Title

SHAREHOLDERS, SUPERVISORS, AND STAKEHOLDERS Practices of financial responsibility and their limits

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Shareholders, Supervisors, and Stakeholders: Practices of Financial Responsibility and Their Limits

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I. Introduction

Financial markets are systemically risky, crisis-prone, and a site of wealth valued many times in excess of world trade or production.[1] As such, finance has been historically and continues to be an important site for discussions about responsibility. What does it mean to manage wealth responsibly? To whom are financial actors responsible? Does corporate responsibility extend beyond shareholders to some broader public audience? Who should be held accountable when financial systems tip into crisis, impacting the real economy and the savings, job prospects, and retirement accounts of ordinary people?

Financial markets have stark distributional consequences, consolidating wealth in ways that many contend is unjust while increasingly permeating the everyday lives of subjects not conventionally seen as part of the world of high finance. The lightly regulated growth of financial capital and its high returns have fueled inequality, concentrating wealth in the top 1% of the global population (Milanovic 2016, 36-40; Piketty 2014). At the same time, and in spite of massive geographic and class-based variation in income and wealth, nearly everyone's life has become increasingly entangled with debt and credit, fueled by development-oriented projects of financial inclusion and the expansion of financial technology into new sectors of everyday life (see Gabor and Brooks 2017). While financial markets have been shaped and governed by doctrines of fiduciary and corporate social responsibility, so too have they developed in ways that exceed and elude conventional causal and individualistic theories of responsibility. As they have grown more complex and uncertain, financial markets have come to pose distinctive empirical and theoretical challenges to conventional theories of responsibility.

In this chapter, we first provide an overview of how responsibility has conventionally been conceived – and to varying degrees institutionally and legally encoded – in the context of finance before turning to a discussion of how responsibility was allocated for the 2008 financial crisis in popular and academic narratives. We then discuss how the crisis brought to light dynamics and characteristics of contemporary financial markets that fit poorly with traditional theories of responsibility. We conclude by discussing the challenges for theorizing and taking responsibility for global financial markets.

II. Relations of responsibility in global finance

Fiduciary responsibility and shareholder value

While finance's excesses and single-minded focus on profit maximization have been deemed irresponsible by some (Curran 2015; Herzig and Moon 2013), relationships of responsibility have played a constitutive role in the development of modern financial strategy, practice, and governance. Indeed, even finance's exclusive pursuit of profits has been legitimized and institutionalized in the doctrine of shareholder value which has at its core an explicit, albeit narrowly conceived, definition of responsibility (Lazonick and O'Sullivan 2000, 13-14). However, attempts to delimit and enforce financial responsibility

[1] A 2014 Deutsche Bank study estimates the stock of global financial assets (stock market capitalization, outstanding public debt securities, financial institutions' bonds, nonfinancial corporate bonds, and securitized and nonsecuritized loans) at US$242 trillion, or 329% of global GDP (Sanyal 2014, 1-2). Notional amounts of outstanding derivatives dwarf these numbers, totaling over $700 trillion in 2013, according to the Bank of International Settlements (Sanyal 2014, 6).

beyond this paradigm in the guise of fraud prevention and corporate social responsibility have failed to reckon with the broader structural injustices perpetuated and funded by financial markets.

The principle of shareholder value, a cornerstone of contemporary corporate governance in the US, UK, and – increasingly – the OECD more broadly, assigns responsibility for maximizing shareholder value to corporate executives as agents of their shareholder principals, "in accordance with [shareholders'] desires, which generally will be to make as much money as possibly while conforming to the basic rules of society, both those embodied in law and those embodied in ethical custom" (Friedman 1970, 33). This conceptualization of responsibility, which became dominant in the Anglo-American financial sphere in the 1980s, represents a change from earlier corporate governance paradigms which figured corporate executives as responsible chiefly for retaining revenues on the books for purposes of reinvesting them in human and physical capital (Lazonick and O'Sullivan 2000).

Shareholder value theory is premised on the idea that the firm is little more than a bundle of private contracts which allocate claims on asset and cash flows and which therefore clearly delineate responsibility (Jensen and Meckling 1976, 311). Motivated by the massive growth in corporate size which exacerbated the risk of managers directing profits in self-serving (and inefficient) directions as well as by heightened external competition from Japan, the theory of shareholder value has its origins in principal-agent theory and 1980s United States financial economics.[2] Shareholder value theory specifies that corporate managers' responsibility is to their shareholders and can be measured directly through corporate stock performance (see Jensen and Meckling 1976; Fama and Jensen 1983). As such, the long stock market boom of the 1990s was interpreted by shareholder value proponents as evidence of the merits of this doctrine.

