Hugo Chávez* may cause this to become true. However this does beg the question of how long these “new people” can last in such an environment where the social-movement aims are consistently sub-ordinated to the short-terms considerations of petro-state party politics and very legitimacy of the project of 21st century socialism when other countries not seeking to develop it are appearing to be preferable economic models (Prevost).

VII. Conclusions

As I have hoped to show from the above, the notion that Venezuela is developing 21st century socialism that is distinct from a particular form of paternalist populism can only be sustained through a reading of the government’s claims

rather than it's actions. Despite, or perhaps because of this, much of the current literature on 21st century socialism has centered on the promises rather than the actions of the regime, tellingly compiled on the website solopromesas.com. While this now semi-cottage industry amongst leftist academics does make for at-time interesting analysis of the operation of protagonisto, revolutionary subjectivities, it is also important to combat the notion that the community councils so lauded by Wilpert and other "Venezuela-hands" can be the emancipatory model for activists combatting neo-liberalism when wedded to a highly presidentialist regime (Burbach & Ramierez). It is not just that Máduro, like Chávez before him, can dissolve councils with his discretionary power, but that such a political geometry has had serious chilling effects on developing a political culture not characterized by ideological polarization, cronyism and clientism and has further inhibited institutional effectiveness, continuity and long-term sustainability. This is not to say that polarization as a thing-unto-itself is to be avoided, indeed it is expected to increase in times of revolutionary upheaval, however as the Máduro regime seeks to reinforce itself amongst widespread shortages, power outages and electoral discontent it becomes harder for it to mask it's elements of corporatism in an atmosphere where political surveillance reigns. Put simply, despite his and

Inside Venezuela the number of people distancing themselves from Chávez's legacy is continuing to grow. In the 2012 elections the PCV expressed their discontent with the regime by running their own candidates in several regions. It is not just the parties, however, that are starting to jump ship.

While there was an 80% turnout for Chávez's last election, this number fell to 54% when it came to elect Maduro. The irony of this situation is of course that the collectives that worked to broaden electoral participation, and later subsumed themselves within the PSUV, now find themselves facing an electorate increasingly dissatisfied with policies that are no longer recognizable as theirs. Whether these policies will change through the leadership recognizing its unpopularity is, however, unlikely as the government has increasingly sought to buffer itself from the electorate. According to the December 4th, edition of El Universal the Maduro administration is continuing its use of state organs for elections in open violation of CNE law.

Since his election and contested victory by 2%, Nicholas Maduro has continued to exacerbate the country's political polarization by increasingly relying upon a discourse of paranoia. Power failures in the country are now the cause of opposition sabotage, food and goods shortages are the fault of the opposition – despite Indepabis being a chavista construct. This blaming of the opposition, which really means any political group that doesn't submit to the PSUV line, occurs during a period of increasing violence within the country. Safety on the street, one of the recurring pretexts for military coup in Latin America, has increased become a salient issue for Venezuelans – and the government's response has been to stop keeping official records of the number of murders that transpire and leaving it up to civil groups to take their place. Of additional note, since the creation of the Bolivarian state, narco-traffickers have increasingly come to use Venezuelan harbors to smuggle

goods, suggesting that lacking US support in the war on the cocaine trade the shipping and spillover violence will increase. All of this does not even touch upon the open and consistent bolstering of the Boli-bourgeoisie in sectors supportive to the Great Patriotic Pole for their ability to help maintain near-monopoly market shares. It is not just the giving away of air time by television stations which benefitted from RCTV having their broadcast license revoked, but also the newly announced government produced “Newscast of Truth” that will be broadcast on all radio and TV stations twice daily. Additionally, while the arrest of 100 business speculators may display a narrative popular to the numerous disenfranchised, its actual efficacy in helping the country amidst soaring inflation rates is dubious and is likely to promote further divestment in a country already ranked very low for it’s ease in doing business by the World Bank.

The GPP and the PSUV have in a way replicated much of the same problems that have characterized previous radical-democratic parties in Venezuela’s history and perhaps even exacerbated them due to his rhetoric. This is not to say that MUD, the opposition organizing committee composed of 18 different parties, is necessarily the solution or that there is nothing redeemable in their foreign policy goals – but should Máduro continue these policies under the banner of 21st century socialism it will do more to discredit the movement than gain it praise. While Máduro may take Castro as a positive figurehead and potential model for the country, he does so at the risk of alienating those tangentially sympathetic to him domestically and abroad that sees the gradual, social democratic route as the best alternative to the

neoliberal formulation of governance.

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December 11, 2013 / History, Politics, Uncategorized, Venezuela

Gabelli v. SEC: Disincentive to Legislative Action, Market

Evolution, Minimal Funding of a Major Regulatory Agency and Plutocratic Law

Considering the Supreme Court's 9-0 ruling it would seem that despite the prior District Court's ruling in the Security and Exchange Commission's (SEC) favor, their **case against Bruce Alpert and Marc Gabelli** lacked any true merit. Indeed, current legal commentary on the case is sparse, as if it were not deserving of much attention. This lacuna is understandable as the main point on which the case depended regarded simply in establishing whether or not the statute of limitations for the government to seek civil penalties for fraud is the same as that of a private litigant. For the latter, legal precedence clearly established that the statute was five years from reasonable expectation of discovery. As the SEC first began investigating a potential transgression by Gabelli in early 2003 yet did not begin penalties proceedings based upon this knowledge until late in 2008, nor did they seek to enter a tolling agreement with Gabelli that would have extended the statute of limitations under the acknowledgement that any subsequent penalties would be reduced due to his co-operation, the time line is the pivot on which the case turned. The previous, 2nd District Court ruling in the SEC's favor imposed a penalty of 16 million dollars on Gabelli and followed the reasonable expectation of discovery interpretation. According to the Supreme Court's ruling that overturned the Gabelli case, however, the SEC is significantly different from an individual due to its status as a government agency and thus the five-year statute of limitations is from

when the fraud occurred. When questioned about this long time lapse in the execution of regulatory capacity in oral argument, the council for the SEC admitted that this circumstance was without precedence and added that this was not because of any further deceptive practices on the part of the defendant but simply occurred as a result of an “ongoing exchange” that delayed investigation such that they could have the largest possible amount of information for their case. Ignoring rigorously to prioritize speediness in his opinion for the majority, Roberts based his judgment on a strict reading of [28 U.S.C. § 2462](#), and stated that as this government entity is constantly searching for misdoings, it has five years from the occurrence of fraud and not from its discovery to enact penalties proceedings. Judge Roberts’ rationale was that to allow the lower court’s reading of a discovery rule into the securities law would mean that fraudsters would lose their ability to repose. The constant fear which fraudsters would face were this discovery rule “grafted” was conceived to not only be deleterious to those persons involved in prior fraudulent activity, but to have effects across the entire securities and investment market. According to those that supported the petitioner’s case in addition to losing their individual ability to repose, people that had engaged in practices that were once considered legal would risk prosecution for stale charges, individuals and corporations capacity to organize their affairs according to their own wishes would be hampered, the SEC would be encouraged to pursue non-meritorious cases in order to obtain settlements, the change of the discovery rule would make it harder to discern between wrongdoers and the wrongly accused, and the SEC’s “new powers” would lead to

increased arbitrariness of practices.

These effects and whether they are desirable or not in a context of widespread questionable financial practices is contestable. That Gabelli acted in a fraudulent manner is not. His fraud was not that he was engaged in market-timing, a practice discouraged by the Financial Industry Regulatory Authority (FIRA) due to the negative effects to long-term investors but that he clearly and repeatedly represented to investors in his Global Growth Fund that he was not engaged in market timing practices. This fraud meant that while one portion of his mutual fund portfolio was actually returning negative growth, the other that was engaged in market-timing was able vastly to be incredibly profitable, around 185%, and thus allowed the whole fund to appear profitable.

Evolution of Financial Services Markets

To understand the importance of this case it is crucial to gain a better understanding of the current market for financial services and its role in the American economy. Over the past fifty years the calculation methods informing the financial market has shifted from business school knowledge, with its greater, conservative appreciation for long-term investment to those found in university physics, statistics and math departments that promised speedier, short-term profits. The people involved with the latter form of financial investment, sometimes referred to as quants, in turn rely upon advanced calculations and technology to analyze aggregate market data. In the case of Marc Gabelli, the proprietary software modeling used by his Global Growth Fund would determine choices for

investments based upon speculation of whether or not they were correctly priced. The “correct” price would be different from the listed price because sometimes their reported valuation would be based upon stale information. Those able to exploit this disconnection has the potential to obtain quick profits from these market miscalculations by purchasing massive amount of shares nano-seconds before the close of trade so they could be immediately resold when the market opened in the morning. It should be noted that while the Financial Industry Regulatory Authority (FIRA) discourages market-timing due to the negative effects to long-term investors, the practice itself is not currently illegal.