The idea that corporate managers' responsibility is primarily to their shareholders has been institutionalized in regulatory policy and corporate governance with material consequences that go beyond stock return data. During the 1980s, the shareholder value theory of responsibility was explicitly encouraged by regulatory changes in the United States which allowed insurance companies, pension funds, money-market funds, and banks to compete more effectively with mutual funds by freeing them from restrictions on investment activity, fueling investment in junk bonds and hostile takeovers through the 1980s and 1990s, as well as share buy-back schemes (Lazonick and O'Sullivan 2000, 17-18). The search for returns throughout subsequent decades fueled financialization, putting pressure on cross-shareholding models of corporate governance in Europe (Morin 2010; Jürgens, Naumann, and Rupp 2000).

In assigning corporate managers responsibility for maximizing shareholder value, the shareholder value theory of responsibility implicitly – and in some case explicitly (Friedman 2002, 133) – relieves financial actors from broader responsibilities, legitimizing the massive labor force restructuring and downsizing that characterized corporate strategy in the 1980s and 1990s and abjuring any responsibility to the significant percentage of workers who did not have significant savings invested in the stock market (Williams 2000, 2). For these reasons, shareholder value – and in particular its underlying conception of responsibility – have been critiqued. As David Ciepley (2013, 140) writes:

[2] Knafo and Dutta (2019) contend that the financialization of the firm, commonly understood as having its origin in the shareholder revolution of the 1980s, in fact should be understood as the result of changes in corporate governance beginning in the 1960s. They argue that shareholder value theory emerged from strategic choices by corporate managers rather than from shareholder demands. Whereas conventional narratives serve to shield corporate managers from responsibility by casting their actions as responding shareholders, Knafo and Dutta shift the locus of responsibility to corporate managers themselves.

> The corporation became a pure creature of the market rather than a creature of government, exempting it from any duty to the public, or accountability to the public, or even publicity to the public, and rendering it eligible for a raft of constitutional rights, including electioneering rights […] In construing shareholders as the corporation's owners and principals, it also fixates corporations on short-term share price, sinking their productivity while upping their irresponsibility. […] Reducing corporations to private contracts is theoretically confused, economically deleterious, and normatively askew.

Financial fraud and the responsible corporate officer doctrine

While shareholder value theory defines responsibility to shareholders narrowly, it does, per Friedman's formulation, also require "conforming to the basic rules of society" (1970, 33). With executives held accountable to shareholders by stock market outcomes, financial regulation during the 1990s and early 2000s shifted primarily to identifying and preventing fraud and other illegal financial behavior. Although proponents of the efficient markets hypothesis and shareholder value theory like Eugene Fama (1990) held that those with residual claims on corporations' financial assets would have sufficient incentive to monitor firms for fraud themselves, empirical evidence suggests otherwise.[3] Even as financial markets were significantly deregulated in the 1980s and 1990s, financial regulators like the Securities and Exchange Commission and Commodity Futures Trading Commission retained a narrowed authority to oversee financial firms with the goal of preventing fraud. For example, regulators' interest in the wake of derivatives-related bankruptcies and collapses in the 1990s attributed these losses to fraud, rather than excessive risk-taking or the increasingly complex and interconnected financial system itself (Lockwood 2018).

This regulatory focus on fraud was intensified by a series of corporate and accounting scandals in the late 1990s, culminating in the 2002 Sarbanes-Oxley Act (the House of Representatives version of which was entitled "Corporate and Auditing Accountability, Responsibility, and Transparency Act") which was passed in the U.S. to improve securities regulation and auditing and incentivize whistle-blowing. The Sarbanes-Oxley Act's conception of responsibility is highly individualistic, specifying in Section 302 that the CEO and CFO take direct individual responsibility for internal controls and for the accuracy and completeness of financial reports. In defining responsibility in these terms, the Act drew on the responsible corporate officer (RCO) doctrine with respect to mandating the accuracy and validity of corporate financial reports.

Originating in the Supreme Court's decision in *United States v. Dotterweich* (320 U.S. 277, 1943), the RCO doctrine emerged in the context of public welfare misdemeanor law.[4] According to this doctrine, corporate officers can be held liable for corporate crimes committed, of which they had, or should have had knowledge, and had the authority and responsibility to prevent or stop (See: Block and Voisin 1993; Hustins and Gotanda 1994; Bragg et al. 2010). While the doctrine remains controversial – Matrin Petrin (2012, 286) argues that it represents "an unwarranted augmentation of corporate agents' duties and runs contrary to established tort, criminal, and corporate law principles" – there have been both public and scholarly calls to expand the doctrine in the context of financial crime.[5] Christina M. Schuck (2010) calls for expanding the doctrine to include mortgage fraud in the name of public welfare. Similarly, Amy J.

[3] In their analysis of 216 cases of alleged corporate fraud between 1996 and 2004, Alexander Dyck, Adair Morse, and Luigi Zingales (2010, 2214) find that debt holders are absent from those reporting and detecting fraud and equity holders account for just 3% of cases. These actors' agents (auditors and analysts) account for just 24% of fraud reports.

[4] The Court clarified this concept in *United States v. Park*, 421 U.S. 658 (1975).

[5] For a robust theoretical defense of expanding the doctrine on the basis of criminal omission, see: Aagaard (2006).

Sepinwall (2014, 377) argues that the doctrine "allows prosecutors to evade the purported systemic risks of going after entities that are 'too big to jail' or prompting dissolution of entities that are 'too big to nail,'" a necessity in the post-crisis context.

However, while Attorney-General, Eric Holder (2014) called for expanding the doctrine, because "we need not tolerate a system that permits top executives to enjoy all of the rewards of excessively-risky activity while bearing none of the responsibility," the value of the doctrine remains limited in financial contexts. Even its defenders note that it can only be applied to actual statutory violations and would thus be limited only to cases of financial fraud (Sepinwall 2014, 405-406). To apply it as Holder suggested, to discourage risky but legal financial practices, would be an excessive expansion of prosecutorial authority contrary to criminal and corporate law. In the context of the "everyday injustices" of global finances, the RCO doctrine remains either toothless or excessive.

Corporate social responsibility and socially responsible investing

Shareholder value was a deliberate challenge to a different concept of responsibility which had emerged in the second half the twentieth century: corporate social responsibility (CSR), a discourse which has been reinvigorated in recent decades in response to the excesses of shareholder value maximization (Carroll 1999). A broad concept, with diverse and contested meanings (Garriga and Melé 2004), CSR refers to a firm's capacious set of responsibilities to and for society as a whole, beyond its responsibilities to its shareholders and legal obligations, by virtue of its reliance upon and effects on a broad set of societal stakeholders. According to its advocates, adopting CSR practices can simultaneously restrain the worst impulses of businesses while still maximizing shareholder value.

In the context of finance, much of the literature on CSR focuses on the concept of socially responsible investing (SRI). Here, investors negatively or positively screen firms' social behaviors for exclusion or inclusion in their portfolios, engage in practices of shareholder activism to pressure firm behavior, and invest in specially marketed socially responsible mutual funds (Kurtz 2008).[6] Finance serves as an intermediary institution through which socially conscious investors can act to hold corporations to higher ethical, social, and environmental standards than existing laws (Clark and Hebb 2005). However, theoretical and empirical studies of SRI have been mixed at best (Kurtz 2005). In a meta-analysis of such research, Christophe Revelli and Jean-Laurent Viviani (2015) find that SRI itself neither promotes nor hinders financial performance, suggesting that, at a minimum, SRI is no less profitable than traditional investment strategies. Others (Johnsen 2003; Haigh and Hazelton 2004; Scholtens 2006) have noted a number of limitations on the effectiveness of SRI including the limited share of global finance constituted by SRI and broader structural constraints.

CSR has also been adopted by investment banks and financial institutions themselves. Goldman Sachs, JP Morgan Chase, Barclays, Bank of America, Morgan Stanley, and Deutsche Bank all have webpages devoted to their CSR practices, suggesting that finance itself can and should be an object rather than only a tool of CSR. Noting the absence of a suitable framework for studying CSR in the banking industry itself, Bert Scholtens (2009) has generated a framework based on four dimensions – codes of CSR principles, environmental management, responsible financial products, and social conduct – to rank thirty-two banks in fifteen countries. Hsiang-Lin Chih, Hsiang-Hsuan Chih and Tzu-Yin Chen (2010), studying the determinants of CSR in the financial industry, find that a firm's size, competitive environment, and legal environment all contribute to adopting CSR, and that there is a negligible link between CSR adoption and financial performance. Surveying discourses of CSR and corporate social irresponsibility in

[6] On SRI in the American context, see: Schueth (2003); for SRI globally, see: Hill et al. (2007).

the financial industry following the 2007-2008 financial crisis, Christian Herzig and Jeremy Moon (2013) show the diversity of purposes for which CSR practices and discourses are invoked, from rationalization and justifying the behavior of the financial industry to calls for a more fundamental restructuring of the industry as a whole. This research suggests that despite the growth of CSR in global finance, its ability to fulfill its promise of holding firms – both financial and otherwise – to higher standards of social and environmental responsibility remains limited at best.