This singular example from a wide variety of quantitatively-informed calculation and investment methods is instructive but does not give a holistic picture of the huge impact such financial services have on the composition of the American economy. According to the U.S. Bureau of Economic Analysis, in a 27 year period, from 1984 for 2011, the financial industry’s contribution to total corporate profits has trebled from 11.8% to 32.3% while their contribution to total economic output has doubled from 8.8% to 16.3%. According to the New York Federal Reserve, the financial services sector currently composes around 8.5% of American GDP. These percentages of capital in themselves are significant yet when compared to the off-exchange trading of financial derivatives it pales in comparison. According to April 2010 figures from the Bank for International Settlements and the International Monetary Fund, the trading that occurs here is several times the volume of all shares and bonds traded. This is of extreme significance as while the Gabelli case is framed within the context of the

shares and bonds market, with a volume of 87 trillion dollars, the statue of limitations precedent set for the case equally applies to the 601 trillion dollar volume of the derivatives market. Any potential penalties for fraud by administrators of credit options, derivatives, forward rate-agreements, contract specific structured product accumulators, collateralized mortgage backed or asset backed securities, or a variety of other security products in this much larger over-the-counter (OTC) derivatives market would, in five years, be nullified. While it is a given that the size, significance and political influence of this market should not be underestimated, nor should it's novelty or the effects it has had on financial markets and other business enterprises.

Cultural anthropologist Karen Ho researched historical trends within the financials market and married it to reflections on her own experiences while working for Bankers Trust in the early 1990's in her book *Liquidated*. Her explanation as to why it is that the investment practices radically shifted stems from changes in the legal rulings as to what precisely a corporation is, what it owes to its shareholders and new regulations that allowed for a massive consolidation of what was often vastly different enterprises by holding companies. As part of this "share-holder revolution" corporate executives were now legally required to transition from long-term business strategies based on production of goods to short term ones based on whatever would be the most profitable despite the sometimes profoundly deleterious effects this could have on social and economic relations. Anything that could boost stock prices, especially immediately before quarterly earnings reports, was

considered fair game and, as the previous statistics show, financial services increasingly had a role in accomplishing this. As Ho recounts, the relatively stable business environment of the 1950's and 1960's transformed into one of asset stripping, purposeful bankruptcy to obtain corporate pension assets for stockholders and other "creative" forms of destruction for profit. Informing and enacting these decisions were the financial market wizards who were, basically, churning sales for percentages. However as merger-mania began to decline following the massive consolidation of disparate enterprises and the realization that this was not always beneficial to investors, new financial services and methods of risk analysis were deemed as necessary to continue the functioning of these advisors. Capital adequacy ratios were lowered, risks increased and people's social relationships to labor became, like the composition of capital itself, more liquid. Ho uses this term to describe how in this new regulatory environment at any point a nominally profitably business oriented to long-term profit could be preyed upon by junk-bond traders and dismantled for their short-term gain. Michael Lewis describes similar circumstances in his books *Liars Poker* and *The Big Short*, and concurs with Ho that these changes incentivized businesses to increasingly invest their capital holdings into financial products, even if they were organized to produce ice cream, rather than reinvestment in productive capacity as to not do so gave corporate raiders or their actual business competitors a potential financial advantage. The controversy over whether or not these instruments are actually productive or just assist in the creation of credit bubbles thus largely get subsumed under their increasing practical necessity for any large

business that wishes to remain competitive in the market.