If CSR neither enhances financial performance nor restraints financial excess, what, then, explains its embrace by global finance? More critical analysis places CSR within the context of neoliberal governmentality, in which social responsibility is transferred from public entities to private actors while moral behavior and social goals are commodified as means of market differentiation (Bannerjee 2008; Shamir 2008). Rather than holding finance responsible for its effects on social welfare, CSR projects are pursued strategically (Windsor 2001). Contra Revilli and Viviani, Meng-Wen Wu and Chung Hua Shen (2013) find a positive link between CSR and financial performance, suggesting that investment banks may pursue CSR for strategic and not altruistic ends. CSR practices provide a way of branding financial products and appeal to investors who are concerned with sustainability in a competitive environment (Ogrizek 2002). For example, in 2018, responding to shareholder activism – in particular by Robeco and the Church of England Pensions Board – Royal Dutch Shell announced a policy linking executive compensation to carbon emissions targets. Additional strategic uses of CSR include legitimizing the size and profits of the industry (Haigh and Hazelton, 2004), cultivating a sense of identity for investors (Markowtiz 2007), or staving off formal regulation (Gentzoglanis 2019). CSR's ambiguity provides a strategic value for financial firms, as its rhetorical promise – for firms, shareholders, and social activists – far exceeds its empirical purchase. The mythology surrounding CSR, Markowitz (2007, 149) summarizes, "has not only allowed the growth of the SR mutual fund industry but has given it the freedom to avoid answering difficult questions about the product it is selling." Therefore, rather than holding the global financial system accountable for the social harms it engenders, CSR practices and discourse at best represent side payments to cover negative externalities and at worst work to legitimate business as usual.

III. Financial responsibility in crisis

If the social consequences of shareholder value maximization had strained conventional practices of responsibility during ordinary times, the 2008 financial crisis exposed the insufficiencies of their conceptual underpinnings. The collapse of the U.S. housing market was magnified and transmitted well beyond defaulting homeowners and mortgage-issuing banks in the United States. Many people, from those with retirement funds invested in financial funds to workers laid off in the wake of crisis-induced corporate losses, suffered not solely because of fraud, failure to fulfill fiduciary responsibility, or socially irresponsible investments, but as a result of finance's deep imbrication in society. In the aftermath of the 2008 global financial crisis, the question of who was to blame for such large and systemic economic damage loomed large in both popular and academic circles.[7] Popular narratives tend to emphasize individual moral responsibility on the part of borrowers, investors, and bankers. Borrowers were blamed for having taken on irresponsible levels of debt and for being bad financial citizens. Investors and consumers were criticized for their poor understanding of market dynamics, leading OECD Secretary-General Angel Gurría to conclude that the appropriate solution lay in helping consumers and investors "make more informed decisions" (qtd. in Griffin 2012, 10). Perhaps less surprisingly, bankers were often identified as especially culpable. Timothy Hellwig and Eva Coffey's (2011, 417) survey data from Britain

[7] TIME magazine's list of "25 people to blame for the financial crisis" is illustrative of this kind of popular post mortem. Their list was discussed and dissected by a number of other news outlets including *The Guardian, Huffington Post,* and *The New York Daily News* (2009).

found that 65% of respondents identified "banks and investment companies" as "the most responsible for the recent problems facing world financial markets," with 25% choosing "governments and regulators."[8] The latter attribution of responsibility is consistent with the trope of regulators "asleep at the wheel" in the lead-up to the financial crisis, emphasizing the close relationship between regulators and industry and the possibility that this proximity has captured or compromised regulatory actors.
In contrast with popular narratives, which tend to single out particular firms and people, scholarly accounts of the crisis focus less on individuals and more on actors' institutional position within the global financial system, their incentives, and their relations with other actors, with the goal of generating a causal account of the crisis. Eschewing the moralistic tone of popular accounts, scholarly accounts are more likely to provide an empirically substantiated *causal* account. Much of the academic literature on the financial crisis causally attributes responsibility to specific financial innovations, relationships among financial actors, and predictive models and accounting practices that make up the global financial ecosystem.

Frank Partnoy (2009, 431) locates financial innovation as being at the core of the 2008 financial crisis, citing its tendency to outpace investors' ability to process information and arguing that the subsequent information asymmetries exacerbated misunderstandings and crucial gaps in knowledge. Structured finance – products like securitized assets, credit derivatives, and collateralized debt obligations – has been singled out for the role it played in magnifying and transmitting the collapse of the U.S. residential mortgage market (Benmelech and Dlugosz 2010, 161). Assembling new financial products out of assets like residential mortgages and selling them on to third parties allowed banks to make more and riskier loans to borrowers. At the same time, it eroded market incentives to accurately measure risk and hold appropriate amounts of capital as investment banks transferred the biggest risks associated with securitized loans off their balance sheets to special purpose vehicles while retaining on their books those tranches of the securitized loans rated highly enough to avoid capital charges (Acharya and Richardson 2009, 195; Benmelech and Dlugosz 2010, 165). According to Viryal Acharya and Matthew Richardson (2009, 196-197), the resulting concentration of risk in the unsupervised shadow banking sector and overleveraging in the regulated financial sector was the ultimate cause of the financial crisis.

Other scholars have focused on the role that private credit raters played in reassuring buy-side investors and in-house risk managers that securitized assets and the derivatives written on those structured products were safe investments (Partnoy 2009; Blinder 2009). The relationship between credit raters and banks has come under particular scrutiny; banks pay for credit rating services, creating an incentive for raters to use models that generate more favorable ratings.[9] Partnoy (2009, 431), for example, has argued that credit raters should be understood less as providing accurate information to investors and more as providing "regulatory licenses" that allowed banks to carry out asset securitization and swap deals outside the scope of regulators' capital requirements. Benmelech and Dlugosz (2010, 162) cite the "overreliance on statistical models that failed to account for default correlation" as a "main cause of the credit rating disaster."

[8] They also found that the likelihood of blaming governments and regulators was higher among respondents with low political sophistication and Conservative Party identifiers. Economic ideology played no role in determining individual assignment of responsibility.
[9] Benmelech and Dlugosz (2009, 200; 162) note, however, than more than 80% of the tranches of asset-back securities derivatives were rated by two or three agencies which provided the same rating. Nonetheless, tranches with only one rater were more likely to be downgraded, providing some evidence for the idea that raters provided overly rosy scenarios in order to attract the business of banks. Prem Sikka (2009) argues that similar conflicts of interest also undergirded auditors' relationship with banks in the lead-up to the financial crisis.

An overreliance on the methodology of predictive models and the subsequent over-confidence in risky financial transactions is also central to Patricia Arnold's (2009) account of accounting practices' contribution to the financial crisis. Major accounting firms in the U.S. and Europe were directly involved in the process of asset securitization and directly advised their investment banking clients. Like credit raters, they relied on models that not only failed to predict the crisis, but may even have exacerbated it by requiring assets to be priced according to their market value (fair value accounting) which is highly volatile (and often very low) during crises (Arnold 2009, 803). Mary Barth and Wayne Landsman (2010, 399) dispute this conclusion, exonerating fair value accounting, and laying the blame instead at the feet of financial disclosures and reporting on asset securitization and derivatives which they contend was "insufficient for investors to assess properly the values and riskiness of bank assets and liabilities." They couch their conclusions explicitly in the language of responsibility arguing that, "it is the responsibility of bank regulators, not accounting standard setters, to determine how best to mitigate the effects of procyclicality on the stability of the banking system" (Barth and Landsman 2010, 407).

Exceptions to moralized and causal accounts have focused on the role that dominant ideas played in legitimating self-regulation of the financial sector. Alison Kemper and Roger Martin (2010) document the shift in the locus of responsibility for financial firms' social consequences from the state to the firm level, culminating in the paradigm of shareholder value discussed above. They contend that the crisis was an obvious failure of the idea that firms discharge their social responsibility by maximizing shareholder return, creating an opening for governments to resume their position as the actors responsible for regulating firm behavior (2010, 229). David Colander et al. (2009) push this critique a step further to implicate the role that the economics profession as a whole played in the financial crisis. Like other scholars, they cite unwarranted confidence in flawed risk models that, in failing to account for feedback loops and irrationality, led both regulators and market participants to overestimate the stability of the financial system and to underestimate – or even ignore – systemic risk (Colander et al. 2009, 254; King 2017, 120ff). They also call the profession to task for its post facto assessment of the crisis as an exogenous shock rather than the product of deeply flawed assumptions and models (Colander et al. 2009, 249-250).