Understanding such a context it becomes clear that while the SEC lacks precedence in taking so long to bring penalties actions such that it would be thrown out and may thus an example of attempted government overreach, the procedures that it uses to deal with these are new and deal with a massive amount of data. What should also be clear from this brief historiography is that the ruling has much wider significance. Specifically, the case had vast implications for a large class of potential civil penalty suits stemming from widespread deceit and financial fraud in various financial sectors. This is because, following the court's ruling, the SEC was limited to six and a half months to pursue actions against those firms and individuals whose malfeasance played a driving role in the "great recession". After this time period the statute of limitations would run out and a multitude of private investment firms and investment banks that had engaged in potentially fraudulent practices related to derivatives, credit default swaps and the other new financial instruments could avoid charges or penalties related to it if able to avoid legal action. This, according to the Wall Street Journal, this is precisely what has happened. Since the Gabelli ruling the number of SEC cases against alleged wrongdoers has dwindled precipitously. The SEC pursued 38 cases in 2011 and 48 in 2012. However as of September 11th of 2013, the SEC has only pursued 11 cases. In this regard, the Gabelli case becomes a foundational case as it shows that the Supreme Court will not allow the SEC or other financial regulatory bodies to pursue those individuals or companies involved in the recent, massive upward transfer of wealth while a smaller

country like Iceland takes no issue with not just fining but jailing those complicit in such crimes of fraud and misrepresentation.

Composition of the Amicus Curiae Petitioners

Looking to the amicus curiae briefs bolsters the above speculation about the interest of the finance sector involved in the case. The Cato Institute, The National Association of Criminal Defense Lawyers, the American Bankers Association, The National Chamber Litigation Center, the Voice of the Defense Bar, National Association of Criminal Defense Lawyers all filed in favor of the petitioner, Mario Gabelli, to overturn the 2nd Circuit Court's ruling against him. Not one brief touches upon the fact that Gabelli did anything wrong, but unanimously state that were he punished for his wrongdoing it would be wrong. Considering that financiers makes up a large percentage of the financiers of these organizations, this is not surprising.

Some content worth noting from Several of the briefs state is that were the court to judge in favor of grafting the five-year discovery ruling to the statute then it would be a pre-empting the prerogative of Congress. In the context of the current electoral system I find this claim to be one of the most interesting as it is no secret that a significant percentage of the funding for much of the Presidential, Senate and Congressional elections comes from large financial institutions. If not similar in size to Gabelli's comparatively modest \$30 billion dollar firm, they are in type. They too view penalties as a small cost of doing business but would still seek

to avoid them in any way possible, that is, with the exception of actually following the law. For this reason it is unsurprising that they would encourage conservative, standpatter behavior on regulatory issues such as this.

The only brief actually in support of the SEC's position was that filed by [Occupy the SEC](#), an outgrowth of the Occupy Wall Street movement that has been one of the few OWS working groups that have pursued policy and regulatory reform. They claimed standing as a representative of the American people as a whole, rather than the class of actors that would most benefit from a ruling favoring Gabelli, and their brief counters the positions stated by Roberts and the briefs above. They state that prior case law favors the reading of the discovery rule based upon its reasonableness component, that lacking explicit Congressional commentary on U.S.C. § 2462 it is in the judiciary's role to best promote the public interest and not that of the financial elites. They state that the SEC's enforcement functions are greatly curtailed by these undue restrictions that "hinder them from discharging their regulatory responsibilities in an effective manner" and have allowed the nullification of 40% of family wealth in the period from 2007 to 2011. Additionally, they point to the actual institution of the SEC rather than an idea of it as evidence as to why they need more time to pursue such cases. They held that part of the reason they have not been able to effectively function is the general atmosphere of austerity spending towards government agencies.

To better understand the capacity of the SEC, it's worth looking at Federal spending on oversight and regulation of

the financial market. Comparing spending on regulatory institutions to the amount of transactions and deals that are made within this market allows for some degree of quantitative assessment and discernment over the claim that the SEC is a credible guardian of market fraud. The current tax that funds the SEC's is equivalent to \$.02 per every \$1,000 in financial transactions [i]. Considering the size of the market mentioned earlier and the wages required for the institution to attract highly skilled people to the public rather than the private sector this should seem as if there was an interest in the government for it not to enforce regulations. Indeed, while it seems impressive that the SEC has been able to extract 2.88 billion in penalties from financial crisis fraudsters, considering that the cost was between 6-14 trillion, according to the Federal Reserve Bank of Dallas, this is a mere drop in the bucket [ii].