At the core of Colander et al.'s critique is the disparity between the individualist assumptions of economic models versus the systemic risks produced by large number of market participants using the same models and identical micro strategies. This disparity is echoed in the sheer number and variety of scholarly analyses of the causes of the financial crisis, and it speaks to both the complexity of the financial system and the difficulty of matching causal explanations of the crisis with theories of responsibility. While there have been some moves towards more structural accounts of the financial crisis,[10] referencing broader macroeconomic factors (e.g., low interest rates fueling "irresponsible" borrowing, the global savings glut), even these tend to fall back on an individualized conception of responsibility, concluding, for example, that it was the Fed who was ultimately responsible for keeping interests rates too low.

IV. Finance and the limits of personal responsibility

[10] James Crotty (2009), for example, attributes the financial crisis to the flawed institutions and practices of what he calls the New Financial Architecture, an amalgamation of rapid innovation and cycles of booms and crises accompanied by government bailouts, followed by further expansions. He enumerates a list of flaws in this architecture, including its weak theoretical foundation; the perverse incentives that created excessive risk; the complexity and opacity of financial products that prevented accurate pricing; self-regulation; channels of contagion created by relying on complex financial products in a tightly integrated financial system; and high system-wide leverage.

The dynamics of global finance undermine traditional conceptions of moral responsibility, in which "one is accountable as a subject who is the cause of his or her actions through the freedom of the will" (Raffoul 2010, 5). Ascriptions of moral and legal responsibility rely on a series of onto-political conditions – linear causality, calculable risk, unified agency, and rational control – that do not prevail in the context of financial markets.

Clear Causal Connection

The first condition, causal connection, is relatively straightforward: to be responsible for something, there must be a clear causal connection between the agent and some event or change in the world. As Iris Marion Young (2006, 116) summarizes, "one assigns responsibility to a particular agent (or agents) whose actions can be shown to be causally connected to the circumstances for which responsibility is sought." While this usually takes the form of some action, failing to take an action can also be grounds for ascriptions of responsibility, when such inaction directly leads to some harm, such as in cases of strict liability (Sankowski 1990).

The complexity of the financial system means that establishing clear causal connections between actions and harms is difficult. Each actor within the financial system has multiple counterparties, each of whom have many other counterparties, resulting in a dense network of relationships of debt and credit which have proven difficult to value, especially during times of crisis when the risk of nonpayment by one counterparty can set into motion a chain of knock-on downgrades to creditworthiness, forced sale of assets at very low prices, and thereby threats to the solvency of multiple firms in the system. As Andrew Haldane (2009, 5) of the Bank of England observed in early 2009:

> The financial system is […] a network, with nodes defined by the financial institutions and links defined by the financial interconnections between these institutions. Evaluating risk within these networks is a complex science; indeed, it is the science of complexity. When assessing nodal risk, it is not enough to know your counterparty; you need to know your counterparty's counterparty too. In other words, there are network externalities. In financial networks, these externalities are often referred to as contagion or spillovers.

Calculable Risk

The second condition presupposes the existence of alternative possibilities arranged as calculable risks, which amounts to a claim that the agent could have known the consequences of their action. If it is fundamentally impossible for an agent to predict the consequences of their action, ascribing moral responsibility would be unfair. As Steve Vanderheiden (2004, 143) writes in the context of climate change, "agents are assumed to be morally responsible (as opposed to merely being causally responsible) for their acts (or omissions) insofar as they can reasonably anticipate the consequences of those actions (or inactions.)" While an agent may be causally responsible for some harm, they can only be held morally responsible if the risks of action, or inaction, could be determined in advance.

This is not always the case in finance. Financial networks are characterized not only by externalities, but also by feedback loops and reflexive dynamics, whereby individual actions generate outcomes in excess of intentions, expectations, what the simple aggregation of individual decisions might lead one to expect. For example, the widespread use of a common methodology used to calculate risk led to correlated investment strategies that, rather than making the financial system less crisis-prone as intended, in fact rendered it more vulnerable to disruption and contagion (Lockwood 2015). As a result, the condition of known, calculable risks does not always obtain. While we may rightly hold a number of actors responsible for failing to anticipate the possibility – indeed, probability – of systemic contagion in the financial sector, it is considerably more difficult to contend that, at every juncture, each actor involved could have knowingly made crisis measurably less likely by acting differently. The financial crisis was not the sum of knowable, calculable risks. Instead, it was characterized at least in part by incalculable uncertainty (Nelson and Katzenstein 2014).

Unified Individual Agent

Ascribing responsibility also makes implicit claims about the nature of the agent themselves. The third condition, reflecting a broadly liberal conception of the self as a unified and sovereign actor, is that the responsible agent is relatively discrete. Whether a natural or corporate person, theories of moral responsibility point to a single, unified individual agent to be held accountable (Lavin 2008, 8-10; Young 2011, 101-104). This both reflects the insistence that someone must answer for some social harm and an individualist social ontology that understands social outcomes as the result of interactions between discrete individuals.

The emergent properties and reflexive dynamics of global finance mean that the global financial system is better conceptualized precisely *as a system* and not as an aggregation of individual traders, managers, and firms acting in isolation. Firms' investment strategies are not forged in a vacuum; they variously reflect, compete with, and amplify the strategies of their competitors. They are social phenomena, driven not just by rational calculation but also by market sentiment, irrational expectations and exuberance, and Keynes's animal spirits. Even individually purely rational calculation – like continuing to invest in what you know is likely a bubble as long as it has not yet burst – can produce collectively suboptimal results. The result of these interactions are Kindleberger's (2005) manias, panics, and crashes: outcomes that are greater than the sum of their parts and which are difficult or impossible to understand in a methodologically individualist paradigm.

Rational Control

Finally, commonsense accounts of responsibility assume a fourth condition: that the agent has a level of rational control over their actions. Thomas Nagel (1993, 60-61) summarizes: "it seems irrational to take or dispense credit or blame for matters over which a person has no control, or for their influence on results over which he has partial control."[11] To hold an individual responsible is, therefore, to make an implicit claim that not only could the event have been otherwise, but that the responsible agent alone determined the course of events that happened. Despite voluminous philosophical debate in the metaphysics of agency, this intuition is widespread in contemporary political thought, underpinning both liberal (Berlin 2002; Dworkin 2000, 5-8; Hayek 1960, 72) and republican (Petit 2001, 8-11, 45-47) conceptions of responsibility.

While individual traders, risk managers, CEOs, and financial regulators were not powerless in the lead-up to the financial crisis, their agency was constrained by the systems and structures in which they were embedded. In the case of flawed market risk models that may have inadvertently rendered the financial system less stable, banks did not decide to use Value-at-Risk independently; the methodology (though not its specifics) was recommended by the Basel Accord and incorporated into national capital adequacy regulations. The reliance on flawed systems of risk-modelling continued after the crisis. In 2012, JPMorgan Chase sustained $6.2 billion in losses as a result of the so-called "London Whale" trades,

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[11] This assumption is taken to underpin ordinary feelings of regret, which turn on the belief that things could have been different (James, 1919). Joel Feinberg's (1968) conception of contributory fault similarly emphasizes that causal connection alone in insufficient.

which occurred far in excess of regulatory and internal risk limits.[12] While risk managers, traders, and executives at JPMorgan Chase bear responsibility for gaming and ignoring risk limits and capital requirements, the use of manipulable risk models in the first place, banks' ability to effectively set their own capital requirements, and lax regulatory oversight of the whole process has a much longer history, and one that surely bears some responsibility for the resulting losses. Similarly, although the AAA ratings that senior tranches of CDOs enjoyed almost certainly made investors overconfident in the soundness of these products, the use of private credit ratings is incorporated into U.S. law and regulation governing the valuation of bank assets and allowable purchases (Carruthers, 2013).

V. Conclusion

Global finance represents a critical yet challenging case for scholars of responsibility. On the one hand, finance is conceptually and practically bound to responsibility, whether in the form of the fiduciary responsibility owed by fund managers, the legal liability for financial fraud, or the growing calls for socially responsible investing. On the other hand, as became painfully clear in the wake of the 2008 financial crisis, the dynamics of financial markets render traditional theories and practices of moral and legal responsibility inadequate. This "responsibility gap" (Buell, 2018) is intensified by the distributive consequences of financial practices and crises and the corresponding calls for greater accountability in finance. Curran (2015, 405) contends that "the massive *mismatch* between those who gained from financial system risks and those who suffered damages from them" contribute to widening inequality as a privileged few are able to extract gains while many others suffer the losses.