Small Penalties, Bumper Business

This bespeaks a general trend within the investment and banking sector – it is often more profitable to risk getting caught engaging in fraudulent practices than it is to avoid them. If the penalty for 250 million of ill-begotten profits is 100 million, the net gain is worth it – especially if the work to obtain such wealth consists merely of a few phone calls and clicks on the keyboard. The criminal and regulatory statutes, supposed to provide incentives for actors to avoid specific actions, thus fail in their capacity and doubly so if the regulatory agency lacks the man and will power to pursue such cases. If such a relationship between regulators and actors isn't to be considered outright collusion or complicity,

than it is only so because of the burden of regulatory change is placed on a Federal legislative system whose elected politicians benefit from such ill-begotten gains through disproportionately high campaign contributions from the financial sector.

In addition to the congressional apathy towards altering laws that would harm their donors, the institution itself bears examination besides just how it is funded. The government-private sector revolving door widely commented on at the upper echelons of government – Dick Cheney, Tim Geitner and Mitt Romney being some of the most widely known in this regard – allows for the transmission of the government’s regulatory knowledge and procedures, not to mention the personal relationships that go along with it. Indeed the current chair of the SEC, Mary Jo White, is one such person with a long background in the private sector with connections to people that have engaged in dubious practices[iii]. While these examples come from the top, it occurs at lower levels as well. Of the five people that were involved in the Gabelli cases’ initial filing in New York, only three of them (Robert B. Blackburn, Jill S. Henderson and Ivonia K. Slade) have thus far stayed with the SEC. Mark Kreitrnan now works for Nixon Peabody and Christopher R. Conte works at Stepto and Johnson, LLP. According to several ranking systems, such as *Private Equity Analyst*, Nixon Peabody is considered to be one of the leaders in franchise law and private and equity capital ventures while *Stepto and Johnson, LLP* offers a wide range of services, specializing in white-collar criminal defense. They proudly and prominently state on their website that, “In the past, the firm has

defended senior executives from companies such as Enron, Tyco, WorldCom...” [iv]. This situation thus creates the bizarre situation such that private personages such as myself are barred from obtaining documentation about the progression of an important, precedent setting case with vast effects while those that were intimately involved in its operation are able to move freely to private firms that defend such fraudsters, alleged or otherwise. That the conditions for obtaining information with a significant impact on the manner in which financial investigations transpire are either the time and willingness to work for the institution or the deep pockets to hire the people that once worked for the SEC means that the public itself loses on a crucial oversight function and begs the question: quis custodet ipsos custodies?

Case Law Since Gabelli

The most immediate implications wrought by Gabelli for the SEC is their reformulation of strategic decision-making processes. They are now incentivized to enter into tolling agreements, wherein co-operation with processing investigations are given extension under the understanding that any subsequent discovery of wrong-doing will be given a smaller penalty as well as rushing to complete investigations. This is not, however, the limit of the impact as there already have already three cases citing the Gabelli decision against the SEC. In March of 2013, in the first cases to apply the Supreme Court’s ruling, the Solicitor General made a motion to dismiss the SEC’s certiorari in their case against Bartek. Citing the Gabelli precedent, they were unable to proceed with

the case as the crimes had occurred more than five years ago. The SEC's case against Sam Wyly is another, more ominous examples of the application of the Gabelli ruling and is illustrative of the limiting effects it has on the institution's capacity to extract penalties. Wyly, a Texas investor perhaps most well known for his Michael's chain of craft goods, and his now deceased brother were accused of conducting insider trading and developing a fraud that netted them 550 million dollars. While still allowing the SEC to pursue smaller aspects of their case against Wyly, on June 6th, 2013 US District Judge Shira Scheindlin dismissed the majority of their penalties claims against him as having occurred too far back in time. Notable, though not directly related to the case, is the article's mention that the brothers were also generous donators to "conservative causes.[v]" Another case occurring in the wake of the Gabelli ruling and affected by it has been the SEC case against Pentagram Capital Management PLC. The Second Circuit Judge of the case held that the SEC could not include any profits made from their illicit trading practices prior to the five-year period in their penalties even though there was clear evidence of it. As judges continue to uphold the Gabelli precedent, the SEC will stop pressing such cases of fraud and the likelihood of public knowledge of how endemic such occurrences are will decrease. The Gabelli ruling, is thus, in a few words, a shield to protect ill begotten gains.

As the composition of the financials market and these three cases clearly indicate, The Supreme Court's ruling is not to maintain widespread social repose and fend off fear but is in fact a ruse to protect a small group of extremely wealthy

financial elites who occasionally or consistently use fraud to personally enrich themselves and the wealthy that have the capacity to invest millions in their funds. The implicit recognition in the lower courts previous ruling and Occupy the SEC's amicus curiae that without a discovery rule would result in the decreased enforcement capacity of an agency already dealing with rapid turnaround and brain-drain to the private sector thus far proves to be true.

[i] <http://www.fool.com/investing/general/2013/04/11/the-sec-needs-funding.aspx>

[ii] <http://www.sec.gov/spotlight/enf-actions-fc.shtml>,
<http://dallasfed.org/assets/documents/research/staff/staff1301.pdf>

[iii] <http://www.forbes.com/sites/billsinger/2013/01/22/securities-and-exchange-commission-revolving-door-spins-for-mary-jo-white/>

[iv] <http://www.steptoec.com/practices-17.html>

[v] <http://www.reuters.com/article/2013/06/06/sec-wyly-idUSL1N0EI1LF20130606>

Review of "Mirage: Florida and the Vanishing Water of the Eastern U.S."

The presence of fresh water, be it in excess or in scarcity, and the politics connected to it is the primary concern of Cynthia Barnett's book *Mirage: Florida and the Vanishing Water of the Eastern U.S.*. By presenting an account of problems faced by Florida in a comparative setting, she helps highlight the unique factors that inform the particular regulatory assemblage that helps compose resource management policy. Barnett first illustrates how the general, national trend is towards large water projects. Massive federally funded public works programs create construction sector employment so as to reapportion material to fit the immediate logic of capital, be it intensive agriculture, dams to power industry, etc. Following the creation of irrigation and drainage canals, farming commences in regions that previously would have been considered inappropriate for such an activity.

While the consequence of this are new sources of economic production, it also creates conflict over access, especially during times of drought, potentially devastating economic conditions and landowners that seek to externalize costs by exploiting public coffer money to ensure the continuous running of their enterprises. Conflict forms not just between preservationists and capitalists but among industries as well, with housing, ecotourism, manufacturing and extractive industries each struggling for access or control of the water. From this framework, Barnett is able to then highlight the

political hypocrisy in government administrators seeking to preserve a quantitatively diminishing resource that is simultaneously deteriorating in quality due to agricultural and industrial adulterants all while simultaneously promoting economic growth through market-planned housing development. While she does address the fact that the state is able to control the market at time, as a whole she shows how it is predominantly collusive and rarely if ever punitive. The county, state and Federal system foot costs created by housing developers' limited scope of planning. The irony embedded in this situation, that as more people move to Florida for a specific form of life the less that this habitat exists, isn't something lost on Barnett. She states it plainly and even provides a short psycho-geographical and environmental exegesis of the fluctuating relationship between place and personality.

In close, I would think it would have been productive for Barnett to compare not just the judicial form of rights, conflict resolution and management issues related to water permitting and allocation across the US. but to delve into development planning in non-Federal regions or those where civil government has a longer tradition of bureaucratic excellence rather than base economic subservience. Barnett hints at something akin to this when she points out how Miami Lakes was "well planned," and contrasts this by stating that the restrictions enacted by Florida legislature placed upon large scale planning projects were circumvented by patchworks of smaller size housing developments but does not pursue it. This is particularly puzzling as she clearly sees the ease at which large industries are able to circumvent local

prohibitions through appeal to higher positions in the bureaucracy. Lacking the legal capacity such that ALL Florida regions disallow the continuation of low-density, suburban development and have genuine local control over use means that private property developers will continue to burden the public sector's resources. To coin a turn of phrase, density informs destiny, and the over-reliance on state-assisted capitalist development in the region has created redundancies, reduced efficiencies, and encouraged a fragmented and individualist patchwork of communities not truly tied together. All this at a time when a greater sense of civic virtue is direly needed to address serious problems that Barnett has lain out.

December 3, 2013 / Book Review, Florida, History, Politics, Uncategorized



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