More fundamentally, this responsibility gap should itself be understood as a structural feature of global finance, analogous to what Beck (1995, 63-65; 1998) has called "organized irresponsibility" – despite the highly organized and regulated nature of contemporary social and economic structures, their complexity render it increasingly difficult to hold any individual agent or node in such a network accountable for harms. In fact, "it is the application of prevalent norms that guarantees the non-attributability of systemic hazards […] Whoever waves the banner of rigorous causal proof while demanding that the injured parties do the same, not only demands the unachievable," but also "holds aloft a shining shield to keep rising, collectively conditioned hazards out of the reach of politics or attribution to individuals" (Beck 1995, 64). The very ways in which finance organizes relationships of responsibility insulates both individual financial actors and the financial system itself from accountability, while also providing a legitimating narrative to the status quo. Because no one agent is responsible for the harm, it can be absolved away as a market failure or tragic misfortune.

The same individualistic and causal accounts of responsibility that continue to shape both financial practices and scholarship are ubiquitous in contemporary political life. Nevertheless, the 2008 financial crisis revealed their empirical and normative inadequacy and the need for more collective and political conceptions of responsibility. This tension between conventional accounts of responsibility and the structure of global finance can be found in a perhaps surprising source: the final report of the Financial Crisis Inquiry Commission (FCIC) in the United States.

[12] The U.S. Senate Permanent Subcommittee on Investigations (2013, 1) writes that JPMorgan Chase's "inadequate derivative valuation practices enabled traders to hide substantial losses for months at a time; lax hedging practices obscured whether derivatives were being used to offset risk or take risk; risk limit breaches were routinely disregarded; risk evaluation models were manipulated to downplay risk; inadequate regulatory oversight was too easily dodged or stonewalled; and derivative trading and financial results were misrepresented to investors, regulators, policymakers, and the taxpaying public who, when banks lose big, may be required to finance multi-billion-dollar bailouts."

The FCIC's mission was cast in explicitly causal terms (to "examine the causes of the current financial and economic crisis in the United States"[13]) and its report was "intended to provide a historical accounting of what brought out financial system and economy to a precipice and to help policy makers and the public better understand how this calamity came to be" (FCIC 2011, xi). *The Financial Crisis Inquiry Report* begins with a conventional recitation of how the financial crisis developed, and cited a familiar concatenation of factors as causally contributing to the crisis, among them failures in supervision and regulation, excessive borrowing and opaque risky investments, and an inconsistent government response (FCIC 2011, xvi-xxiii).

Nevertheless, the FCIC's (2011, xxii-xxiii) conclusions – and indeed, conception of responsibility -- are more nuanced than their statutory instructions might lead one to anticipate, and are worth quoting at some length:

> […A] crisis of this magnitude cannot be the work of a few bad actors, and such was not the case here. At the same time, the breadth of this crisis does not mean that 'everyone is at fault'; many firms and individuals did not participate in the excesses that spawned disaster. We do place special responsibility with the public leaders charged with protecting our financial system […] These individuals sought and accepted positions of significant responsibility and obligation. Tone at the top does matter and, in this instance, we were let down. No one said 'no.' But as a nation we must also accept responsibility for what we permitted to occur. Collectively, but certainly not unanimously, we acquiesced to or embraced a set of policies and actions, that gave rise to our present predicament.

The *Report's* concludes with an explicit call for collective responsibility: "The greatest tragedy would be to accept the refrain that no one could have seen this coming and thus nothing could have been done. If we accept this notion, it will happen again. This report should not be viewed as the end of the nation's examination of this crisis. There is still much to learn, much to investigate, and much to fix. This is our collective responsibility. It falls to us to make different choices if we want different results." (FCIC 2011, xxviii). This outlines not only a political agenda, but also a scholarly one. Future scholarship on finance and responsibility should begin not doctrines of moral responsibility or liability, but with the structural dynamics of financial markets, which simultaneously unevenly distribute risk and loss while obscuring attributions of responsibility. The challenge of global finance calls for a more fundamental rethinking of the concepts and practices of responsibility to move beyond the reliance on individualistic causal attribution.

[13] The FCIC's mission was specified as part of the Fraud Enforcement and Recovery Act (Public Law 111-21) signed in May 2009.

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